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**F.NO. 15/14/2006-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Anti-Dumping & Allied Duties**  
**Department of Commerce**

**Dated 28<sup>th</sup> March 2008**

**Final Findings**

**Sub: New Shipper Review investigation concerning import of Vitrified Porcelain Tiles from China PR in respect of M/s Foshan Chan Cheng Jin Yi Ceramics Co. Ltd. (Producer), M/s Foshan Jayson Ceramic Material Company Ltd. (Exporter) and M/s Able Ace (M) Sdn. Bdh., Malaysia.**

**A. Background and initiation**

1. Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules), vide notification dated 3rd December 2001 the Designated Authority recommended imposition of provisional antidumping duty on import of vitrified porcelain tiles (hereinafter referred to as subject goods) from China PR and Central Government vide notification No. 50/2002-Customs dated 2.5.2002 imposed provisional antidumping duty on the subject goods, originating in or exported from China PR (hereinafter referred to as subject country). Vide notification dated 4th February 2003 the Authority recommended imposition of definitive antidumping duty and vide notification No.73/2003-Customs dated 01.05.2003 the Central Government imposed definitive antidumping duty on the subject goods originating in or exported from China PR.

2. The Designated Authority received an application on 11th May 2006 from M/s Foshan Chan Cheng Jin Yi Ceramics Co. Ltd. producer of the subject goods in China and M/s Foshan Joyson Ceramic Material Company Ltd. and M/s Able Ace (M) Sdn. Bdh., Malaysia, as the exporter/shippers of the subject goods from China PR (herein after jointly referred to as applicants) for initiation of a new shipper review investigation in terms of Rule 22 of the Rules. The above producer and exporter/shipper from China and Malaysia, in their application for initiation of the review under the above Rules, *inter alia* submitted that M/s Foshan Chan Cheng Jin Yi Ceramics Co. Ltd. is a new producer of the subject goods in China and therefore, did not export the product to India during the period of investigation. They also submitted that they are not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties on the product. The other party to the application M/s Foshan Joyson Ceramic Material Company Ltd. claimed to be a trading company registered in China in 2004, not related to any exporter or producer in the subject country. This Company alongwith M/s Able Ace, Malaysia had entered into an arrangement with the above producer in China PR for export of the subject goods from China as a new shipper of the subject goods manufactured by the above producer.

3. On the basis of prima facie examination of the information submitted by the applicants in respect of their status as a new producer/exporter of the subject goods, the Authority initiated the above new shipper review, under the above Rules, vide notification dated 22.03.2007, with a period of investigation as 1st January 2006 to 31st December 2006 (12 months) for detailed examination and determination of individual dumping margin for the applicants. Subsequently applicant requested for extending the period of investigation, which was considered by the Designated Authority and vide a corrigendum dated 30.04.2007, period of investigation was modified as Oct 05 – Dec 06 (15 Months)

## **B. Procedure**

4. Following procedure has been followed in respect of this investigation:

- i. After initiation of the review the Authority notified the domestic industry and other interested parties with a request to make their views known within 40 days from the date thereof. The views of the domestic industry and other interested parties have been taken on record.
- ii. As per the initiation notification the applicants were required to file their questionnaire response within 40 days of the completion of period of investigation. Accordingly, the applicants have filed their questionnaire response and market economy questionnaire response on 7th May 2007, for determination of their dumping margin in terms of the Rules.
- iii. The data submitted by the above applicants, in their application for New Shipper Review and Questionnaire Responses, were verified in terms of the relevant provisions of the Rules, at their plants and offices at Foshan, China PR.
- iv. 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
- v. The Authority has examined the confidentiality claims of the interested parties in respect of the data submitted by them. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, alongwith non-confidential summary thereof, has been treated confidential. \*\*\* in this finding represents information furnished by all the interested parties on confidential basis and so considered by the Authority under the Rules.
- vi. The Authority held a public hearing on 22.06.2007 to provide an opportunity to all interested parties to present their views. The oral submissions made by the parties during the public hearing, and reproduced in writing, have been taken on record for the purpose of this investigation.
- vii. The Authority issued a disclosure statement on 12th March 2008 disclosing the essential facts under consideration which would form the basis of final determination and methodologies for such determination. Comments of the interested parties on the disclosure statement have been taken on record and the Authority has examined the issues raised therein in this finding, to the extent they are relevant and substantiated.

## **C. View of the interested parties**

### **C.1 Views of M/s H & R Johnson (India) Ltd.**

5. M/s H & R Johnson (India) Ltd, in its written submissions has argued *inter alia* that

- That prior to initiation of this review investigation the Authority had issued alert letters for initiation of the sunset review in the same case and the domestic industry had filed its application for initiation of the sunset review. In such a circumstance no purpose could have been achieved by grant of individual dumping margin, as the new shipper would have been under an obligation to participate in sunset review proceedings to claim his fresh individual dumping margin.
- that the exports made prior to the initiation of the present new shipper review proceedings would not be eligible to retrospective levy under proviso to Rule 22 (2) as the power to give retrospective levy to determination of dumping is restricted inasmuch as it can be applied only from the date of initiation of the review and not for a period prior to thereto.

• That the present application for new shipper review has been filed on the basis of false and misleading information. The very same new shippers had approached the Designated Authority earlier under Rule 22 and the investigations were initiated, vide initiation notification dated 18.02.2005. On the recommendations of the Designated Authority the Ministry of Finance had issued Notification No. 68/2005 dated 19.7.2005 exempting the new shippers from the original anti-dumping duties during the term of the review investigation. But due to non-cooperation by present new shippers, the Designated Authority was constrained to close the investigation on 12.01.2006. The Notification No. 68/2005 dated 19.7.2005 was withdrawn by Ministry of Finance vide Notification No. 107/2006-Cus dated 10.10.2006. Further, by 12.01.2006 these new shippers were intimated by the Designated Authority that the investigation was closed due to non-filing of response. Despite the above, the applicants continued to enjoy the benefits of exemption Notification No. 68/2005 dated 19.7.2005 even after termination of the review proceedings. Admittedly, the new shippers exported 17862 sqm from September 2005 to June 2006 all under the above exemption notification knowing fully well that they were not eligible to import under the said exemption notification.

• That the new Shippers get an opportunity to plan their normal value and export price as they are granted a prospective period of investigation by the Designated Authority. Even the Appellate Tribunal has pointed that such a practice leaves ample room for the new shippers to doctor their figures for a no dumping margin.

• That the producer is operating under different names and all such names have not been disclosed to the Designated Authority. The producer, in its questionnaire response, suppressed information about several factories, which must be treated as serious attempt to mislead the Authority. The producer in various websites has claimed itself to be manufacturer and exporter set up in 1990 while in response they have claimed that they have no exports. No disclosure about the date on which they were setup has been provided to the interested parties.

• The exporter from China suppressed its relationship with certain other exporters from China. And the exporter from Malaysia, while filing questionnaire response, mis-declared that they are not a producer whereas the Company is apparently registered as a manufacturer and not trader as claimed.

• That the applicants have failed to satisfy the preconditions required to be satisfied before initiation of the case. Further, the application and questionnaire response filed by the exporter from Malaysia, trader and the producer from China for the initiation of new shipper review is grossly inadequate and unsubstantiated as is evident inter alia from the fact that no evidence was placed in support of the claim that the producer has been engaged in the production of subject goods and the producer has not stated that whether it is the new plant or has been an old plant taken over from a producer who was subject to the original investigation.

• That the producer has admitted that they are related to M/s. Foshan Jinpin Ceramics Co. Ltd. (Jinpin) who supplied tile body to the producer. No details about related entity was provided in the application for the authority to examine if Jinpin itself was subject to duties or exported during the original period of investigation.

• No indication about the quantities proposed to be exported was provided for the authority to examine whether such applicants were serious players in this business or were merely looking for ways and means for circumvention of duties already imposed.

• That it is not clear from the application made for the new shipper review as to who is claiming for the separate determination of dumping margin. Only the exporter from exporting country in question can request for the separate determination of dumping margin. There are presently two exporters and each one of them has claimed determination of his individual dumping margin.

- In its post disclosure submissions this party has reiterated most of its arguments recorded above. It has been further argued by the party that the Authority has taken a lot of new facts on record which are not available in any of the responses filed by the new shipper.

- It has also been argued that M/s Jin Yi Ceramics is not the producer of the subject goods as they are only engaged in polishing of tile bodies manufactured by another party and polishing activity cannot be treated as manufacturing activity.

6. In addition to the above procedural aspects of the case H & R Johnson has also raised several legal issues regarding the interpretation of Rule 22. It has been argued that Rule 22 enjoys a special status in the whole scheme of the Act and the Rules. The new shipper is already aware of the level of duties and other details through the final findings in the original case and has an opportunity to contrive his domestic and export prices in a pre-determined manner and hence the need for a special care before initiation. It has also been argued that as per Rule 22 a case for new shipper review cannot be initiated each time an application is received from a new shipper. The authority may decide to initiate cases for new shippers annually or semi-annually or based on a periodical basis fixed by the authority. In other words, the initiation of new shipper review is not triggered as and when the applications are received but are required to be bunched together for initiation after periodical intervals. It has also been argued that China is a non-market economy and an exporter-specific normal value cannot be determined and, therefore, there is no question of invoking Rule 8(3). The authority may take only the normal value which has been established for China in the original investigation as the same has become final and no mid-term review has been sought by any of the exporters. Any other approach for determining the normal value in the case of New Shipper Review would be in contradiction to the interpretation of the aforesaid decision of the Hon'ble Supreme Court as resorted to by the Designated Authority. In its post disclosure submissions the party has again argued that Rule 22 only envisages determination of dumping margin and not normal value and the Authority has misdirected itself in determination of normal value of an exporter contrary to the judgment in quoted above.

7. This interested party has also raised the issue of excessive confidentiality claimed by the applicants in their questionnaire responses and non-disclosure of certain vital information by the applicants in their submissions.

## **C.2 Views of the applicants for the review**

8. The applicants in their post public hearing submissions have inter alia argued

- That M/s H & R Johnson (HRJ) does not constitute the 'domestic industry' within the meaning of the term as per the Rules. Therefore, there is no opposition to the present review by those Indian producers who constitute the domestic industry and the Indian Industry in general is not aggrieved by the successive new shipper review notifications by the Designated Authority. It is only H & R Johnson, whose objection is to prevent fair price in the market by eliminating competition, is opposing all new shipper review investigations by making unsubstantiated allegations.

- That the domestic industry has a very limited role in a new shipper review investigation proceedings. However, in the name of opportunity to participate in the investigations, HRJ has demanded such information which are clearly highly business sensitive and confidential.

- That even if the Designated Authority had initiated a Sunset Review, the applicants are entitled for new shipper review.

- That the current review has been initiated based on updated petition and positive evidence submitted by the applicants and therefore, conjectures and unsubstantiated allegation of HR Johnson regarding mis-declarations by the applicants must be rejected.

• That the applicants had earlier filed an application and the investigation were earlier initiated, which were subsequently closed. While it is true that the applicants could not file the questionnaire response within the initial time limits, it is also true that the Designated Authority simply closed the case without issuing any reminders to the applicant. Principles of natural justice demanded that the Designated Authority should have at least warned the applicants of the consequences of not responding to questionnaire within the time limits.

• That the Chinese companies have different names in English and in Chinese and what is relevant to the Authority is the official name of the applicants.

• That it is reconfirmed that applicants have no such factories as stated by the HRJ in its submissions and no information is suppressed by the applicants from the Designated Authority. Assumption that all companies having “Jinyi” or “Jinpin” are related to the applicants, only because these words are common, is not correct. It is reconfirmed that the applicants do not have any relationship with any of the entities stated in the submissions by HRJ. It is also reaffirmed that the Malaysian company is not a producer as on date. The company is setting up a plant for manufacturing of Soup Noodles.

• That the applicants have given their official name to the Authority. Information has been given in respect of the applicants regardless of whether the operations were in the official name or some other name. .

• That the applicants also dispute the understanding of HRJ that any producer existing at the time of original investigation is subject to duty. Such an interpretation is contrary to Indian law and WTO Agreement.

• That information about Foshan Jinpin Ceramics, to the extent considered necessary by the Designated Authority, has been provided by the applicants. In fact, the initiation notification itself very clearly states factual position in this regard. Jinpin Ceramics makes tiles body only and is not a producer of subject goods. However, the company had agreed to provide information considered relevant by the Authority.

• That the understanding of HRJ with regard to “periodical” is without basis as there is no legal prescription for bunching of applications.

• That it would be relevant to reiterate that Rule 22 deals with a very limited aspect i.e. determination of margin of dumping for exporters not originally investigated. Section 9A and 9A(5) of the Act read with rules 18, 20 and 22 of the Rules empowers the Designated Authority and Central Government to modify quantum of anti dumping duties earlier imposed in respect of such new shippers. The applicant have not exported the subject goods during the period earlier investigated and therefore could not be subjected to the same quantum of duties as has been determined in respect of non-cooperative users/exporters in China at the time of original investigation.

• That the applicant dispute that the Designated Authority could have imposed anti dumping duties even on those producers/exporters who have not exported the goods during the period of original investigation. Section 9A (1) authorizes the Government of India to impose anti dumping duties only on those producers/exporters who have exported the subject goods during the period of investigation. While the Rules provide for determination of individual margins of dumping, the same at best can be for those producers/exporters who had exported during that period. Thus authority of the dumping duty cannot be read in respect of those producers who have not exported subject goods during the period of original investigations. Such companies did not have an export price and therefore they had no dumping margin during the original investigation.

- That the Supreme Court has not held that the normal value determined at the time of original investigation would remain the same irrespective of the time.
- That the confidentiality claimed by the applicant is consistent with the legal position. Applicants have claimed only that information confidential which is business sensitive by nature or which has been provided on confidential basis.
- Authority has so far conducted several new shipper reviews and the review processes have been upheld by the Hon'ble CESTAT. The applicants have also submitted that there is no legal and procedural bar on adoption of a POI of 15 months as has been argued by the interested party in this case.

### **C.3 Examination of the issues raised**

9. The Authority notes that the domestic producers, who constituted the domestic industry within the meaning of the terms as defined in the Rules, have not filed any submissions or opposed the current review. Only one of the constituents of the domestic industry, i.e., M/s H & R Johnson, has participated in the public hearing and filed its written submissions pursuant to the public hearing. The issues raised by the applicants and H & R Johnson, in their respective submissions have been examined as follows:

10. The Authority notes that neither the Agreement nor the AD Rules puts any restriction on the timing of the new shipper review investigation. While the sunset review investigation can determine the dumping margin and the duty rate for the new shipper for the future, it cannot take care of the shipments during the investigation period, while the new shipper review provides an opportunity to ship such goods under the provisional assessment provision of the Rules under bond and adjust the duty after completion of the review. Therefore, the arguments of H & R Johnson, that this review should not have been initiated since the sunset review was due in this case, are not tenable.

11. As far as the issues of the period of investigation and retrospective application of duty, as a result of the review, are concerned, the Authority notes that the review has been initiated for determination of the dumping margin of the new shipper based on the exports made by the new shipper after imposition of duty in the original investigation and such determination is as per the Rules. Since antidumping duty collected cannot exceed the margin of dumping at any point of time, once a determination of the dumping margin and applicable duty is made the applicants are eligible for redemption of the bonds for the goods cleared under provisional assessment or obtain refund of duty paid in excess of the dumping margin under relevant Rules. Therefore, it is for the appropriate Authority to decide about the application of the duty once a determination is made by the Designated Authority based on the export transactions of the new shipper. Therefore, the POI has been correctly fixed covering all transactions of the applicants prior to initiation of the review.

12. In view of the above, the past history of the previous investigation, which was closed, has no relevance in this case. However, the Authority notes that the same applicants had filed an application for the new shipper review in December 2004 and the review was initiated on 18.02.2005 under Rule 22 on prima facie satisfaction of the conditions precedent, with a period of investigation of April 05 – Sept 2005. On the recommendations of the Designated Authority, the Ministry of Finance issued Notification No. 68/2005 dated 19.7.2005, exempting the new shippers from the original anti-dumping duties during the term of the review investigation. The applicants were under obligation to file their questionnaire responses within 40 days after the expiry of the POI. However, in view of the failure of the applicants to file the data in time the Authority closed the investigation on 12.01.2006. The applicants again approached the Authority in May 2006 for initiation of the review under Rule 22 and the Authority sought several additional information for consideration of this request and after prima facie satisfaction of the conditions for review under this Rule, the review was initiated again on 22nd March 2007 with a retrospective POI of Jan– Dec 06. The applicants requested for amendment of the POI as major portion of the exports had taken place before this period and after considering the issue, the Authority, vide notification dated 30th April 2007, amended the POI to Oct 05-Dec 06. The applicants filed their questionnaire response as per the revised notification on 7th May 2007, covering all exports made during the revised POI for determination of their individual dumping margin under the above Rules. H & R Johnson has argued that no disclosure has been made about the nature of information sought and submitted by the applicants prior to the initiation of the review. In this connection the Authority notes that neither the Agreement nor the Rules requires the

Authority to place the correspondences from the Authority to the applicants before initiation of an investigation in the public folder. The obligation of the parties to provide non-confidential versions of the submissions begins after the initiation. Therefore, the arguments of the party are not tenable.

13. As far as the issues of pre-conditions for initiation of new shipper review and periodicity of such reviews are concerned, the Authority notes that the review was initiated based on prima-facie satisfaction of the Authority about the new shipper status of the applicants as specified in the Rules, insomuch as they have not exported the subject goods during the original investigation period and they were not related to any other producer or exporter of the subject goods during the said period. Confirmation of this status is the subject matter of detailed investigation and cannot be concluded before initiation of the investigation. Required inquiry into the claims of the applicants, as far as the twin conditions precedent are concerned, were carried out by the Authority before initiation as is evident from the fact that several additional information were called from the applicants before initiation of the review at two different stages. The Authority notes that the applicants prima facie established that they were not related to any of the exporters who exported the subject goods to India during the original investigation and therefore, not subjected to antidumping duty through individual duty rates or residual rates. The applicants also prima facie established that they were new producer and exporter of the subject goods to India and came into existence during the currency of the duty and therefore, they themselves did not export the subject goods during the original POI. In view of the above, the contentions of HRJ that the initiation was without adequate examination of conditions precedent are not valid.

14. As regards the periodic nature of the review as argued by HRJ the Authority notes that the Rules neither specify, nor envisage a review in periodical manner, such as quarterly, half yearly, or annually, as has been interpreted by H&R Johnson. A review of this nature is triggered by a new shipper which satisfies the conditions stipulated. The Hon'ble CESTAT has also settled this issue, vide final order No. 8/07-AD dated 27th August 2007, in the case of HR Johnson (India) Ltd Vs Ministry of Finance & Ors, in an appeal filed by this party. Therefore, the arguments of this party in this respect are not valid.

15. As regards the arguments of H & R Johnson that the dumping margin for the new shipper should be determined with reference to the normal value determined in the original investigation, the Authority notes that the issue has also been settled by the Hon'ble CESTAT in the same appeal of HRJ and therefore, the arguments of this party in this regard are not valid. HRJ has also raised the issue of manipulation of pricing behaviour by the new shippers in a prospective POI. However, this issue is not relevant in this case as the POI in the instant case is retrospective, i.e. prior to the date of initiation.

16. H&R Johnson has further argued that the verification reports including the comments of the exporters on the same should have been placed in the public file. In this connection the Authority notes that Article 6.7 of the Agreement provides as follows:

*“ in order to verify information provided or to obtain further details, the Authority may carry out investigation in the territory of other Members as required, provided they obtain agreement of the firm concerned and notify the representative of the government of the Member in question, and unless that Member objects to the investigation. The procedure prescribed in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.”*

Corresponding Rule 9 of the Rules provides as under:

*“The designated Authority may carry out investigation in the territory of other countries, if the circumstances of a case so warrant Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation.”*

17. The above provision shows that collection of further information and verification of the data submitted by a party is the purpose of such investigation in the territory of the exporting country. The above provision casts an obligation on the Authority to disclose the result of the on-spot investigation/verification to exporter concerned, either through a separate report or through the general disclosure statement. At the same time the Agreement provides that the authorities may also make the results available to the other parties. Pursuant to these provisions the Authority has disclosed the result of the verification in a fairly detailed manner in the disclosure statement issued to all interested parties though the Rules do not provide for any such disclosure of the result of on-spot investigation to the other parties. Neither the Agreement, nor the Rules require the Authority to place the verification reports or the information/documents collected during the verification, in the public folder as has been argued by the above party. Therefore, the arguments of the appellants in this respect are not tenable.

18. Other issues raised by this interested party in its submissions, including the post disclosure submissions, are related to factual aspects of the case regarding the status of the applicants and the quality of data and other information placed by them before the Authority. The Authority notes that these are matters of factual examination and have been dealt in relevant sections.

#### **D. Examination of the claims of new shipper**

19. The application for this new shipper has been filed by M/s Foshan Chan Cheng Jin Yi Ceramics Co. Ltd., producer of vitrified tiles alongwith a Chinese exporter, M/s Foshan Jayson Ceramic Material Company Ltd. from China and M/s Able Ace (M) SDN BDH, Malaysia. The producer has submitted that they are the producer of polished vitrified tiles for which tile body is procured from several producers of tile body, including its associated manufacturer M/s Jin Pin Ceramics Co. Ltd. Therefore, the profiles of both the companies, as well as their market economy status, have been examined for the purpose of determination of the normal value of the applicants. On the basis of the information filed by the applicants verification of the information submitted by the above parties was carried out to the extent possible.

20. Examination of the profile of the respective parties indicates that M/s Foshan Chan Cheng Jin Yi Ceramics Company Ltd. (Jin Yi) is a polishing unit which produces only vitrified tiles with a capacity of approximately \*\*\*\*\* square meters per annum. This company makes only one type of tiles i.e., soluble salt tiles, in three sizes. The plant, machineries and plant sheds are relatively new. It revealed that the plant was initially set up in 2001 at a different location in Foshan city and due to redevelopment of the area by the local government the company shifted the plant to the current location for which the land has been leased out from the village community. This Company has an affiliated Company M/s Foshan Jin Pin Ceramics Co. Ltd, which produces Tile Body. Jin Yi procures tile body from Jin Pin and other unrelated producers for production of the subject goods.

21. The Chinese exporter M/s Foshan Joyson Ceramic Material Company Ltd. was established in 2004 as a private limited trading company between two shareholders with \*\*% & \*\*% partnership and the Company came into operation in that year.

22. The third party to the application i.e, M/s Able Ace (M) Sdn. Bdh., is a trading company in Malaysia, and not a producer of the subject goods. The company is also not related to the producer or exporter in China. It only acts as intermediary trader of the subject goods from the applicant exporter from China.

#### **E. Examination of Market Economy Claims of the applicants**

23. As per the Auditor's and Director's Report of Company and certificate of the Prime Certified Public Accountants, Jin Yi, was established in 2001 and started manufacturing in May 2001. This company was established jointly by the shareholders of M/s Nanhai Hengfa Ceramic Factory (since reconstituted as M/s Foshan Jin Pi Ceramics Company Ltd.) and M/s Nanhai Ruinan Decorative Tiles Factory (now known as M/s Foshan Ruinan Ceramic Company Ltd.) in 2001 with capital contribution of RMB \*\*\*\*\* (\*\*%: \*\*%).

24. The history of these two companies named above was also examined. It was revealed that that two Ceramic tile body manufacturing factories, in the name of Nanhai Hengfa Ceramic Factory and Nanhai Ruinan Decoration Tile Factory, were established in the Nanzhuang Development

Area in 1992 as a joint venture between the Guangdong Nanhai Luonan Ceramics Corporation Group and Foshan Nanzhuang Luonan Town Economic Joint Venture, with \*\*\*\*\*% investment by the former and \*\*\*% by the later. The factories operated as State-owned enterprises till 2001 and produced ceramic tile bodies (not vitrified tiles). In 2001 Guangdong Nanhai Luonan Ceramic Corporation Group, as the controlling party of these two factories, issued a public notice for giving away both the factories on lease/ hire purchase basis. As a result of such divestment notice Nanhai Hengfa Ceramic Factory was acquired by a group of 10 individual investors (co-partners) under a 19 year Capital Charter Contract (Hire purchase agreement). Similarly, Nanhai Ruinan Decoration Tile Factory was taken over by an individual investor Mr Chen Youwei under a Capital Extended Purchase contract (hire purchase agreement).

25. As per the conditions of the hire purchase contract of Hangfa Ceramic factory, the unit has been leased to the new management on a long term hire purchase basis with annual payments in cash to the original owners. Method of hire purchase and valuation of the assets was also checked. It was found that the hire purchase agreement was entered through public notice by the state. The lease /hire purchase agreement shows fixed assets value \*\*\*\*\* Million RMB and current assets of \*\*\*\*\* Million RMB at the time of signing of the agreement. The Company produced valuation report of the assets at the time of hire purchase. The hire purchaser was required to pay the amount in \*\*\*\*\* different installments till 2020.

26. As far as Jin Yi is concerned, it is a new tile polishing unit established in 2001 by the investors of Hengfa and Ruinan with an initial investment of \*\*\*\*\* Million RMB in fixed assets of Jin Yi, as per their books or records. The Company has not taken any bank loan or any other financing from out side to acquire the assets and finance the production. The shareholders of the Company have invested their personal finances in the form of personal loans to the company. The plant and machineries for setting up the new polishing unit was purchased in 2001 and the plant was set up in Foshan city which started production in 2001. However, due to redevelopment of the area where the plant was originally located in Foshan city, this plant was shifted to current location in 2004. The land for the new unit was obtained from the village in lieu of the old land taken over by the government for redevelopment. Current land has been leased from the Laonan Village and the Company pays land use tax to the Government.

27. After the hire purchase agreement the Hengfa production unit has undergone certain changes. The registration information of the unit was altered with effect from 27th July 2004, vide certificate dated 12th July 2007. As per this certificate the name of unit was changed from Nanhai Hengfa Ceramic Factory to Foshan Jin pin Ceramic Co Ltd. Therefore, in effect the assets have been taken over by the new privately owned company on long terms lease-purchase basis and is being run as a privately owned enterprise. This unit was a ceramic tile body manufacturing unit and has been converted to a vitrified tile unit in 2004. The Company produced the certificate of alteration of register information of the Company dated 12th July 2007 and Article of Association of the company of Mar 2005. The AOA of 2005 shows a different capital contribution by 5 shareholders. The Company explained that though originally Hengfa and Ruinan had 10 shareholders subsequently 5 shareholders have exited in May 2004 and currently there are only 5 shareholders as recorded in the AOA referred above. A copy of share transfer document dated 30.05.2004 was produced.

28. The other unit i.e., M/s Nanhai Ruinan Decorative Tiles Factory continues as a ceramic tile body manufacturing unit and is now known as M/s Foshan Ruinan Ceramic Company Ltd under the control of one individual investor who had taken over the unit on extended purchase contract basis.

29. The applicant producing Company, M/s Jin Yi did not have a license to export the subject goods and therefore, sales in the domestic market only. The export to India has taken place only through M/s Foshan Joyshon Trading Company during the period of investigation.

30. As recorded above the original production unit of Hengfa was only a ceramic tiles body production unit and did not have the facilities to produce vitrified tiles till 2004. The new owners have done significant modifications to the production line to produce vitrified tiles body. The company also produced the original certificates dated 31st October 2006 and 12th March 2007 issued by Prime Certified Public Accountant which certifies that Foshan Jin Pin Ceramics (earlier known as Nanhai Hengfa Ceramics Factory) was producing ceramic tiles only since 1992 till 2003. Production of vitrified/porcelain tile body started in 2004. The Company produces vitrified tile bodies in various sizes, colours and designs (prints).

31. As far as relationship of Jin Pin with Jin Yi is concerned, it was noticed that these two Companies are related with same set of investors.

32. Procurement records of Jin Yi shows that during the POI this Company have procured tile bodies from Jin Pin and 4 other producers in significant quantities. The price comparison revealed that the price of tile body purchased from Jin Pin was lower than the price from other producers by \*\*\* to \*\*\*%. Therefore, cost of production and price from Jin Pin to Jin Yi does not appear to reflect the true market price. However, the applicant producer has argued that the selling price of Jin Pin to other unrelated parties which is quite significant should be considered for comparison. As per their statement of sales by Jin Pin about \*\*\*\*\* Sqr Meters of tile bodies were sold to other unrelated parties at an average price which is marginally higher than the price charged to its related party Jin Yi. It has also been argued that the purchases of Jin Yi from other unrelated parties are in small volumes and of different specifications as per specific customer orders and therefore, the prices are higher compared to general category tile procured from its related tile body manufacturer. However, details of difference in the specification of tile body purchased from other sources could not be provided during the verification. Therefore, this claim could not be fully substantiated. Accordingly, the prices of tile body procured from the other unrelated producers have been adopted for determination of cost of production of the vitrified tiles manufactured by Jin Yi.

33. Examination of management control and relationship between the tile body and polishing units shows that the tile body manufacturing unit has been hire-purchased from the government on a long term hire-purchase contract and the management is in the hand of the new hire-purchasers and the local government or the original owners of the erstwhile plant are not involved in day-to-day management or operation of the company. The lease proceedings and pricing of the lease purchase of the tile body unit was carried out through public notice and negotiation between the parties involved. Tile polishing unit is however, a new entity established by private individuals and they control the management of the company through the board of directors.

34. The Exporter, M/s Foshan Joyson Ceramic Material Company Ltd. was established in 2004 as a private limited trading company between two shareholders with \*\*\*% & \*\*\*% partnership and the Company came into operation in that year. It is basically a family owned business and as a trading company deals with several products (including vitrified tiles) and exports the goods to several countries, including India. As per their records the owners of the Company do not have any other business other than this Company and tiles business to India is a new venture.

35. The issue of relationship of the applicant companies i.e. M/s Jin Yi, M/s Jin Pin and M/s Joyson Ceramics were also examined as the issue had been raised by the domestic industry in its submissions. As per the records verified, to the extent possible, no relationship with these companies could be established. The Company Clarified that Hengfa Ceramic factory, under the state-ownership for a long time, was a big brand earlier and continues to be so though the entity does not exist today. Therefore, all trading Companies associate themselves with this brand through their web advertisements. That however, does not establish relationship as has been argued by the domestic industry.

36. Apart from the tile body the applicant producer uses electricity and water as the major inputs for producing the subject goods. Purchase of these inputs has also been examined. Electricity is being purchased from the state-owned power supply company. It was observed that Foshan JinYi Ceramics is sourcing electricity from State-owned Company, M/s Foshan Electric Bureau. No evidence of any possible preferential treatment, directly or indirectly, was found. During the verification, it was seen that the price charged by the supplier is different in different time lags like for peak, mid-peak and non-peak hours. Price per unit for peak and mid-peak hours are higher than non-peak hours. The minimum demand charges have also been charged for 2500 units at a very high rate of \*\*\*\*\* RMB per unit. The average power price paid by the plant is about \*\*\*\* RMB per unit. It did not appear that the power price was significantly distorted.

37. The producing Company has been selling the subject goods primarily in the domestic market and freely decides regarding the output and sales depending upon market demand and nothing adverse had been found in this regard from their records. On examination of the claim of the new shipper it was found that there were sales of the subject goods in the domestic market in substantial volume and the evidence of state involvement was not found regarding determination of sale price/quantities. It was also observed that sales of subject goods in the domestic market have been made to different customers at different prices but wide variation was not found. Domestic or export sales varies from customer to customer which depends on demand and supply position in the market.

38. As regards engaging labours, the company claimed that all employment decisions were taken by the company itself. There is full freedom to the company with regard to its mode of hiring employees and they can be fired also on a very short notice. They claimed that the Chinese Government does not provide any benefit like housing, medical care etc.

39. The company was found to be maintaining its accounts as per Generally Accepted Accounting Principles of China. The company maintains monthly profit & loss statement which is required to file profit & loss statement along with VAT filing to Tax authority. Accounts of the company were audited by the Auditors and no adverse comments were found in their Auditor Report with regard to the accounting practices followed by the company.

40. As far as application of bankruptcy and property laws are concerned, the Authority notes that such laws are in place in China and are applicable to all enterprises operating under the Company Laws of China. The company is free to acquire property and dispose them off under the said laws. The company claimed that bankruptcy law is applicable to a firm when a firm becomes bankrupt and the details regarding the settlement of the dues is governed by law maintained under bankruptcy law.

41. As far as the issue of exchange rate is concerned, it is a macro-economic issue and the market economy status of the company cannot be decided on the basis of this issue alone. The export earnings of the Company were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction.

42. H & R Hohnson, in its post disclosure submissions has argued that Jin Yi being the polishing unit cannot be treated as the producer of the subject goods as polishing activity does not constitute manufacturing activity. The market economy status of the tile body manufacturer i.e. M/s Jin Pin should have been examined by the Authority. In this connection the Authority notes that these two companies are related and held by the same set of shareholders though the tile body making unit is still under long term hire purchase agreement. Tile body manufactured by one unit is being polished in the second unit to produce the finished product i.e. vitrified tiles. The market economy status of both the Companies has been adequately examined as recorded in the foregoing paragraphs. Therefore, the arguments of the party are not valid.

43. The above examination indicates that there is no significant carry over of distortions from the erstwhile market economy system and the applicant producer, as well as its associated Company have been operating under market economy principles without significant state intervention in its commercial activities. In view of the above normal value has been determined as per para 1 to 6 of Annexure 1 to the Anti Dumping Rules.

#### **F. Determination of Normal Value**

45. Raw materials procurement, financial accounts and cost of production of the applicant producer Foshan JinYi Ceramics was verified from their books of accounts. Basic raw material of the applicant is tile body which is procured from the associated company Jin Pin (related party) and other producers. The company sourced \*\*\*% of its requirement of tiles body from its related company, M/s Foshan JinPin Ceramics Co. Ltd. and balance \*\*\*% from unrelated suppliers in the domestic market. As recorded earlier the average purchase price from related supplier during the POI was lower than the average purchase price from unrelated suppliers by \*\*\*% to \*\*\*%. In view of large difference in the prices of tile body procured from the related Company M/s Foshan Jin Pi Ceramics and others the transfer price it appeared that the transfer price was distorted due to relationship. Therefore, the Authority proposed to adopt the price of tile body procured from unrelated suppliers for determination of the cost of vitrified tiles of the applicant.

46. The applicant exporter in its post disclosure submissions has argued that significant difference in prices itself establishes that two product types sourced from different sources are not the same. It has been argued that there is otherwise no reason why the producer should source only \*\*\*% of its requirement at such high prices from the market. It has been argued that these two product types are significantly different in terms of their associated product parameters, including thickness. However, the Authority notes that the differences in product parameters as claimed by the exporter in its post verification submissions were not demonstrated during the verification process. Therefore, it is not possible to accept this

argument at this stage. Accordingly, the cost of tile body, for the purpose of determination of cost of production of the vitrified tiles, has been determined based on the price of the tile body procured from the other sources.

47. Examination of the balance sheet of the company indicated that a large amount towards Accounts payable-others (approx. \*\*\*\*\*millions RMB) was lying in the liabilities side. This amount was payable out of the capital borrowed from the five shareholders of the company. Therefore, for the purpose of computation of cost of production a notional interest amount, computed based on the prevalent market interest rate of approx. \*\*\*% per annum during POI, has been added to cost of production

48. The benefit accruing to the production unit on account of leased land from the village community has been neutralized by loading the cost with a rental amount derived on facts available basis.

49. Other than these few elements of cost no other elements of distortion to the cost of production and sales was noticed. Therefore, subject to these adjustments the cost of production and sales of the producer have been accepted as no other distortion in cost, due to any other non-economy factors, could be found in the cost of production and sales. Accordingly, the cost of production plus selling and general administrative expenses works out as RMB \*\*\*\* per sqr meter. The cost of production so determined has been compared with the domestic sales for ordinary course of trade test.

### F.1 Domestic sales

50. During the POI the producer has sold \*\*\*\* square meters of tiles of soluble salt variety in the domestic market against \*\*\*\* transactions out of which only two transactions are to its affiliated parties. The producer Jin Yi has sold only soluble salt type tiles in three sizes. However, export to India was Soluble Salt 600X600 size only. Therefore, this product type has been considered for determination of normal value of this exporter-producer combination.

51. All sales are ex-factory except few transactions to M/s Jayson which is an exporter of the subject goods. Sales to Jayson are FOB Foshan for which FOB expenses have been accounted for. All sales are against advance cash payment. Therefore, no adjustment to the selling price is required.

Size	Qty Sold Sqr Meters	Invoice Value Net of VAT in RMB	Selling Price RMB/Sqr Mtr
600X600	*****	*****	*****

52. The net selling price has been compared with the cost to make and sale and it was found that the selling price in the domestic market is below the computed cost as above. Therefore, the normal value for the applicants has been constructed as the cost of production plus a reasonable margin of profit. The profit margin earned by the producer in terms of paragraph 4 of Annexure-I to the Anti-dumping Rules has been examined and it is found that as per the records of the Company the Company has registered a total profit of \*\*\*% on the cost of sales of the product under consideration during the period of investigation. Therefore, this profit margin has been added to the cost of production plus general administration and selling expenses to arrive at the constructed normal value at ex-factory level which works out as follows:

	RMB/Sqr Meter
Total cost of sales	*****

Profit @ *****%	*****
Normal Value RMB/Sqr Mtr	*****
Exch Rate	7.616
Normal Value US\$/Sqr Mtr	*****

53. H & R Johnson, in its post disclosure submissions has argued that having admitted that the said exporter has incurred loss on its domestic sales the Authority cannot determine normal value under Section 9A(1)(c)(1). The Authority has not recorded the basis on which it came to conclusion that the normal value cannot be determined under section 9A (1)(c)(ii)(a) i.e. on the basis of export price to an appropriate third country. In this connection the Authority notes that the Rules do not provide for any hierarchy of methods to be adopted for determination of normal value, if the domestic sales are not in the ordinary course of trade, as has been argued by this party. Therefore, the arguments of this party are not valid.

**F.2 Export Sales**

54. During the POI the exporter M/s Joyson has exported only \*\*\*\*\*Sqr Meters of the subject goods, produced by Jin Yi, to India through another exporter in Malaysia i.e. M/s Able Ace (M) Sdn. Bdh, Malaysia, who in turn has sold the goods to buyer in India. Jayson purchases the goods from Jin Yi on payment of VAT @ 17% and obtains refund of 13% on exports. Since the transactions are on FOB terms, direct selling expenses of the producer, i.e., export packing expenses, inland transport and insurance, handling and customs brokerage charges have been adjusted from the producer’s prices as reflected in appendix 1 to the questionnaire response. It was noticed that Joyson raises the invoices on the Malaysia exporter who acts as an indenting agent but the goods are directly shipped to India by Joyson. Able Ace only raises another invoice on Indian customer including its margin which is about \*\*\*\*%.

55. Transaction between Joyson and Able Ace are on LC at sight terms, FOB Foshan. Therefore, only bank charges paid by Joyson and other FOB expenses incurred by them have been deducted from their invoice price. Able Ace does not incur any direct selling expenses as it acts as an indenting agent only.

56. As per the export transactions verified the net ex-works export price of the exports made by Joyson, China PR through Able Ace, Malaysia at the ex-factory level works out as follows:

<b>Export Price Determination</b>	<b>Exchange Rate</b>	<b>7.616</b>
<b>Able Ace to India (Final Export Price)</b>		
Qty	Invoice Value	Price
Sqr Mtr	US\$	US\$/Mtr
	****	****

**Less Expenses of Able Ace (Exporter from Malaysia)**

Direct selling Expenses	NIL	Sales are on FOB terms
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**Less Direct Selling Expenses of Joyson (Exporter from China)**

Bank Charges	****	
FOB Expenses (Export packing, transportation, insurance, handling and customs brokerage)	****	
Allowance for margin/commission of trader	****	**%
VAT Differential paid	****	
<b>Less Direct selling expenses of Jin Yi (Producer)</b>	<b>NIL</b>	
Total Adjustments	****	
Net Value at Ex-works level	****	****

**F.3 Dumping Margin**

57. The normal value determined at ex-works level has been compared with the net ex-works export price as above to determine the dumping margin of this new shipper which works out as follows:

NV	****
EP	****
DM	****
DM %	0.75%

58. The dumping margin of the applicants has been found to be de minimis.

**E. Conclusions and Recommendations**

59. Having conducted this review in terms of Rule 22 of the Rules and after considering the foregoing the Authority concludes that

i. the producer M/s Foshan Chan Cheng Jini Yi Ceramic Company Ltd, M/s Foshan Jayson Ceramic Material Company Ltd. and M/s Able Ace (M) Sdn. Bdh., Malaysia, as the exporters of the subject goods from China PR, have established themselves as new shippers of the subject goods to India and therefore, are eligible for separate dumping margins.

ii. Dumping margin of the vitrified porcelain tiles manufactured by M/s Foshan Chan Cheng Jini Yi Ceramic Company Ltd, and exported by M/s Foshan Jayson Ceramic Material Company Ltd. and M/s Able Ace (M) Sdn. Bdh., Malaysia, during the period review, was found to be de minimis.

60. Therefore, in terms of Rule 22 of the Rules the Authority recommends that no anti dumping duty be imposed on imports of Vitrified/porcelain Tiles falling under Chapter 69 of the Custom Tariff Act, 1975 produced by M/s Foshan Chan Cheng Jini Yi Ceramic Company Ltd and exported

by M/s Foshan Jayson Ceramic Material Company Ltd. and M/s Able Ace (M) Sdn. Bdh., Malaysia as the exporters of the subject goods from China PR

61. An appeal against the orders of the Central Government arising out of this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Act.

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