

F. No. 15/16/2015-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated 10th April, 2017

Subject: New Shipper Review under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for the purpose of imposition of anti-dumping duty on dumped imports of Clear Float Glass, originating in or exported from Pakistan, in respect of M/s. Tariq Glass Industries Ltd. (producer and exporter).

No. 15/16/2015-DGAD: Whereas having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter also referred to as AD Rules);

A. BACKGROUND

2. The Designated Authority (hereinafter referred to as “Authority”) initiated anti-dumping duty investigation concerning “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive), the nominal thickness being as per BIS 14900: 2000” (hereinafter referred to as “subject goods”) originating in or exported from Saudi Arabia, UAE and Pakistan vide initiation Notification No F.No.14/25/2012-DGAD dated 11th April 2013. The Authority vide final findings dated 10th October 2014 recommended an anti-dumping duty for all exporters/producers from Pakistan, Saudi Arabia and UAE at the rates prescribed in the said findings. The recommendation of the Designated Authority was accepted by Central Government and antidumping duty was levied vide Customs Notification No. 48/2014- Customs (ADD) dated 11th December 2014.
3. M/s Tariq Glass Industries Ltd (hereinafter referred to as “New Shipper” or “Applicant”) filed a duly substantiated application before the Authority in accordance with Rule 22 of the AD Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the definitive anti-dumping duty imposed by the Central Government vide Customs Notification No. 48/2014- Customs (ADD) dated 11th December 2014, concerning imports of the subject goods, originating in or exported from Pakistan.
4. The Act and the AD Rules made there under require the Authority to undertake a New Shipper Review for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation of the original anti-dumping investigation concerning imports of the subject goods from the subject

country and that the applicant is not related to any of the exporters and producers in the exporting country who are subjected to the antidumping duty. The applicant claimed that they are not related to any of the exporters/producers in Pakistan or other subject countries against who anti-dumping measures are in force with regard to the product concerned. Furthermore, they claimed that they have not exported the product concerned during the period of investigation of the original investigation.

5. The Authority prima facie examined the information submitted by the applicant and at the stage of initiation of the investigation, found it sufficient to justify the initiation of a new shipper review investigation in accordance with the provisions of Rule 22 of the AD Rules. The Authority accordingly initiated the New Shipper Review under Rule 22 of the AD Rules vide Notification F. No. 15/16/2015-DGAD dated 23rd September, 2015. The period of investigation for the purpose of the present review is 1st July, 2015 to 31st March, 2016 (9 months).
6. Having initiated the subject NSR investigation, the Authority recommended provisional assessment on all exports of subject goods made by M/s Tariq Glass Industries Ltd., till this review is completed in accordance with Rule 22 of the Rules supra and having regard to Customs Notification No. 48/2014- Customs (ADD) dated 11th December 2014.
7. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by M/s Tariq Glass Industries Ltd. till completion of the subject NSR investigation vide Notification No. 53/2015-Customs (ADD) dated 30th October, 2015.

B. PROCEDURE

8. The procedure described below has been followed with regard to the present investigation:
 - a. The Authority issued a public notice dated 23rd September, 2015, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.
 - b. The Authority forwarded a copy of the initiation notification to the NSR applicant along with a copy of the exporter's questionnaire and gave them opportunity to make their views known in writing.
 - c. The Authority also forwarded a copy of the initiation notification to the Pakistan High Commission in New Delhi.
 - d. The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.

- e. In response to the initiation notification, response in the form of Exporters Questionnaire was filed by M/s Tariq Glass Industries Ltd.
- f. Arguments raised and information provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this findings.
- g. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- h. The Authority held Oral Hearings on 17th August and 2nd November 2016 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). The interested parties were allowed to present rebuttal rejoinders on the views/information presented by other interested parties. The Authority has considered submissions received from interested parties appropriately.
- i. Further information was sought from the applicant and other interested parties to the extent deemed necessary. The data submitted by the Applicant was examined and back-up documents were called for, wherever required.
- j. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for the findings were disclosed to known interested parties on 27th March 2017 and comments received on the same have been considered in the Final Findings.
- k. *** in the findings represent information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.
- l. The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential.

C. Product Under Consideration

9. The present investigation relates to exports of Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive), the nominal thickness being as per BIS 14900: 2000. The classification at the 8-digit level is 70051090 even though the same are being classified and imported under various sub-headings like 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020. The customs classification is indicative only and in no way, it is binding upon the scope of the product under consideration under the investigation.

D. Views of the Applicant / New Shipper, M/s Tariq Glass Industries Ltd (Producer cum Exporter)

10. The views of the Applicant have been summarized below:

- a. The Applicant did not export the PUC to India during the period of investigation of the original investigation, i.e., 1st October 2011-31st December, 2012.
- b. The Applicant started production of PUC in April, 2013 and began exporting the PUC to India with effect from 12th July, 2013, subsequent to period of investigation of the original investigation.
- c. The Applicant has no related company engaged in the production of the PUC. None of the related companies of the Applicant exported the PUC to India during the period of investigation of the original investigation, i.e., 1st October 2011-31st December, 2012.
- d. The Applicant is not related to any of the exporters or producers in Pakistan, Saudi Arabia and UAE. The Applicant is also not related to any of the exporters or producers in China PR.
- e. The Applicant participated before the Designated Authority in the original investigation and filed injury submissions and comments on the Petition. However, the Applicant did not file questionnaire response at the time of the Original investigation because it had no exports to India during the period of investigation of the original investigation.
- f. The Applicant Company has not exported PUC to India during the period of investigation of the original investigation and is not related to any other entity that had exported PUC to India during the period of investigation of the original investigation. The Applicant also certified that it is not related to any entity in any country on which anti-dumping duty on the subject goods is applicable. Thus, the Applicant satisfied both the requirements of Rule 22 of the AD Rules and was eligible for the initiation of the New Shipper Review and the determination of an individual rate of duty.
- g. The Applicant did not claim excessive confidentiality. All the documents upon which confidentiality was claimed contain business confidential information and are not available in the public domain and did not impact or prejudice the Domestic Producers. The Contract between QYGMMC (M/s. Qinquangdao Yaohua Glass Machine Manufacture Company Ltd) and the Applicant is subject to a confidentiality clause therein and thus, was not shared with the Domestic Producers.
- h. The Applicant procured a new plant for production of Float Glass from QYGMMC and part payment for procurement, erection and commissioning was made through issue of shares for better management of cash flows. The Applicant opted to issue 41, 58,000 shares for this purpose. Out of this, 31,

18,500 shares were issued to QYGMMC which amounts to 4.25% of the total shares of the Company and 10,39,500 shares were issued to Global Link Glass Company, another service provider. QYGMMC and Global Link Glass Company are not related to each other. The issue of shares pursuant to the contract with QYGMMC was also duly disclosed in the Applicant's Financial Statements in Note 13 for the year ended June 30, 2013 and June 30, 2014. Out of these 31,18,500 shares, QYGMMC subsequently disposed of 5,50,000 shares in the year 2015 and consequently the shareholding of QYGMMC has come down to 3.5% during the POI for the present new shipper investigation. The 3.5% of shares so held by QYGMMC, directly or indirectly, were merely payment, and do not create any "relation" between the two companies. The shareholding of QYGMMC was not a direct investment by it rather the shares were issued to it against partial payment for plant and machinery supplied by it. Based on the fact that 3.5% of the Applicant's shares are held by QYGMMC, the DI attempts to raise the argument that the Applicant is "controlled" by them or that the two are "related". This is not the case and the conditions for establishing "relation" under Rule 2(b), the only comparable standard under the Rules, are not even remotely considered by the DI.

- i. QYGMMC does not have any representation on the Board of Directors of the Applicant Company, has no direct or indirect control which gives it any influence over the Applicant or which gives it any right to direct any of the Applicant's operating decisions. QYGMMC has no family relation with the Applicant. The Applicant and QYGMMC are not under any common management or control and the manufacturing process or business of the Applicant is not in any way dependent on QYGMMC. This fact can be verified from the annual report of the Applicant. No products of the Applicant are sold or transferred to QYGMMC.
- j. The Applicant is not related to Yaohua Glass Group Corporation, as alleged by the Domestic Producers.
- k. The Domestic Producers cannot question the Applicant's certification regarding lack of exports at this stage when they did not question it at the time of the original investigation. The Domestic Producers are estopped by their waiver in this regard. The Applicant relied on the Supreme Court decision in *Ferro Alloys Corpn. Ltd. & Anr. vs. Union of India & Ors*, (1999) 4 SCC 149, wherein the Supreme Court rejected the argument that an appellant could challenge a part of a departmental order that it had previously supported without qualification by virtue of estoppel, waiver and acquiescence.
- l. The Applicant cited the decision of the CESTAT in *H&R Johnson* (2005) to establish that the condition under Rule 22 of the AD Rules could be satisfied at any point of the Review proceeding, and the condition was not necessarily required to be satisfied prior to initiation.

- m. The Domestic Producers are misguided in their understanding that “exporting country” under Article 9.5 of the WTO AD Agreement refers to *all* exporting countries on whom anti-dumping duty is applicable and not just Pakistan where the applicant is based. The Applicant has submitted that acceptance of such a premise would lead to many practical complications in the conduct of the New Shipper Reviews, especially for MNCs and where multiple period of investigations are involved.
- n. The Domestic Producers are misguided in their understanding of the term “related” as it appears in Rule 22 of the AD Rules. The Applicant is not ‘related’ to QYGMMC. The relationship between QYGMMC and the Applicant is purely contractual and the subject contract is available with the Designated Authority for examination. The Applicant is not “related” to QYGMMC by any standard available under AD law or any other laws.
- o. The Domestic Producers have misunderstood the scope of “subject to anti-dumping duty” under Rule 22. The Applicant presses that, under Rule 22, “subject to anti-dumping duty” refers only to those entities which are subject to *individual dumping rate* and not those subject to *residual rates*. In this regard, the Applicant relies on *H&R Johnson (India) Ltd. v. Designated Authority, 2007 (218) E.L.T. 273* (paragraph 5).
- p. The selected period of investigation is not arbitrary as stated by the Domestic Producers. Annexure I, para. 2(i) to the AD Rules provides that the period of investigation to determine the normal value, the export price and the dumping margin should be “a reasonable period of time (not less than six months)”.
- q. The Domestic Producers claim that selection of a prospective period of investigation for the subject new shipper review is arbitrary and that the initiation of the subject review is bad in law. In this regard the Domestic producers cite *H&R JohnsonIndiaLtd.vs.Designated Authority2007 (218) E.L.T. 273 (Tri. - Del.)*. The CESTAT in this order, found that:

15. When the review applicants had neither exported nor sold for export during therelevant period of review, they were obvious non-starters and were not eligible to claim newshipper review under Rule 22. Since the producer-applicant had, admittedly, not producedthe subject goods before making the application for new shipper review and the exporters didnt make any export to India prior to their new shipper review applications, (they were notqualified for applying for initiation of new shipper review under Rule 22. The initiation ofreview was, therefore, contrary to Rule 22 of the rules. The review proceedings are, therefore,declared illegal and non est, vitiating the impugned final findings and the impugnednotification. The impugned notification and final findings cannot, therefore, be sustained andare hereby set aside. The appeal is, accordingly, allowed.

- r. The Applicant distinguishes the factual situation in the subject review with the factual situation in *H&R Johnson (2007)* case. The findings of the CESTAT are not applicable in the Applicant's case because:
 - i. In the *H&R Johnson (2007)* case, the new shippers had not begun production or exportation to India at the time of filing the new shipper review application. The Applicant has begun production and export to India in substantial quantities before filing the new shipper review application.
 - ii. In the *H&R Johnson (2007)* case, the new shippers were found to be ineligible for initiating a new shipper review under Rule 22.
 - iii. In the *H&R Johnson (2007)* case, the entire period of review was prospective. The subject review herein consists of a period of investigation that is part prospective and part retrospective.
- s. The Applicant also relies on *H and R Johnson (India) Limited v. Union of India & Ors.*, 2008 (232) E.L.T. 390, wherein the Delhi High Court stated that “*the initiation of a new shipper review cannot be with retrospective effect in the case of a first time exporter*”.
- t. The Applicant's plant is a new plant, not an old plant. The instant case is not one of circumvention by way of old plant of QYGMMC being sold off to the Applicant.

E. Views of the Domestic Producers

11. The submissions made by the Domestic Industry and considered relevant by the Authority are as follows:
- a. The initiation of the present New Shipper Review is bad in law. The mandatory requirements and pre-conditions of Rule 22 have not been satisfied prior to initiation of new shipper review. The application filed by the exporter and the producer for the initiation of new shipper review is grossly inadequate and unsubstantiated in view of the following;
 - i. The Applicant has supplied no data to establish the lack of exports to India during the period of original investigation;
 - ii. No data and information has been filed by any of the related party of the Applicant to substantiate the requirement of “no exports” by them in the original period of investigation
 - iii. The Applicant has made an incomplete relationship declaration and failed to establish / clarify the nature and extent of their relationship with M/s Qinhuangdao Yaohua Glass Machine Manufacture Company Ltd. (“QYGMMC”).

- iv. No details have been provided whether it is a new plant or an old plant taken over by the producer,
- b. The Applicant has claimed excessive confidentiality and failed to provide reasons for claims of confidentiality on certain documents and no reasons have also been provided as why the same is not susceptible to summarization. Applicant has not provided non confidential version of some documents and contract with QYGMMC. Meaningful non-confidential submissions were not provided either.
- c. Under Rule 22, the Applicant was required to show that it is not related to *any* exporter or producer ‘for all the countries for which duty on the product was applicable’.
- d. The law on Rule 7 has been very well clarified by the Hon’ble Supreme Court in the case of Sterlite industries and thereafter by the Hon’ble Tribunal. It has also been clarified by the Hon’ble Tribunal that every information is not by itself required to be treated as confidential merely because a party in the course of investigation provides it to the Designated Authority on a confidential basis.
- e. The Applicant did not fulfill the pre-conditions of Rule 22 of the AD Rules. Appropriate and sufficient materials were not placed before the Designated Authority as a pre-condition for initiation under Rule 22 to initiate new shipper review. It is necessary under Rule 22 that the Applicant in the exporting country must not have exported the subject goods to India during the period of investigation and should not be related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. The “exporting country” is not limited to the country under investigation but includes all countries against whom duty has been imposed by the Authority with respect to the PUC.
- f. The Applicant made false declarations concerning its related Chinese entity, QYGMMC, to circumvent duties. QYGMMC has investments in several Float Glass lines in China, is a shareholder of the Applicant and is subject to anti-dumping duties as per Notification No. 47/2015-Customs (ADD) dated 08.09.2015. The Applicant did not bring this fact on record.
- g. It is certain that if the alleged disclosures which were subsequently made by the Applicant through letters, written submissions and rejoinder about the Chinese shareholding company had been made known to the Designated Authority prior to initiation, the case would not have been initiated. Such suppression of material facts and conduct of the Applicant clearly show the malafide intent in securing an unwarranted initiation.
- h. The period of investigation, fixed as 9 months from 1st July 2015 to 31st March 2016, is arbitrary. Fixation of such shorter period of 9 months is contrary to Trade Notice of the Designated Authority specifying that the minimum period of investigation shall be 12 months. Further, the period of investigation selected is prospective. The Designated Authority, under Rule

22, is not empowered to determine such a prospective period of investigation. The law in this regard is clearly laid down in H&R Johnson where the Tribunal had held that selection of prospective period is unwarranted and would distort the entire scheme and purpose of imposition of anti-dumping duty to the grave disadvantage of the domestic industry that had earned the protection of anti-dumping duty.

- i. The exporter has not submitted proper non-confidential version of the response by claiming excessive confidentiality without any proper justification. Domestic industry claims that it has been done to ensure that they are not in a position to comment upon or to bring inadequacies in their submissions.
- j. It is submitted that the New Shipper has not clarified the discrepancy regarding allotment of shares in lieu of cash in the annual report and the response filed by them. Thus nondisclosure of complete information is a clear act of non-cooperation that too with the intent to mislead the authority and impede the investigations. The response of the new shipper should be rejected for non-compliance with the requirement of law and non-disclosure of information.
- k. In view of Rule 22 of AD Rules, the authority is obliged to analyse the relationship of Chinese company with Tariq Float Glass Limited (Pakistan). Since the new sipper from Pakistan is related to producer/exporter in China and the Chinese entity, NSR needs to be terminated.
- l. In the case of H&R Johnson India Ltd. v Designated Authority, 2005 and the findings of Designated Authority in the case of Compact Fluorescent Lamps(CFL), it has been stated that authority may collect information with regard to evidence pre-initiation and during the course of investigation. In view of this the domestic industry reiterates that authority should verify Yaohua Glass Group Corporation, China to ascertain the nature and structure of the relationship between Tariq and Yaohua Group.

F. Examination by the Authority

12. The Authority initiated the New Shipper Review keeping in view the provisions of Rule 22 of the AD Rules, which reads as follows:

“Rule 22

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

the anti dumping duties on the product.

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

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

13. Rule 22 specifies the circumstances under which a New Shipper Review investigation is to be carried out for the purpose of determining individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the following two conditions are satisfied:

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

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

14. It is evident from the above that the intention under Rule 22 is to determine individual dumping margin in respect of an exporter or producer who did not export the subject goods during the period of investigation of the original investigation. Since such producer/exporter did not export subject goods to India during the period of investigation of the original investigation, the Authority could not have determined individual dumping margin in respect of its exports at the time of original investigation. The purpose of new shipper review provision is, therefore, to provide an opportunity to such producer/exporter to claim individual dumping margin considering that these exporters have been granted residual dumping margin during the original investigation.

15. In the instant case, M/s Tariq Glass Industries Ltd., Pakistan filed an application before the Authority seeking individual dumping margin and requested for initiating the new shipper review.

16. The basic requirements for initiating the New Shipper Review under Rule 22 are that (a) anti-dumping duty is applicable on the subject goods and (b) the exporters or producers who are seeking determination of individual margin of dumping must not have exported the subject goods to India during the period of investigation of the original investigation and they must show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the subject goods. The new shipper applicant who is seeking review, apart from making a declaration in the application that he fulfils the above conditions set

out in Rule 22, cannot adduce any evidence at the time of making the application that he had not exported the goods during the period of investigation of the original investigation and that he is not related to the exporters/producers in the exporting country who are subject to anti-dumping duty on the subject goods. The Authority is not required to conduct a detailed enquiry prior to initiating new shipper review but is required to be *prima facie* satisfied that the conditions of Rule 22 are fulfilled. Unless there is material adverse evidence to contradict the statements made in the application, then the Authority may not refuse to initiate the new shipper review. In the present case, on the date of initiation of new shipper review, there was no material on record to show that the statements made by M/s Tariq Glass Industries Ltd, Pakistan (Producer and exporter) were not correct. Therefore, it cannot be said that there was no prima facie satisfaction on the part of Authority before initiating the new shipper review and accordingly, the initiation of the new shipper review is in order.

17. The claims with regard to eligibility of the applicant as new shipper were examined to know whether the company had, directly or indirectly, exported the product to India during the period of investigation of the original investigation. The applicant was asked to establish its claim that the applicant or any of its related company had not exported the product concerned to India in the period of investigation of the original investigation. The Applicant provided certification stating that:
- a. The Applicant did not export the subject goods to India during the period of investigation of the original investigation;
 - b. The Applicant is not related to any exporters or producers in Pakistan who had exported the subject goods to India during the period of investigation of the original investigation;
 - c. The Applicant is not related to any exporters or producers in Saudi Arabia, UAE, China, Indonesia and Iran who had exported the subject goods to India during the period of investigation in the investigations against these countries;
 - d. The related companies of the Applicant did not engage in the manufacture of the subject goods;
 - e. The related companies of the Applicant are not related to any exporter or producer in Pakistan who had exported the subject goods to India during the period of investigation of the original investigation;
 - f. The related companies of the Applicant are not related to any exporters or producers in Saudi Arabia and UAE who are subject to anti-dumping duty;

The Authority considered the submissions of the Domestic Producers in this regard, but did not find any adverse material against the Applicant's claim of being a new shipper.

18. With respect to the issue regarding the relationship of the Applicant with a Chinese company, M/s. Qinquangdao Yaohua Glass Machine Manufacture Company Ltd ("QYGMMC"), the Authority notes as under:
- a. Article 9.5 of the WTO Anti-Dumping Agreement reads as follows:

9.5 *If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in **the exporting country in question** who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are **not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.** ...*

- b. The authority notes that requirement under Article 9.5 is to show that the Applicant (who is a producer-exporter based in Pakistan) has not exported the product concerned to India during the period of investigation of the original investigation and is not related to any of the exporters or producers in Pakistan who have exported the subject goods to India during the period of investigation of the original investigation and who are subject to the anti-dumping duties on the product concerned. The Applicant has clearly satisfied this requirement that they are not related to any producer/ exporter in Pakistan who have exported the subject goods to India during the period of investigation of the original investigation or are subject to antidumping duties on the subject goods.
- c. The Authority notes the concerns of the Domestic Producers with respect to likelihood of circumvention and has, therefore, examined the relationship between the Applicant and QYGMMC. The Authority finds that the relationship between the Applicant and QYGMMC is purely contractual and the ownership of shares by QYGMMC is incidental to the contract entered into between the Applicant and QYGMMC for supply of plant and machinery. The relation between QYGMMC and the Applicant is one of service provider and service receiver.
- d. The Authority also notes that the Annual Reports of the Applicant list the related companies of the Applicant. It is further noted that the list of related companies does not mention QYGMMC.
- e. The Domestic Producers have not established any meaningful ‘relationship’ between the Applicant and QYGMMC, a Chinese entity. The Authority finds that a contractual relationship is insufficient to establish “relation” for the purpose of Rule 22.
- f. Further, the shareholding of QYGMMC is less than 5%, which is insufficient to show a controlling interest. No Directors are appointed on the Applicant’s Board of Directors by QYGMMC by virtue of the shareholding. The Applicant and QYGMMC are not under any common management or control and the manufacturing process or business of the Applicant is in no way dependent on QYGMMC. No products of the Applicant are sold or transferred to QYGMMC.

- g. In light of the above, the Authority notes that QYGMMC is not related to the Applicant under Rule 22 of the AD Rules.
19. During the investigation the Authority neither found any evidence regarding relationship of the Applicant with any of the exporters or producers in Pakistan, who are subjected to anti-dumping duty nor any material evidence in this regard was brought before the Authority by any of the interested parties. The Authority, therefore, notes that the New Shipper Review investigation was initiated as per provisions laid down in Rule 22 of the AD rules which is in conformity with article 9.5 of the WTO AD Agreement. Further, the Authority also finds that the Applicant is not related to any exporter / producer based in any of the countries on which duty is applicable.
20. As regards the period of investigation, the Authority is well within its bounds to determine a period shorter than 12 months, but longer than 6 months. In the case of a New Shipper, it is not uncommon for a shorter period of time to be considered as the period of investigation. It is pertinent to mention here that the period selected is partially retrospective and partially prospective. The Authority notes the Domestic Producer's concerns regarding the risks of selecting a prospective period of investigation and indeed, the concerns are very valid. However, the factual situation of the present case is clearly distinguishable from the factual situation of the *H&R Johnson (2007)* case cited by the Domestic producers. In the *H&R Johnson (2007)* case, the CESTAT clearly noted the invalidity of the initiation of the new shipper review on the following grounds:
- i. The new shippers had not even begun production or exportation to India at the time of filing the new shipper review application.
 - ii. The new shippers were found to be ineligible for initiating a new shipper review under Rule 22.
 - iii. The entire period of review was prospective.
21. In the initiation of the subject review, the Authority was mindful of these requirements, as laid down by the CESTAT in *H&R Johnson (2007)* case and carefully considered these issues prior to initiation of the subject review. The Authority noted that the Applicants herein had begun production and exports to India in substantial quantity prior to the filing of the new shipper review application. The period selected is part retrospective and part prospective. Further, given the purport of Rule 22 of the AD Rules, it is noted that in a new shipper review, the entire period of investigation cannot always be retrospective. Thus, the selection of the period of investigation is justified.
22. The Authority notes that the Applicant began production of the subject goods subsequent to the period of investigation of the original investigation. The Authority notes that the primary business of the Applicant is the production and sales of all types and kinds of glass products, including the subject goods. The Applicant fired up their furnace and began commercial production of the subject goods in April 2013. The finished product is sold by the Applicant directly to unrelated companies in the domestic market as well as in the export market. There are only two principal

shareholders / owners of the Applicant Company who are private individuals. The Authority also notes that the Applicant has three affiliate companies in Pakistan and all three of them have certified that they are not engaged in the manufacturing of the PUC and are not related to producers and exporters in Pakistan, Saudi Arabia or UAE who had exported the PUC to India during the period of investigation of the original investigation.

23. With regard to confidentiality of information, Rule 7 of AD Rules provides as follows:-

Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule (2), (3) (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

24. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of a public file.

G. Methodology for determination of Normal Value, Export Price and Dumping Margin

NORMAL VALUE

25. Under Section 9A(1)(c) of the Customs Tariff Act, 1975, normal value in relation to an article means:

(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

General Methodology for working out Normal Value

26. It was first determined by the Authority whether the total domestic sales of the subject goods by the Applicant is representative when compared to the exports of the subject goods to India.
27. Thereafter, it was examined whether their sales are under ordinary course of trade in terms of Para 2 of the Annexure I to the Anti-dumping Rules. The producer and exporter has provided transaction wise details of sales made in home market and same have been accepted by the Authority, the said information has been relied upon to determine the normal value of the subject goods sold in the home market.
28. For conducting ordinary course of trade test, the cost of production of the product concerned was examined with reference to the information provided by the Applicant and compared with domestic selling price to determine whether the domestic sales were in the ordinary course of trade or not. The authority has considered all the transactions in the domestic market for the determination of the normal value where profit making transactions are more than 80% and in case where profitable transactions are less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value.
29. While arriving at the net export price Authority relied on the DGCI&S transaction wise data in order to verify the correctness of data/information filed by the New Shipper applicant. It is further noted that comparison was made at the same level to arrive at the dumping margin.

NORMAL VALUE FOR APPLICANT

30. The Authority notes that the Applicant has submitted Exporter's Questionnaire response furnishing details of domestic sales and cost of production of subject goods during the POI. All the sales in the domestic market were made directly to independent customers. Applicant has reported total domestic sales of *** of subject goods for the gross invoice value of ***. The domestic sales are in sufficient volumes when compared with exports to India. All domestic sales transactions have been considered for determination of the normal value. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods and determined whether profit making transactions are more than or equal to 80% or not. Since, the profit making transactions were less than 80%, authority has only considered profit making transactions for determination of normal value.
31. Applicant has claimed adjustment on account of rebates, commission, packing cost and credit cost. The Authority has allowed the adjustments as claimed and determined the normal value at ex-factory level in respect of the Applicant. The Normal Value so determined has been mentioned in the dumping margin table appended below.

EXPORT PRICE

32. As per the Exporter's Questionnaire, during the POI, the Applicant **exported *** MT** of subject goods to India for the gross invoice value of ***. directly to independent customers in India. The Applicant has claimed adjustments for inland freight, port handling expenses and bank charges. The Authority has allowed the adjustments as claimed and determined the export price at ex-factory level in respect of the Applicant. The net export price of the subject good was compared with the normal value arrived for the Clear Float Glass without packing based on the verified data/information and further corroborated with the DGCI&S transaction wise data. Details of the same are mentioned in the dumping margin table appended below.

DUMPING MARGIN

33. Comparing the aforesaid normal value and export price as determined, the individual dumping margin determined for the Applicant during the POI is as follows:

<u>Country</u>	<u>Exporter / Producer</u>	<u>Normal Value(US\$)</u>	<u>Net Export Price(US\$)</u>	<u>Dumping Margin(US\$)</u>	<u>Dumping Margin (%)</u>	<u>Dumping Margin Range</u>
<u>Pakistan</u>	M/s Tariq Glass Industries Ltd	***.	***.	***.	***.	<u>5 -15</u>

Comments on Disclosure

Post Disclosure Statement submissions by the Applicant

34. Applicants adopt all the submissions made during the course of the investigation and submitted that if there is any change in the essential facts under consideration as presented in the disclosure statement, a personal hearing must be mandatorily granted by the Authority to the Applicant along with an opportunity to make comments.

Post Disclosure Statement submissions by the domestic industry

35. The following submissions were made by the domestic industry:
- a. Initiation of the investigation in this case itself is without jurisdiction inasmuch as the applicant industry has resorted to sheer manipulation to get the investigation initiated.
 - b. Domestic Industry has time and again requested the Authority to verify and check the genuineness of the export prices reported for the POI as 13mm products are exported at lower prices and kindly check the prices offered by Tariq Glass to other countries during the same period.
 - c. The Authority has no jurisdiction in the present matter due to lapse of time as maximum period available to the Authority to conclude the investigation is 18 months in terms of Rule 17 and the same has expired.

Examination by the Authority

36. The Authority notes that post-disclosure comments/submissions made by the interested parties are mostly reiterations of earlier submissions, which have already been examined suitably and properly addressed in the disclosure statement or in the relevant paragraphs of the present finding and therefore for the sake of brevity all of them are not repeated hereunder. The authority further considers appropriate to address some of the issues raised by the interested parties herein below:
- a) With regard to the submission of the Domestic Industry regarding the pricing of Clear Float Glass of 13 mm thickness, the authority notes that pricing of 13mm clear float glass has no relevance in the present investigation as the same is not part of the product under consideration. Further, prices of different thicknesses are determined based upon the market demand and supply and it is not correct to compare the price of one particular thickness with the price of other thicknesses. The claim of the domestic industry also does not bear any merit because they have not been able to demonstrate that the price of 13mm thickness clear float glass supplied by Tariq Glass is lower as compared to the price of 13mm thickness clear float glass imported from other countries. Thus, there is no reasonable basis to correlate the prices of subject goods with the Clear Float Glass of 13mm thickness supplied by the Applicant.

- b) The Authority has examined the genuineness of the export prices reported by the Applicant from the DGCI&S data for exports to India and also compared the same with prices offered by Tariq Glass to other countries during the same period. The authority notes that there no significant variation between the export price to India and other countries for the product under consideration. Accordingly, there is no merit in the contention of the Domestic Industry.
- c) With regard to the submission of Domestic Industry on completion of New Shipper Review Investigation, the authority notes that the final findings of the New Shipper Review investigations have been completed as per provisions stipulated in Anti-Dumping Rules.

Final Findings and Recommendations of the Authority

37. After considering the foregoing the Authority concludes that

- i) Export price of Clear Float Glass exported to India produced by M/s Tariq Glass Industries Ltd, Pakistan is below its normal value during the period of investigation.
- ii) The Authority, therefore, recommends the anti-dumping duty of USD *** per MT be imposed on imports of “Clear Float Glass of nominal thickness ranging from 4mm to 12 mm (both inclusive), the nominal thickness being as per BIS 14900:2000” falling under Chapter 70of the Custom Tariff Act, 1975 produced and exported by M/s Tariq Glass Industries Ltd, Pakistan

38. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Act.

Dr. Inder Jit Singh
Additional Secretary & Designated Authority