

GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES)  
UDYOG BHAWAN, NEW DELHI

**Notification**

Dated 25<sup>th</sup> April, 2009

**Final Findings**

**Subject:-** New Shipper Review (under Rule 22) of Anti-Dumping duty imposed on imports of Vitrified/Porcelain Tiles from China PR in respect of M/s. Foshan Lihua Ceramics Co. Ltd., China PR (Producer), M/s. Foshan Henry Trading company., China PR (exporter) through M/s. Anjaneya Trading PTE Ltd; Singapore (exporter)

**No 15/23/2008-DGAD-**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);

2. The procedure described below has been followed.

i. M/s Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited Singapore (Exporter), filed an application and requested the Designated Authority for determination of individual dumping margin under Rule 22 of the Rules and to initiate a 'new Shipper' review of notification no 37/1/2001 dated 4.2.2003.

ii. The applicants claimed that they are not related to any of the exporters/producers in China PR subject to anti dumping measures in force with regard to product concerned. Furthermore, they claimed that they have not exported the product concerned during the period of investigation of original investigation. The Authority prima facie examined the information submitted by the applicants and considered it sufficient to justify the initiation of a new shipper review investigation in accordance with the provisions of Rule 22 of Anti Dumping Rules.

iii. The Designated Authority initiated the New Shipper Review on the basis of request made by M/s Foshan Lihua Ceramics Company Limited and Foshan Henry Trading Company Ltd., China and Anjaneya Trading Pte. Limited Singapore, under Rule 22 vide notification No. -DGAD dated 11th November, 2008.

iv. The aforesaid new shipper investigation was initiated in the matter concerning import of Vitrified / Porcelain tiles falling under Chapter 69 of the Customs Tariff Act, 1975 originated in or exported from China PR and UAE where the Designated Authority vide its final finding no. 37/1/2001-DGAD dated 04.02.2003 had come to conclusion that

a. Vitrified/ Porcelain Tiles have been exported to India from UAE and China PR below its normal value resulting in dumping;

b. The Indian industry has suffered material injury;

c. The injury has been caused cumulatively by the imports from the subject counties.

v. The Central Government imposed anti-dumping duty vide Notification No. 73/2003-Customs, dated 1.5.2003, in the original investigation on imports of vitrified and porcelain tiles from UAE and China PR, other than vitrified industrial tiles, falling under Chapter 69 of Customs Tariff Act, with effect from the date of imposition of the provisional anti dumping duty i.e., 2.5 2002;

vi. The Authority recommended provisional assessment of all exports of Vitrified / porcelain tiles by Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited Singapore (Exporter), till the completion of the review initiated in accordance to the Rule 22 of Indian Anti Dumping Rules.

vii. The Authority recommended continued imposition of antidumping duties after conducting sunset review investigation vide notification No. 15/17/2006-DGAD dated 21st April, 2008. Based on such recommendations, the Central Government imposed anti dumping duties vide notification no Notification No.82/2008-Customs, dated 27th June, 2008.

viii. The Ministry of Finance issued notification on 22nd December 2008 implementing the decision of the Designated Authority vide notification No 134/2008 – Customs, which inter-alia provided that pending the outcome of the review by the Designated Authority, all imports of vitrified/ porcelain tiles other than vitrified industrial tiles falling under Chapter 69 of the Customs Tariff Act by M/s. Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited Singapore (Exporter) would be subjected to provisional assessment till the review was completed.

ix. The Authority sent a copy of exporter questionnaire and market economy questionnaire to M/s. Foshan Lihua Ceramics Company Limited, Foshan, China PR (Producer), Foshan Henry Trading Company Ltd. and a copy of exporters questionnaire to M/s. Anjaneya Trading Pte. Limited Singapore to elicit relevant information. The Authority sought and verified all information it deemed necessary for the purpose of determination of dumping margin. The Authority conducted on-the-spot verification of the data furnished by M/s. Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited Singapore (Exporter).

x. The period of investigation in this new shipper review investigation is 1st July, 2008 to 31st December, 2008 – 6 months for dumping margin determination.

xi. The Authority officially intimated the authorities of the exporting countries of the initiation of the new shipper review investigation and gave an opportunity to all the interested parties concerned to make their view known in writing within 40 days from the expiry of the POI i.e. 1st July 08 – 31st December 08.

xii. The Authority provided an opportunity to all the interested parties to present their views orally in the public hearing held on 12th February, 2009. All parties who attended the hearing and presented the views orally were requested to file written submissions. The parties were also advised to collect copies of the views expressed by the opposing parties in their submissions and offer rejoinders, if any.

xiii. Subsequent to the public hearing domestic industry filed their comments and the same was exchanged with the applicant.

xiv. The Authority made available the public file as per Rule 6(7) of the Rules containing non – confidential version of the information submissions made by various interested parties.

xv. \*\*\*\* in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules. The information concerning prices and costing filed by respective interested parties claimed confidential and the Authority treated these as confidential.

### **Product under Consideration & Like Article**

3. The product under consideration in the original investigation and sunset review is “Unglazed tiles in polished or unpolished finish and Glazed Porcelain / Ceramic tiles both with less than 3% water absorption (commonly known as Vitrified Tiles / Porcelain Tiles)” (also referred to as subject goods). Glazed and unglazed tiles are used primarily for coverings for floors as well as on walls. These tiles are used in buildings, homes, restaurants, cinema halls, airports, swimming pools, railway stations etc. All types of subject goods are classified within chapter heading 69. The classification is, however, indicative and in no way binding on the scope of the present investigations.

4. The product under consideration in this investigation is a Vitrified/Porcelain tiles as determined in the original case, i.e, “vitrified/porcelain tiles”. There is no argument made by any of the interested parties on the product under consideration and like article. It is noted that the Vitrified/porcelain Tiles produced by the domestic industry is ‘like article’ to Vitrified/porcelain Tiles being exported by M/s. Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited Singapore (Exporter) within the meaning of the Rules. In view of the foregoing, the Authority holds that product under consideration in the present investigations is the same as considered in the original investigation i.e., “Vitrified/Porcelain Tiles”, classifiable under Chapter 69 of the Custom Tariff Act,1975.

### **Views expressed by interested parties and examination by the Designated Authority**

#### **View of the Applicants: -**

5. The applicants have made following submissions.

- a. The Applicant Producer (Foshan Lihua Ceramics Co. Ltd., China PR) was incorporated and set-up a plant in 1992 for production of [polished porcelain tiles](#). The product under consideration in the present application and the product subject to anti dumping duties.
- b. The producer commenced commercial production in 1993.
- c. The Applicant producer has not exported subject goods to India during the original period of investigation and in the sunset review investigation period either directly or indirectly through any other company or trading house etc.,
- d. The Applicant producer company had responded to the Designated Authority at the time of original investigations. A copy of the questionnaire response filed by the company at the time of original investigations is already on record and the same is referred to and relied upon. However, the Authority did not determine dumping margin in respect of exports made by the company as these exports fell outside the investigation period.
- e. The exporter company was incorporated in 2005. Given that the exporter company was incorporated in 2005, the company could not have exported subject goods to India during the period of investigation of original investigation. Further, the company has not exported the subject goods in the investigation period of the sunset review investigation.
- f. M/s. Anjaneya Trading PTE Ltd is from Singapore has not exported the subject goods to India during the period of investigation of either original investigation or of the sunset review investigation.
- g. All the applicant companies have not exported during the original investigation period and in the sunset review investigation, the only condition remains to be seen is whether the applicants are related to any other entity that had exported during the investigation period of original investigation and in the sunset review investigation period.
- h. Details of related companies had been provided along with application. It was thus shown that except Foshan Lihua Ceramics Co. and Foshan Henry Trading Company, none of other related company are involved in either production or sale of the subject goods.

i. Exports to India have been made by Foshan Lihua Ceramics Co. Ltd after the original period of investigation, but before the sunset review period of investigation.

j. The applicants consider the information with regard to names of the related company and their business activities as highly business sensitive information and the information cannot be disclosed in its entirety. However the applicants are disclosing the following information:

i. All the Applicants are private companies registered under respective laws. There has been no change in legal or organizational structure in the preceding three years. All the shareholders in Foshan Lihua Ceramics Co. Ltd. and Foshan Henry Trading Company are private Chinese Nationals. In case of Anjaneya Trading, all the shareholders are of Singapore National.

ii. None of the shareholders are holding any position in any other company engaged in production or sales of the product under consideration.

iii. The producer company has 5 shareholders and all are directors in the company.

iv. The Chinese exporter company has the same share shareholders as in producer company and all are Chinese national.

v. The Singapore exporter company has 3 shareholders and all are Singapore nationals.

vi. The applicant companies do not have any State ownership/holding either directly or indirectly.

vii. Decision of both the companies regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without any State interference in this regard.

viii. Costs of major inputs required for production of the product under consideration purchased by the producer company substantially reflect market values.

ix. The production costs and financial situation of both the companies are not subject to any distortions carried over from the former non-market economy system.

x. The applicant companies are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms.

xi. The exchange rate conversions are being carried out at the market rate.

xii. The applicants are providing a number of documents with the present applicant to show that both the applicants are entitled to market economy status.

### **Views of H. R. Johnson, a constituent of the domestic industry**

6. M/S H.R.Jhonson, one of the constituents of the domestic industry both in the original investigation as well as sun set review, made the following submissions before the Authority.

**a.** The questionnaire response filed by the new shippers received only after 9.2.2009. Only two days time provided to make the submissions on detailed response of the new shippers. Hence, opportunity is not provided in terms of the requirements of principles of natural justice.

**b.** We have not been disclosed the outcome of the proceedings that were earlier initiated by the Designated Authority for Anjaneya Trading Pte. Limited Singapore for which the disclosure statement was issued on 4.11.2008. It appears the new shippers are attempting to get access to the market through multiplicity of proceedings by claiming it to be a new shipper each time which is not permissible under Rule 22.

**c.** If there is any other additional document in the public file, then the same may be provided to us at the earliest so that we are in a position to offer our comments on the same. Further, it appears from the

submissions made during the public hearing that the present new shippers from China have filed certain documents without filing non-confidential version of such documents. We request that all such documents may be placed in the public file and inspection may be granted to enable us to offer our comments. Non-confidential version of all correspondence exchanged with the new shippers and responses received may also be provided.

**d.** The non-confidential version of the application filed by the new shippers which has been supplied to us is not in accordance with the new guidelines being followed by the Designated Authority in all the current cases which require that the non-confidential version should be an exact replica of the confidential application.

**e.** Our preliminary response on the issues emanate from the Application and questionnaire response including market economy questionnaire response same are as under:

i. No certifications are filed by each of the applicants regarding the information and data contained therein.

ii. The joint Application is unsigned, and is undated.

iii. At the time of making of the application and initiation, there was no material to examine whether the producer had any exports during the original period of investigation or period of investigation of sunset review. Prima facie determinations made for fulfillment of conditions of Rule 22 are hence flawed.

iv. The Producer Company failed to disclose that they had in-fact filed a questionnaire response in the original period of investigation at the stage of seeking initiation. The non-confidential version of the same referred to during the hearing has not been provided to us.

v. Information on circumstances that necessitated change of name of producer, details about change shareholding pattern, or change in place of business or shifting of factory etc. are not disclosed.

vi. There is no material in the non-confidential version of the application about relationship between producer and exporter. Further, the condition of no exports in view of such relationship could not have been examined at the time of initiation in the context of the exporter from China being setup in 2005.

vii. Names and details about related companies have been kept confidential without stating reasons for such claims. The claim that these related companies could not have also exported the product concerned to India is without any substantiation.

viii. The test of relationship is in the context of such related party being subject to duty. In view thereof, the declarations made in the application are not in terms of the requirements of Rule 22.

ix. If there is even one entity related to the producer or exporter then the applicants are not eligible for the present proceedings as all producers and exporters from China are subject to duties except to the extent of names mentioned in the sunset review investigations.

x. No reasons are stated in support of claims of confidentiality on business license, certificate of approval, certificate of change in name, Articles of Association, annual reports, list of related parties and details of exports to India. No non-confidential version for such documents is filed or reasons provided for non-summarization or indexation.

xi. The Hon'ble Tribunal in the case of H&R Johnson (India) Limited Vs. Ministry of Finance & Ors reported at 2007 (218) E.L.T. 273 (Tri. - Del.) has clearly held that fixing of period of investigation after the initiation is bad in law and contrary to Rule 22. In view thereof, the present proceedings are without jurisdiction.

xii. No information has been provided in the application as to what percentage of the total production of the producer was exported during the POI. No information is also filed if the producer in China is also exporting to other countries.

xiii. The Designated Authority has not called upon the importer to file his questionnaire response to cross check information filed by the new shippers and verify at what prices the goods actually landed in India.

xiv. The Designated Authority has not sought import statistics for the new shippers from Customs to cross check prices actually declared to Customs.

f. The producer, trader from China and the exporter from Singapore have got the initiation done by mis-declaration and falsification of records and withholding of material information which would have had a direct bearing on the determination of the Designated Authority for initiation of the present case as apparent from the following submissions:

i. New Shippers get an opportunity to plan their normal value and export price as they are granted partly prospective period of investigation by the Designated Authority. In view thereof, the present initiation is contrary to Rule 22 and against the principle of judicial discipline and doctrine of precedents.

ii. The new shippers from China are operating as a group under other names and have more than one factory which is not disclosed in the present questionnaire response.

iii. Our intelligence and other information from China indicate that the producer does not only operate under the name for which it is seeking new shipper review.

iv. The producer in various web sites has claimed itself to be manufacturer and exporter set up in 1992 while in response they have claimed that they have no exports. Further, the former name and details about their predecessor company may be obtained to reach correct determinations not only for examination of pre-conditions of Rule 22 but also for para 7 of Annexure-I of the Rules.

v. Designated Authority has not been provided full information about the exporter Company from Singapore and its history in subject goods to India and other destinations. It is not clear what role they play and who compensates them.

vi. Joint Applications are filed to create confusion and avoid holding of specific statement to any particular new shipper. Further, we find that no mandatory certification has been provided about the accuracy of the information contained therein. Most of the questions are not answered by each of the participating new shipper.

**g.** Conditions of Rule 22 not satisfied: It is our respectful submission that 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. some material in the form of evidence or document must be placed before the authority in support of all claims made in the application.

**h.** Deficient Questionnaire Response: The questionnaire responses filed by the new shippers is grossly inadequate and unsubstantiated.

**i.** The information has been treated confidential without providing reasons in support of claims of confidentiality.

**j.** The producer company has claimed that they have no export sales. In view of such claim, the application itself is not maintainable as without export sales, no dumping margin can be determined.

**k.** We have specific information that the related export company has local sales. They may be put to strict test that they have not made local sales.

**l.** New Shippers have stated that there is no difference between the goods exported to India and to other countries in support of which no evidence has been placed. Grade-wise information has not been provided without which no proper comparison can be undertaken by the authority.

**m.** The name of all the factories involved in production of the product involved has not been disclosed. The names of other factories engaged in other products have also not been disclosed. The website of the producer and exporter from China admits to several factories.

**n.** It has been stated that the goods produced or sold in the domestic market are comparable. We are not too sure if they are identical or only comparable as no information on grades/model has been provided.

**o.** No details about the trading arrangements are disclosed. No details about discounts, commission, rebates, or terms of payment have been disclosed.

**p.** In response to number of questions it has been mentioned by the new shippers that details have already been provided at the time of initiation. We have not been provided with such details and hence we are unable to deal with such submissions and file appropriate response. We request such details or their non-confidential version may be provided to us so that we can file appropriate response.

**q.** Misleading answers have been given to ensure that relevant questions are not responded. For example, the Trading Company from Singapore has stated that they are a private company registered under Chinese Companies Act. In response to a question on legal representative of trading entity from Singapore, it has been stated that a letter from Lihua Ceramics is attached while the company is from Singapore. In response to a question on channels of distribution the trading company from Singapore has stated that it procures goods from its related producer

companies and thereafter sells it to overseas customers. This statement is totally contrary to rest of the statements made by the trader in the application and questionnaire response.

r. None of the questionnaire response state facts about exports made during the period of investigation of sunset review investigations.

s. Appendices 1, 2, 2A, 2B, 3, 3A, 3B, 3C, 4, 5, 6, 8 & 9 are blank and hence no comments can be offered.

t. 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 duties. It is very important in view of the fact that the new shipper review is initiated only for the new exporter but not the exporters who were party to the original investigations or exported the subject goods in the period of investigation of the original or sunset review investigation or were subject to duties.

u. Designated Authority has not been issuing importer questionnaire response in New Shipper Review investigations. The reasons for deviating from practice adopted in other cases are not discernable from the face of the records of new shipper review proceedings.

v. No non-confidential version of 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.

w. In terms of Rule 22, only the exporter from exporting country in question can request for the separate determination of dumping margin. The combination determination for more than one entity is not envisaged under the rules.

x. Rule 22 has been abused.

y. As per Rule 22, a case for new shipper review cannot be initiated each time an application is received from a new shipper. The word 'periodical' used in the Rule 22 makes it amply clear that the authority is required to review periodically (as fixed by the

authority) all the applications for new shipper review received prior to that period.

**z.** China is a “non-market economy country” and has been treated as such in the original investigations. The Designated Authority cannot grant any individual normal value in view of the interpretation resorted to by the Designated Authority in Reliance Industries case. The Authority is presently interpreting the decision of the Hon’ble Supreme Court in the case of RIL Vs. Designated Authority to mean that there can be only one normal value for each country as per Hon’ble Supreme Court.

**aa.** The new shippers have claimed excessive confidentiality in their common response. The new shippers have not disclosed the reasons for such claims of confidentiality on almost all documents. There are also no reasons provided as to why the information on which confidentiality has been claimed and apparently allowed in not susceptible to summarization.

**bb.** The initiation is bad in law as the pre-conditions of Rule 22 have not been examined for a valid initiation. The proceedings are hence without jurisdiction and must be terminated at the earliest.

**cc.** Alternatively and without prejudice to the aforesaid, it is submitted that the new shippers may be asked to provide the information/documents immediately. The same may be provided to us, subject to specific orders of the Designated Authority allowing confidentiality, for comments.

7. In the rejoinder submissions of this one representative of the domestic industry, most of the views as stated by them in written submission have been reiterated. The same are summarized below:

i. Since, appropriate material was not placed before the Designated Authority it cannot be said that pre-conditions of Rule 22 were examined in the present case prior to initiation. Hence, to that extent, the present initiation is contrary to requirements of Rule 22 and bad in law.

ii. None of the submissions made at the time of public hearing have been reproduced in the written submissions. The paper book given during public hearing has also not

been submitted and hence the same cannot be taken on record of the case to reach any conclusions.

iii. The new shippers have not given any declaration that they are related to any exporters or producers in China who are subject to the anti-dumping duty. As per our web research the relationship did exist at the time of filing of the application and also at the time of filing of the questionnaire response but the same was not disclosed.

iv. The following facts (that are duly supported by web print outs) were not disclosed which lead to misleading the Designated Authority in securing the initiation of present investigations:-

- The producer company is listed as a state owned company in the web site of State Information Center contrary to a declaration by the new shippers that there is no direct or indirect state control.
- Name of Foshan Weiduoli Ceramics Ltd., Foshan Svice Ceramics Co. Ltd., Foshan Lihua Ceramics Group Corporation as producers and sellers of subject goods using the same address and telephone numbers has been withheld from the authority.
- New investments reflected in various web sites and interviews with reporters are not reflected in the response.
- the producer company has exporters to over 40 countries and have overseas marketing centers. In response to questionnaire it has been stated that that they have no exports.
- The various types of products are listed in web site while the same have been claimed confidential in their response.
- The numerous show rooms and marketing centers are shown in such web sites. The cost of all such show rooms etc. is not disclosed.

- Indicative rates of various types of tiles are also given in web sites while the same are claimed confidential.
- Henry Trading has not disclosed all its offices. Web print goes to show that they operate also from No. 64 Jinhong St. Textile City, Xiqiao, Foshan City, China. The cost and other aspects hence could not have been examined without providing information about their offices.
- Anjaneya Trading has not disclosed its relationship with another firm Anjaneya operating from Katwaria Sarai, Delhi. This entity has also in its web advertisements claimed to be dealing in similar goods.
- The web advertisement of Anjaneya Trading indicates that they have just been setup to deal in subject goods for reasons best known to the new shippers. Further, no information about total turnover of such goods for period of investigation and past period has been given as per requirements of Appendix of Questionnaire response.
- Anjaneya Trading has listed itself as a manufacturer while such fact has not been disclosed in the present proceedings.
- No evidence that has been placed on record to show that there were no exports during the original period of investigation or in sunset review investigation.
- For the first time it has been disclosed in the written submissions of new shippers that the producer had filed a questionnaire response in the original investigations. This fact was withheld in the application and ought to have been disclosed prior to initiation together with details filed earlier. Non-

confidential version of such details and response has not been filed even today for us to offer comments.

- exports by such entities cannot be ruled out specifically when the trading related entity was setup in 2005 while the producer is in the business of subject goods since 1992.

- In the chart relating to legal structure given with the written submissions of the new shippers, interestingly they have withheld information about exports by the producer while for Henry Trading it has been mentioned that they are engaged in exporting. Further, details of all the items that are exported by Henry Trading are also withheld.

v. There is ample evidence to show that the present exporter and the producer in China are part of a group and related to other entities not disclosed in the present proceedings. Such undisclosed entities are subject to duties and such relationship has been suppressed from the authority.

vi. Any proceeding under Rule 22 which is based on a prospective period of investigation is contrary to Rule 22 as per the ruling of the Hon'ble Tribunal.

vii. Information/ documents/ data sought in our written submissions dated 19.02.2009 not yet been provided. Thereof, we are handicapped to file full and meaningful rejoinder submissions.

viii. We also wish to point out that in New Shipper Review proceedings conducted by MOFCOM; an opportunity is given to the Domestic Industry in China, even prior to initiation of new shipper review proceedings as per Chinese codified rules. No such opportunity is given to Domestic Industry in India.

ix. The period of investigation has to be prior to the date of initiation and cannot be prospective is based on sound

principles of law and internationally settled precedents on the same.

x. On the issue of prospective period of investigation, the decision of the Hon'ble Tribunal is not followed under the pretext of Delhi High Court order dated 14.5.2008. Hence, the Designated Authority is bound by decision of H&R Johnson (India) Ltd. Vs. Designated Authority reported at 2007 (218) E.L.T. 273 (Tri. - Del.).

xi. The new shippers cannot be allowed to keep adding data/information/ or evidence which was required to be filed along with the application after the stage of public hearing and written submissions.

xii. The Designated Authority may at the earliest issue final findings terminating the investigation.

xiii. Once the issues of confidentiality are decided and documents/ information/ data/ correspondence etc. is made available, a fresh opportunity for public hearing and written submissions may be granted in the interest of fair play and natural justice.

xiv. We would once again request the Designated Authority to seek import data from Customs for the original period of investigation and sunset review investigations with names of all exporters and also import data for the present new shippers for the period of investigation fixed for the present proceedings.

xv. No data duly certified has been submitted by admittedly related companies about when they were set up and their total exports country-wise. The accuracy of the information has not been examined in terms of the requirements of Rule 8.

xvi. No further examination ought to be done when it is found that such relationships were in fact suppressed at the stage of filing of the application, filing of questionnaire responses, filing of written submissions. We therefore pray that this is a fit case for termination of new shipper review investigation

with adverse remarks and strict penalties for distorting market prices by seeking interim exemption from duties

xvii. That Designated Authority cannot grant any individual normal value in view of the interpretation resorted to by the Designated Authority subsequent to the case of Reliance Industries Vs. Designated Authority.

xviii. We also pray that a copy of rejoinder submissions filed by the new shippers may be provided to us to be in a position to file effective comments to disclosure statement which is likely to be issued. Without prejudice to the above, we also request the authority to kindly provide us verification report and seek our comments before proceeding further with the investigation.

xix. 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 prices in a pre-determined manner and hence the need for a special care before initiation has been emphasized time and again.

xx. We notice that the Designated Authority takes on record new responses and entirely new information during the verification or after oral hearing. This deprives the interested parties an effective opportunity as contemplated under the law.

xxi. In the aforementioned circumstances, it is requested that the exemption granted to Applicants may be withdrawn immediately and they may be compelled to pay the anti-dumping duties otherwise applicable to all other non-cooperative exporters from China. Strict action may also be taken against the importers in India for being party to such serious fraud on the revenue and a cause of serious injury to the domestic industry

### **Examination by the Authority**

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

*“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”.*

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

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

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

10. It is evident from the above that the intention of Rule 22 is to determine individual dumping margin in respect of an exporter or producer who did not export the subject goods in the period of original investigation. Since such producers/ exporters did not export subject goods in the period of original investigation, the Designated Authority could not have determined dumping margin in respect of their exports at the time of original investigations. The purpose of the new shipper review provision is therefore to provide an opportunity to such an exporter to claim their own dumping margin

considering that these exporters have been granted residual dumping margin during the original investigations.

11. In the instant case, the following applicants made the application for new shipper review:

Foshan Lihua Ceramics Company Limited (Producer)

Foshan Henry Trading Company Limited (Exporter)

Anjaneya Trading Pte. Limited, Singapore (Exporter)

11.1 In their application, the applicants made, inter-alia, the following claims: -

(a) That the applicants had not exported the material during the period of original investigation;

(b) That the applicants were not related to any exporter or producer who had exported during the period of original investigations.

12. The Designated Authority in the present case on the basis of information filed by the applicant found that the exporters and producer has not exported the product under consideration during the period of investigation and provided certification that they are not related to any of the exporters or producers in the exporting country who are subjected to anti dumping duties. The Authority also did not find any adverse material regarding their claim of a new shipper.

13. The applicants provided business license of the applicants, i.e., M/s. Foshan Lihua Ceramics Company Limited China PR (Producer) , Foshan Henry Trading Company Limited (Exporter) and Anjaneya Trading Pte. Limited, Singapore (Exporter) before initiation of investigation and the information has in no way established that the initiation or investigation is vitiated.

14. It was verified whether any other company besides Foshan Henry Trading Company is related to the Foshan Lihua Ceramics Company Limited (producer). During verification, it was found that M/s Foshan Svice Ceramic Co. Ltd., Foshan and M/s Foshan Weiduoli Ceramic Co. Ltd., Foshan are related companies of Foshan Lihua Ceramics by virtue of shareholdings by the family members of the applicant

producer. These companies have been registered with Chinese authorities. It was stated that these companies have been set up for trading of ceramic and other products of Foshan Lihua but have not taken up any business establishment even today. **M/s Foshan Lihua Ceramic Co. Ltd. has given a certificate to this effect.** The relationship with these companies was disclosed by the applicant before initiation of the investigation. The verification of the records has not revealed that the new shipper operates under any other name.

15. Claims with regard to eligibility of the applicant as a new shipper were examined whether the company has directly or indirectly exported the product to India in the investigation period of original investigation or of sunset review investigation. The applicants were asked to establish their claim that the company or any of its related company had not exported the product concerned to India in the investigation period of the original investigation or of SSR investigation. It was stated that even though the company was established in 1992, it does not have the export license till now. The claim was also verified from the VAT return documents for each of the month of POI and it is observed that there were no export sales and also no VAT refund had been claimed. In particular, it was shown that the VAT Return provides for reporting (a) export goods free of tax sales amount, (b) VAT on exports. It was shown that the amounts in these columns for all the months of the POI were nil, thus indicating that M/s Foshan Lihua Ceramic Co. Ltd. had no exports during the period of original POI. As regards the exporter, M/s Foshan Henry Trading Co. Ltd. is concerned; it was incorporated in 2005 and hence was not in existence at the time of the original investigation. The relevant records of Foshan Henry Trading were verified to establish the fact that they have not exported the subject goods to India during the investigation period of sunset review investigation.

16. The Authority holds that the Authority has prima facie satisfied itself with the fact that the applicants satisfied the contentions laid down under Rule 22 before initiating the new shipper review investigations. The detailed investigations have been carried out after initiation in order to establish whether the applicants fully satisfied the requirement laid down under rule 22 and to determine the individual dumping margins. The Authority holds, based upon verification of records, that the applicants meet the requirement laid down in Rule 22.

### **Other Issues**

### **Examination of Procedural Issues**

17. With regard to various procedural issues raised by HR Johnson, the Authority holds as follows:

(i) M/s HR Johnson, the Indian producer of the subject goods on record of the Authority, was provided an opportunity to express their views on initiation notification and the non-confidential version of petition received was kept in the public file. The Authority is under no obligation to send the petition to the domestic industry when the same is available in the public file. No comments were however, made by HR Johnson till the stage of oral hearing.

(ii) The outcome of some other case is not relevant in the present case. As far as M/s Anjanaeya Trading Pte Limited, Singapore is concerned, it is the first time they have applied for new shipper review investigation as an intermediate trader for Chinese producer/ exporter. The only occasion they had approached the Authority prior to this was when they sought inclusion of their name as exporter, supported by the producer M/S Qingyuan Southern Building Materials and Sanitary Ware Company Limited along with New Zhongyuan Ceramic Import and Export Company Limited. The request was subsequently withdrawn and case closed.

(iii) Interested parties had the freedom to inspect the public file and take the note of the documents available in the same.

(iv) M/S H&R Johnson has not provided any material evidence in support of their statement that initial declarations about pre-conditions for initiation of new shipper investigation were wrong and misleading and material information having a direct bearing on the maintainability of the present proceedings has been suppressed from the authority.

(v) The fact that the Producer Company, M/s Foshan Lihua had filed a questionnaire response in the original period of investigation is on record of Authority and the same was examined at the stage of initiation.

(vi) The company was incorporated in 1992 as Nanhai Lihua Superior Wall & Floor Tiles Factory, which was re-named as Nanhai Lihua Ceramic Industry Co. Ltd. in Jan, 2001. The name of the company was further changed to Foshan Lihua Ceramic Industry Co. Ltd. on 19th June

2003. The name was further changed to Foshan Lihua Ceramic Co. Ltd. based on the application dated 25th September 2003. The change of name was not found to have brought any change in constitution of the company as there has neither been any change in the shareholders or their shareholdings and the company remained as a private company since inception.

(vii) There is no basis on the allegation that the fixation of prospective period of investigation provides an opportunity to an exporter to contrive their prices. No evidence has been provided establishing that either the normal value or the export price was contrived in any manner. In this regard, Hon'ble High Court in its decision dated 14th May 2008, while disposing off writ petition opined that the language and intention of rule 22 of the Anti-dumping rules does no prima facie, support the conclusion arrived at by the Tribunal. However, the Designated Authority has filed an SLP against the orders of Hon'ble CESTAT on the issue of prospective period of investigation.

(viii) With regard to calling upon the importer to file his questionnaire, it is noted that Authority cannot insist upon unrelated importer to file his questionnaire response.

(ix) M/S H&R Johnson has not provided any material evidence that the export prices have been manipulated by the new shippers that need cross-checking from other sources.

(x) The applicants provided business license of the applicants, i.e., M/s. Foshan Lihua Ceramics Company Limited China PR (Producer), Foshan Henry Trading Company Limited (Exporter) and Anjaneya Trading Pte. Limited, Singapore (Exporter) before initiation of investigation and the information has in no way established that the initiation or investigation is vitiated.

(xi) The Authority holds that the Authority has prima facie satisfied itself with the fact that the applicants satisfied the contentions laid down under Rule 22 before initiating the new shipper review investigations. The detailed investigations have been carried out after initiation in order to establish whether the applicants fully satisfied the requirement laid down under rule 22 and to determine the individual dumping margins.

(xii) With regard to the argument made by M/S H R Johnson that producer has not placed any evidence in support of their claim that there were no difference between the goods exported to India and to other countries, it is noted that the new shippers have filed the information in the form of Appendix 1 & 2 respectively containing details of sizes/grades on a transaction to transaction basis. Foshan Lihua Ceramics has filed information regarding the sales made to Foshan Henry Trading for exports including to India during the POI.

(xiii) With regard to the issue that no indication about the quantity proposed to be exported was provided to the Authority, it is noted that there is no requirement to pre-decide the volume of exports proposed to be made by the applicants.

(xiv) As regards the argument that the Authority is required to conduct periodic reviews, the Authority notes that the CESTAT has already decided this issue.

(xv) As regard the opportunity given by the MOFCOM to the Domestic Industry in China in New Shipper Review proceedings conducted by MOFCOM, even prior to initiation of new shipper review proceedings as per Chinese codified rules and no such opportunity is given to Domestic Industry in India, the Authority has noted that M/s HR Johnson had made no efforts to offer any comment even after the issue of public notice of initiation where 40 days time was given. The company till the stage of post hearing written submission filed no comments.

(xvi) The verification of records of Anjaneya Trading has not revealed any relationship with another firm Anjaneya operating from Katwaria Sarai, Delhi.

(xvii) With regard to possible abuse of the Rule 22, the Authority notes that it is important to ensure that the provisions are not being abused by conducting an adequate investigation into the genuineness of the 'new shippers'. The Authority needs to examine that such applicants are not related to the exporters or producers in the exporting country who are subject to the anti-dumping duty. Determination of individual dumping margin for such applicants is contingent upon such applicants establishing that they are not related to any exporter attracting ADD. With respect to possible false declarations being made by new shippers,

it is noted that after examination of the facts of the case, no misuse or abuse of rule 22 in the investigations conducted in this case so far has been brought to the notice of the Authority. More ever, the Authority has not come across any misuse by the new shipper during the process of investigations. It is also noted that the Rules itself also provides sufficient safeguards in this regard, wherein it provides that such importers may be asked to furnish bond or guarantee, as the Central Govt. deem fit in facts and circumstances of each case.

### **Examination of the issue of Confidentiality**

18. The Designated Authority holds that M/s H R Johnson has raised issue of confidentiality of information by the applicants at various places in their written submissions filed subsequent to the oral hearing and also in its rejoinder submissions. The Designated Authority further holds that the Hon'ble CESTAT in their order dated 19.5.2005 in the matter concerning H R Johnson v/s. Designated Authority dated 19.5.2005 has observed that:

- i) In terms of Rule 7(1) information submitted on a confidential basis shall be treated as confidential only when the Designated Authority is satisfied as to its confidentiality.
- ii) The Designated Authority is not required to mechanically treat the information provided by a party as confidential merely because that party has desired it to be kept confidential.
- iii) The Designated Authority has to be satisfied about the confidentiality of the information on the basis of various factors such as nature of the information and whether such type of information is by law custom, usage or practice treated as confidential.
- iv) The Designated Authority has not passed any formal order in the matter of confidentiality in this particular case.

19. The Authority holds that Rule 7(1) provides that the Designated Authority shall treat any information submitted on a confidential basis as confidential upon the

Designated Authority being satisfied as to its confidentiality. Rule 7(1) also enjoins a duty on the Designated Authority that if the Authority is satisfied about its confidentiality, such information shall not be disclosed to any other party without specific authorization of the party providing such information.

20. Further, Rule 7(2) states that the Authority “may” require the parties providing confidential information to furnish non-confidential summary thereof. It also provides that if such confidential information is not susceptible of summary, the interested party may submit a statement of reasons as to why summarization is not possible.

21. Further, Rule 7(3) provides that if the Authority is satisfied that the request for confidentiality is not warranted or where the supplier of the information is unwilling to make the information public or authorize its disclosure in a generalized or summary form, the Authority may disregard the information.

22. In the light of the above, the Authority has examined the confidentiality claim of the applicant by taking into account submissions made by interested parties. After examination the Authority has considered the information relating to customers, cost, financial and the information of business sensitive nature as confidential.

### **Methology For Determination of Normal Value , Export Price and Calculation Of Dumping Margin**

#### **Views of M/S H R Jhonson**

23. The China is a ‘non-market economy country’ and has been treated as such in the original investigation. The Designated Authority cannot grant any individual normal value in view of the interpretation resorted to by the Designated Authority in Reliance Industries case.

24. In view of the decision of Hon’ble Supreme Court in the case of RIL vs. Designated Authority, there can be only one normal value for each country. 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 was operative during the period of investigation in the present case.

#### **Views of exporter/producer(New shipper),**

25. Views of appellant and opposing parties with regard to dumping have been noted in Annexure 1 to this disclosure.

### Examination by the Authority

26. The Authority considers that normal value under the rules is defined as under:

“normal value”, in relation to an article, means - 9A(1)(c)

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 (i)

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 - (ii)

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

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) : (b)

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.

26.1. While it is evident that the Authority has to apply ordinary course of trade test, for which information on cost of production is vital, it is noted that the applicant

during the process of investigation submitted details of the subject goods that are exported to India and that which are produced but not sold to India. During the investigation process, it was noted that M/s Foshan Lihua Ceramics Co. Ltd. has significant domestic sales.

27. With regard to applicability of Hon'ble Supreme Court judgement in Reliance case in new shipper review cases for determination of normal value, the Authority notes that CESTAT in its judgement dated 27.08.2007 held that the observation of the Hon'ble Supreme Court in the Reliance case does not apply in the new shipper reviews under Rule 22.

28. The Designated Authority, as per para 8(2) of Annexure I of the AD Rules for the purpose of determination of Normal Value, proceeded with a presumption that any country that has been determined to be or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economic country. In the past three years WTO members such as EU and USA have treated China PR as a non-market economy country in anti- dumping investigations. In the instance case, China PR has been proposed to be investigated as non-market economy Country.

29. The Authority sent market economy treatment (MET) questionnaires and exporters questionnaires to M/s. Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited, Singapore (Exporter). They filed the response in support of their claim of market economy treatment and requested for determination of normal value as per para 1 to 6 of annexure-I of AD Rules on the basis of export of subject goods to countries other than India since there was no domestic sales of subject goods in their home market. In view of their claim of MET treatment, on-the-spot verification was carried out at the premises of the responding producer and exporter. The Chinese producer has claimed individual treatment on the grounds that they are operating under market economy condition irrespective of prevailing economy situation in the country without any direct or indirect State interference or influence in their business activity.

30. In anti-dumping investigations normal value concerning imports originating in China PR, shall be determined in accordance with para 7 & 8 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

*“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the*

*market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.”*

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

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

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country;*

*Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).”*

31. It is noted that the applicants furnished /evidences and information as mentioned in para 8 (3) of Annexure I of Anti Dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a) The decision of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation

of assets, other write-offs, barter trade and payment via compensation of debts;

c) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

d) The exchange rate conversions are carried out at the market rate;

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

32. Detailed questions regarding ownership, management, control, determination of commercial and business policies and on financial situation etc. were addressed to the applicant. The responses filed by the new shipper were analyzed to determine whether the applicant exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The applicant provided information in respect of M/s. Foshan Lihua Ceramics Company Limited (Producer) and Foshan Henry Trading Company Ltd. (Exporter) China and Anjaneya Trading Pte. Limited, Singapore (Exporter). The Authority sought general and certain specific information with regard to the following parameters from the applicants:-

- Ownership details
- Shareholding patterns
- Information on promoter/holding company/companies
- Constituents of Board of Directors, their legal status and person/party being represented by them.
- Raw Material Inputs and Costs
- Existence or otherwise of any minimum wage stipulation by the State and if the enterprises are free to decide wages as per market demand.
- Production Facilities and Costs

- Loans and subsidies
- Barter Trade/ Counter Trade
- Profit Distribution
- Bankruptcy and property laws
- Exchange rates conversions

33. Verification at the premises of the applicants companies was conducted from 2nd March 2009 to 6th March 2009. The exporters were asked to provide complete details of all the related companies, including their present and past ownership, establishment date, product involved, the manner in which these companies were set up, source of funds, etc.

34. It was seen that M/s Foshan Lihua Ceramics is undertaking responsibility for production, while Foshan Henry Trading undertakes exporting activity.

35. In order to examine whether there was any degree of State influence or interference over the allocation of resources and decisions of the applicant, whether directly or indirectly, the ownership pattern of the applicant was examined. The claims/ counter claims of the interested parties were taken into account and details in this respect were verified. The Authority examined the composition of Board of Directors of these companies, identity of persons in the Board, their functions, other position held by these persons etc. to determine whether there is any interference or involvement of the State in the management and working of the companies. The Authority relied upon the relevant provisions relating to constitution of Board of Directors, Board of Supervision, General Manager, their functions & powers, appointment & dismissal, autonomy of the company in matters of appointment etc and the role which State or State owned/controlled persons/bodies plays, if any, in such companies whether directly or indirectly.

36. It is found that the M/s. Foshan Lihua Ceramics Co. Ltd. Foshan, China PR (Producer) and Foshan Henry Trading Company Limited, China P.R. (Exporter) are having common shareholding i.e, the shareholding are controlled by common set of persons. The shareholders of these companies are private individuals holding Chinese identity.

37. Verification of the information submitted concerning Market Economy Status and as contained in the response to Exporters Questionnaire has been conducted to cover the following aspects:-

- (a) Legal Structure of group companies (including all related companies).
- (b) Activities of group Companies and inter-linkage, if any.
- (c) To satisfy the test contained in the parameters listed in Annexure I (8) of Indian Anti Dumping Rules.
- (d) Operating structure of group companies (including all related companies).
- (e) Data/information submitted in response to the questionnaire.
- (f) Others Misc information called on the spot.

**Legal structure of the applicants:**

38. The Authority has verified legal structure of the applicant and it has noted as under:

39. The company was incorporated in 1992 as Nanhai Lihua Superior Wall & Floor Tiles Factory. the copy of business license of 1992 No \*\*\*, issued by Nanhai Administration Bureau of Industry and Commerce, dated 21st Sept., 1992, issued in favour of M/s Nanhai Lihua Superior Wall & Floor Tiles Factory was verified. According to this business license, the registered capital was RMB \*\*\* millions and the company were shown as private enterprise with the business scope of Ceramic products. The business license No. \*\*\* dated 15th January 2001 showing the company as private company with capital of RMB \*\*\* millions and the business scope has been shown as manufacture, sale & export of polished porcelain tiles was also verified. Currently this business license is in force.

40. The copy of the capital verification report of CPA dated 14th August 1992 was also verified, which states that the registered capital of the company is RMB \*\*\* millions contributed equally by the five individual shareholders. According to the capital valuation report, the above shareholders deposited the capital money in \*\*\* A/c No. \*\*\*\*. The company also produced Chinese identity of all the above shareholders.

41. The company could not provide the original certificates issued in 1992 as it was explained that due to flood in 1998, most of the documents were washed away. To substantiate this, the company provided the insurance claim documents in support of the same. As per this claim document, the reported loss due to flood was approx. RMB \*\*\* million including RMB \*\*\* million fixed assets & equipments and current assets in the form of running stock for RMB \*\*\* millions. The company got the claim of RMB \*\*\* millions from the insurance company. The report also stated that the factory is a ceramic manufacturer established since the end of 1992 and put into production in August 1993.

42. The company also produced a photocopy of certificate issued by Nanhai Administration Bureau of Industry & Commerce, Xiqiao Branch stating that Nanhai Lihua Superior Wall & Floor Tiles Factory has been re-named as Nanhai Lihua Ceramic Industry Co. Ltd. in Jan, 2001. The name of the company was further changed to Foshan Lihua Ceramic Industry Co. Ltd. vide Notification of Approval of Enterprise Registration Alteration issued by Administration for Industry & Commerce of Nanhai District, Foshan City on an application of the company dated 19th June 2003. The name was further changed to Foshan Lihua Ceramic Co. Ltd. based on the application dated 25th September 2003. The change of name has not found to be brought any change in constitution of the company as there has neither been any change in the shareholders or their shareholdings.

43. In 2005, the company decided to start exportation and for this purpose, a new company, M/s Foshan Henry Trading was formed as export arm of the Foshan Lihua Ceramics (producer). M/s Foshan Henry Trading Co. Ltd. was incorporated on 29th April 2005. The business license of Foshan Henry Trading Co. Ltd. shows the registered capital as RMB \*\*\* Millions. The scope of business has also been mentioned as import & export of commodities and technologies. The export license (Registration form for Foreign Trade Business Operators) issued on 30th May 2005 under the seal of Archive Filing and Registration Authority was also verified.

44. The basic aim of M/s Foshan Henry Trading is to only perform the export function for the producer company and internal transfer of pricing of the product is in accordance with internal understanding and exigency of the two companies. M/s Foshan Henry Trading, Export Arm of Producer Company does not make any domestic sales.

45. It was verified whether any other company besides Foshan Henry Trading Company is related to the producer, which are involved in the business of subject goods. During verification, it was found that M/s Foshan Svice Ceramic Co. Ltd., Foshan and M/s Foshan Weiduoli Ceramic Co. Ltd., Foshan are related companies of

Foshan Lihua Ceramics by virtue of shareholdings by the family members of the applicant producer set up for trading of ceramic and other products of Foshan Lihua. These companies have been registered with Chinese authorities under registration no. \*\*\* and \*\*\* with the capital contribution of RMB \*\*\* each. It was stated that these companies have not taken up any business establishment even today. M/s Foshan Lihua Ceramic Co. Ltd. has given a certificate to this effect. The relationship with these companies was disclosed by the applicant before initiation of the investigation.

46. As regards land is concerned, it was stated that the same has been obtained on lease from Lianxin Village Collective Assets Management Committee of Xiqiao Town, Nanhai District, Foshan City. The present lease contract is for \*\*\* years, and the lease rent is \*\*\* yuan per square meter per year. The total land area is \*\*\* sq. meters.

47. Board of Directors is the highest body in company. The Board decides all important matters of the company. The important matters would be effective only after being approved by the Board of Directors in accordance to the rules is set out in Articles of Association of the company. There is neither any interference of the government nor any quantity restrictions on sales and production.

48. The verification of M/s Anjaneya Trading Pte. Limited, Singapore (Exporter) was also conducted. The company was setup as a Private company limited by shares on 16th Oct 1997 under the Singapore Companies Act. As on date, the company has 3 directors with capital of \*\*\* S\$.with share value of \*\*\* S\$ per share.

49. From the very inception, the company has been involved in the business as general wholesale trade (including general importers & exporters). The goods traded by them include garment accessories, electronics, glass products and the latest addition has been trading in Chinese tiles as trader.

50. M/s Anjaneya Trading Pte. Limited, Singapore is not related either directly or indirectly with the Foshan Lihua Ceramics Company Limited (including its related companies) or Indian importer M/s. Kajaria Ceramics Limited. The company was an intermediate trader in the export of \*\*\* SQM \*\*\* tiles and \*\*\* SQM \*\*\*tiles to India, which was produced by Foshan Lihua Ceramics, China PR and exported from China PR by Foshan Henry Trading. Goods were directly shipped from China to India. M/s Anjaneya Trading, Singapore has received the full payment from Indian Importer and has paid the contracted amount to the Chinese exporter, M/s Foshan Henry Trading.

51. **Financial Accounts:** The companies were found to be maintaining its accounts as per Generally Accepted Accounting Principles. The Chinese producer and exporter

maintain monthly profit & loss statement, which is required to file profit & loss statement along with VAT filing. The profit & loss statement for each of the months of the investigation period was examined and cross-verified with the profit & loss statement filed by the company along with its VAT return. The Chinese producer determines a separate profitability of the subject goods and other goods. On examination of records it was found that the company was able to post profits on the subject goods. Annual Accounts of the company are audited regularly by the Auditors and no adverse comments were found in their Auditor Report with regard to the accounting practices followed by the company.

52. **Selling Price:** The issue of selling price determination has been examined. It was found that Foshan Lihua Ceramic Company Ltd has been selling the subject goods 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. The Authority notes that the entire export sales to India of the goods produced by Foshan Lihua Ceramics Co. Ltd. were affected by M/s Foshan Henry Trading Co. Ltd. (exporter). No evidence of possible role of State in determination of domestic or export price could be found. It is found that there are variations in prices depending upon customer, volume, type of product involved etc. It was explained by the company that there is no price list either for domestic or export sales as it varies from customer to customer which entirely depends on demand and supply position in the market.

53. The Authority noted that the company determines the cost of production for different types and sizes of product. The cost of production is determined having regard to principles of cost accounting which appeared reasonable and sufficient considering the nature of product and the production process. The company maintains actual cost. Further, cost of production varies from month to month due to movement in prices of raw material, utilities and other factors.

54. **Raw Materials:** It was claimed that the raw materials were purchased from the open market and State was not involved directly or indirectly either in procurement or pricing of raw materials. It was also claimed that major suppliers of major raw materials were neither related with the applicant companies nor State owned enterprises. The company does not have any long-term contract with regard to any raw material supplier. Further, material is being sourced from a number of suppliers, including for sand, chemicals, packing material etc. It was found that the company has maintained wider choice of raw material suppliers and is making efforts to get better prices.

55. **Electricity:** It is noted that the company procured electricity from State owned company M/s. Guangdong Power Company, Foshan Nanhai Branch. Since electricity procurement was from State owned enterprises, the Authority examined the tariff rates at which the company was getting electricity. Sample invoices were collected and tariff paid by the company was ascertained. It was found that the electricity have been charged according to the consumption pattern and the prevailing prices charged by the concerned electricity supply company. it was also seen that the price charged by the supplier is different in different time legs like for peak hours, price per unit is higher than non-peak hours.

56. The exchange rate conversions were also verified from their books of accounts and found that the export remittances were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction. During the verification visit the export invoices were verified to see whether the realized amounts are credited into their books of accounts. The Authority observed that exchange conversions have taken place at the existing rate, which was more or less stable. As regard the submission made by the domestic industry on under valuation of Chinese Currency, no positive evidence has been provided.

57. As regards engaging labour, the company claimed that they took all employment decisions. 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. The terms of engagement of labour were generally governed by the labour contract entered between the company and the employee. They claimed that the Chinese Government did not provide any benefit like housing, medical care etc. However, the company provided accommodation and the cost of the same was reflected in the books of accounts as an expense. Salary was paid every month, which includes basic pay, and incentive for good work, however, deductions were found to be claimed in respect of insurance and income tax.

58. The bankruptcy and property laws were examined and found that the company is free to acquire property. 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. No evidence of any violation of bankruptcy law of China and property law of China were found during the course of the verification.

59. **Finance expenses:** At the time of takeover of production facilities, Foshan Lihua Ceramic Company Ltd has 1 production line only financed from the share capital. The company was stated to have added capacity from time to time, which has become a total of 6 lines for PUC in the year 2000. There has been no capacity expansion thereafter till date as far as to PUC is

concerned. Depending upon the funds requirements, the shareholders provide advances to the company from their personal funds. Since such funds are provided free of interest, the interest cost at the bank rates have been worked out on such funds outstanding during POI and added to cost of production of the subject goods.

60. **Output – Production**: It was verified whether there is any control or interference by the government relating to production. It has been clarified that the company produces various sizes and series as per demand and supply in the market. It has been seen that there is no control over production by the State. The company can increase the capacity and production as per requirement and market situation. The company is free to produce any size and type as per requirement and there is no direction or control of the government.

61. **Sales Volume**: It was verified whether the company is free to sell the product in desired volume in the market at price the company can fetch in the market or there was any direct or indirect, explicit or implicit government interference in this regard. It was clarified that the company sells its product in the market at its own price and there is no control of State or provincial government in this regard. Nothing contrary to this claim was observed during verification. Analysis of Appendix 1 for the product under consideration shows that the company is selling product concern in the domestic market to various customers as per market forces and there is no role of state or provincial government. Further analysis has been done with regard to each size, which shows that the company is selling various sizes and series of product concern as per demand.

62. Following further parameters were verified:

(i) **Depreciation of assets** – Depreciation accounting of the company was verified and It was found that the company is depreciating its assets, which appeared consistent with GAAP. Depreciation is being charged in the books as per policy and it is being applied consistently. The company is charging depreciation on all assets booked in the accounts.

Depreciation is found to be a part of cost of production.

(ii) **Write offs**: It is found that the company follows write off policy for damaged assets and bad debts.

(iii) **Barter trade**: No evidence of any type of barter trade was found during the course of the verification. The books of accounts of the company also did not show any indication of barter trade.

(iv) **Payment via compensation of debts** – No evidence of payment via compensation of debts was found. The books of accounts of the company also did not show any indication of payment via compensation of debts.

### **NORMAL VALUE**

63. Under Section 9A(1)(c), normal value in relation to an article means:

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

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);

64. The Authority sent exporter questionnaire to M/s. Foshan Lihua Ceramic Company Limited (Producer), Foshan Henry Trading Co. Ltd. (Exporter) and M/s Anajaneya Trading PTE Ltd., Singapore (Exporter) for the purpose of determination of normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. In response to the questionnaire the new shippers filed the information in exporter questionnaire. During the investigation period, M/s. Foshan Lihua Ceramic Company Limited produced the subject goods exported to India. The material has been exported through Foshan Henry Trading Co. Ltd. and M/s Anajaneya Trading PTE Ltd. They have exported two types of a particular size of the subject goods to India during the period of investigation. The detailed information regarding the entire domestic sales

of all sizes/ types of the subject goods in their home market has been provided. The applicants have also provided break up of costs of production of all the sizes/models/types of the subject goods that have been produced during the period of investigation. The transaction wise domestic sales were verified from their records during the course of on the spot verification. The element wise cost of production was also verified and reconciled from the books of account maintained by the company. The Authority found the domestic sales have been made to unrelated parties and the same has been adopted for determination of normal value. An analysis of the profit and loss account of the company shows that the company has made an overall profit on the sale of subject goods during the period of investigation and calendar year. The Normal Value based on domestic sales has been determined after considering the volume of sales above per unit cost (applying 80/20 test) so as to determine that these sales are in the ordinary course of trade. For the models/types of vitrified tiles exported to India and sold in the domestic market the weighted average ex factory domestic sales realization for profitable transactions is proposed to be considered for arriving at the normal value as loss making transactions were found to be more than 20% of the sales in the domestic market.

65. As indicated above the company has exported different models/types of one size of Vitrified Tiles to India during the period of investigation. Based on the methodology explained above size wise/ model/type wise ex-factory normal value for these models/ types of Vitrified Tiles is determined as under:

Size	Series	Normal Value USD/ Sq. Mtr.
***		
X		***
***	***	
***		
X		***
***	***	

**EXPORT PRICE:**

66. In response to the questionnaire, the exporters have furnished invoice-wise/ size-wise details of exports made to India during the period of investigation in Appendix-2. The exporters have also furnished copies of invoices in support of the same. Adjustments have been considered based on verified data and are proposed to be allowed to arrive at the ex-factory export price to India. The exports to India made by Foshan Henry Co. Ltd through M/s Anajaneya Trading PTE Ltd, to Indian customers were verified from the original records and reconciled along with the adjustments claimed by them. Details regarding their claim of adjustments were verified during the course of verification from the records maintained by the company. It was found that the aggregate amount of the export sales has been realized vide Bank advice. Export price has been

determined separately for each type of vitrified tile exported to India by the applicants. The export price accordingly has been worked out as under:

Ex-factory Export Price		
Size	Series	USD/Sq. Mtr.
***X***	***	***
***X***	***	***

67. Considering the normal value and export price as determined above, dumping margin has been determined as under. It has been found that the exporters have exported the subject goods above its Normal Value and hence the dumping margin has been determined as negative.

•  
USD/Sq.  
Mtr.

Exports

Size	Series	Ex-factory EP	Normal Value	Dumping Margin	Dumping Margin(%)
***X***	***	***	***	Negative	(-)Negative
***X***	***	***	***	Negative	(-)Negative
Weighted average DM					(-)2.69%

68. The dumping margin of the applicants has been found to be negative.

Comments to Disclosure Statement

69. In response to the disclosure statement, APJ-SLG Law Offices on behalf of M/S H&R Johnson has made following Submissions.

(i) In view of orders of the higher appellate authorities, fixation of prospective period of investigation was bad in law.

(ii) The SLP filed by the Designated Authority against the said decision is not maintainable as a quasi judicial recommendatory authority has no interest in the matter and has no right to file an appeal against an order passed against his recommendation.

(iii) The opportunity provided was not effective in terms of the requirements of principles of natural justice. No fresh opportunity has been provided. The Designated Authority was requested to decide our preliminary objection on maintainability of the present proceedings

(iv) The documents sought written submissions and rejoinder submissions till date have not been supplied. Clearly, documents are being not provided in terms of the requirements of the law and decisions taken on such documents are being withheld. This has resulted in denial of an effective opportunity as contemplated under law. Such proceedings are hence bad in law.

(v) The rejoinder submissions filed by the new shippers. The same have not been provided.

(vi) The conclusions drawn herein are purely based on claims of the new shippers without reference to the material placed by us on record.

(vii) The new shippers in the application withheld information about related entities. Clearly this ought to have formed the basis of termination of the present investigations. In any case, our submission that Anjaneya Trading had in fact filed earlier application and could not have been treated as new shipper has not been ignored.

(viii) The POI expired on 31.12.2008. Strangely for reasons best known to the Designated Authority, before expiry of such time, the Designated Authority had already fixed the public hearing.

(ix) No order on confidentiality was passed which could have formed the basis of our comments for grant of illegitimate confidentiality claims. Our submissions on excessive confidentiality have also not been dealt with.

(x) The questionnaire response filed in original investigations was not provided to us. The same is not also part of the public file.

(xi) Admission that there are related entities is contrary to declarations made at the time of getting the case initiated. Further, the web prints of these related entities goes to show that the related entities were engaged in subject goods and hence the applicants mislead the Designated Authority even on this count. The basis of acceptance of oral claims that these related companies had not taken up any business is absent.

(xii) The Designated Authority was required to examine the records of the new shippers for the original period of investigation and also for the period of investigation of sunset review investigations. Without seeking such data the conclusions are based on assumptions and not verification of relevant material.

(xiii) It is denied that we did not file material evidence in support of statement that initial declarations about pre-conditions were wrong and misleading.

(xiv) The details of information of the company and change in name etc. are not reflected through the applications filed by the new shippers. Clearly material information was withheld at the time of seeking initiation under Rule 22.

(xv) We do not know on what basis and what material evidence the Designated Authority has recorded that there was no change in constitution of the company.

(xvi) The importer is a known importer and we are surprised that even a questionnaire has not been issued to him. Further, the actual import price has not been ascertained from the customs which was necessitated as Designated Authority in many investigations has found that the price declared by the exporter did not match with the import price reflected in DGCI&S data or data obtained from private parties.

(xvii) It is surprised to note the conclusion of the Designated Authority that no relationship was found from the record of Anjaneya Trading with Anjaneya operating from Katwaria Sarai. The Designated Authority ought to have raised specific questions to seek information from the exporter and ought to have made telephonic enquires to seek information from the Delhi entity. Only then some reasoned conclusions could have been drawn.

(xviii) The conclusions on confidentiality are flawed.

(xix) On normal value, a clear decision of the Hon'ble Supreme Court is ignored on the basis of CESTAT decision while on POI the decision of the CESTAT is ignored under the premise that an SLP is filed in Supreme Court. The whole exercise under Rule 22 it appears has been based on convenience and not principles of precedents.

(xx) Numerous statements made on Non-market economy and questionnaire response do not emanate from the non-confidential version of the documents provided to us.

(xxi) The information referred to in disclosure statement is not reflected in such list of documents in Public File as given in written submission Designated Authority cannot rely on any documents that were not part of public file.

(xxii) Our submissions on new guidelines on confidentiality being followed by the Designated Authority in all the current cases are totally ignored.

(xxiii) No findings are recorded on our submission that:

a. Joint Application is unsigned, and is undated

b. Application filed confidentially runs into 89 pages while non-confidential version of the application contains only 7 pages

c. no material placed on record by the producer to substantiate that the producer company could not have exported subject goods during the original period of investigation or period of investigation of sunset review

d. the Producer Company even failed to disclose that they had in-fact filed a questionnaire response in the original period of investigation at the stage of seeking initiation

e. new shippers have craftily not given a declaration that they are not related to any exporters or producers in China who are subject to the anti-dumping duty

f. Hon'ble Designated Authority may also seek clarifications whether the applicants are directly or indirectly controlled by any other company or both the applicants are controlled by a third person.

g. Deficient Questionnaire Response was filed

h. we are prevented from filing appropriate response to non-market economy questionnaire

i. the new shippers may be asked to provide the information/documents on expedited basis.

(xxiv) No reasons in support of claims of confidentiality are provided

(xxv) No reasons for not providing non-confidential version of confidential information have been provided.

(xxvi) No reasons as to why information is not susceptible to summarization have been provided.

(xxvii) The producer company has claimed that they have no export sales. In view of such claim, the application itself is not maintainable as without export sales, no dumping margin can be determined.

(xxviii) Both the producer and exporter from China have claimed that they get VAT refund.

(xxix) No appropriate response has been filed on a specific question on trading arrangements.

(xxx) The list of raw materials has been kept confidential.

(xxxi) New Shippers have stated that there is no difference between the goods exported to India and to other countries. We would like to submit that the producer or exporter has not placed any evidence in support of their claim.

(xxxii) The name of all the factories involved in production of the product involved have not been disclosed.

(xxxiii) Presently, in the form in which questions have been answered, no answer has been filed by the producer and exporter to specific questions having a direct bearing with the outcome of the proceedings and determinations required to be made.

(xxxiv) The name of the related companies is not disclosed and it is mentioned that they are disclosed elsewhere in the response.

(xxxv) It has been stated that the goods produced or sold in the domestic market are comparable. We are not too sure if they are identical or only comparable as no information on grades/model has been provided.

(xxxvi) No details about the trading arrangements are disclosed. No details about discounts, commission, rebates, or terms of payment have been disclosed.

(xxxvii) The new shippers have not provided catalogues and brochures issued by the company

(xxxviii) The channel of distribution for sales in the home market and exports to India were required to be provided.

(xxxix) Each of the new shippers has not provided negotiation process in home market and export to India.

(xl) The non-confidential version of complete set of documents generated/received in case of sales in the home market and export to India are not provided and no reasons as to why summarization is not possible has been offered.

(xli) The table relating to investments has been claimed confidential

(xlii) Reasons for claiming confidentiality on balance sheet are not disclosed.

(xliii) It has not been substantiated as to how there are no differences in profit determination on account of quantities sold, conditions and terms of sale, level of trade etc. Internationally there are differences on account of such factors

(xliv) No response has been filed to Section K and the new shippers have merely stated that the same is not applicable.

(xlv) In response to number of questions it has been mentioned by the new shippers that details have already been provided at the time of initiation. Please note that we have not been provided with such details and hence we are unable to deal with such submissions and file appropriate response.

(xlvi) The exporter from China has claimed confidentiality on the legal form of the company which could not have been allowed by the Designated Authority.

(xlvii) The response of the new shippers is filed not in the letter and spirit but with the sole object of making it appear that all questions have been answered.

(xlviii) None of the questionnaire response state facts about exports made during the period of investigation of sunset review investigations.

(xlix) Appendix 1, 2, 2A, 2B, 3, 3A, 3B, 4, 5, 6, 8 & 9 are blank and hence we are unable to offer any comments. The same are contrary to requirements of Rule 7

(l) No findings are recorded on the submission that 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 duties.

(li) No findings are recorded on the submission that it is not clear from the initiation notification as to who is claiming for the separate determination of dumping margin.

(lii) It is pertinent to note that Singapore is not a subject country and hence is not eligible for a new shipper review. No findings are recorded on the submission that determinations under Rule 22 can be only when the party seeking an individual dumping

margin has his own normal value and export price to India. The grant of combination duties is hence contrary to scheme of Rule 22.

(liii) We wish to keep the issue alive by reiterating that as per Rule 22 a case for new shipper review cannot be initiated each time an application is received from a new shipper. It may be noted that the authority may decide to initiate cases for new shippers annually or semi-annually or based on a periodical basis fixed by the authority.

(liv) We wish to reiterate and keep the issue alive that China is a “non-market economy country” and has been treated as such in the original investigations and hence Designated Authority cannot grant any individual normal value in view of Reliance Industries case.

(lv) The proceedings are without jurisdiction and must be terminated at the earliest

(lvi) From the disclosure statement it appears that Designated Authority sought various details about from the new shippers. None of such correspondence or non-confidential version of the response filed by the new shippers is available in the public file.

(lvii) The conclusions reached by the Designated Authority on the basis of VAT return are misplaced.

(lviii) A lot of new facts have crept in the disclosure statement, which were never made known to us at any stage of the investigations. the questionnaire responses have been accepted without the support of certificate of truthfulness which was a mandatory requirement. In view of the above, the proceedings are bad in law as findings are proposed to be based on material which has not been provided to interested parties or available on record.

(lix) Relevant information was not at all collected or obtained.

(lx) If the names of the related companies and the data of their exports during the original POI were not available in the application filed by the new shippers, it cannot be said that the Designated Authority could have prima facie satisfied himself on pre-conditions of Rule 22.

(lxi) The quantum of exports as per Designated Authority is not required to be examined as the same is not a requirement under law. While reaching such conclusions the Designated Authority has failed to appreciate the ratio of decision of the first new shipper review case decided by the Hon'ble Tribunal wherein issues of circumvention and possibility of misuse of the provision of new shipper review has been discussed.

(Ixii) The non-confidential version of the response does not contain any information based on size/grades as stated to have been filed by the new shippers.

(Ixiii) The evidence placed on record along with written submissions have been totally been ignored while recoding conclusions in the disclosure statement.

(Ixiv) The deficiency letters or correspondence exchanged with the new shippers is not available in the public file.

(Ixv) The authority has till now determined several normal values for each new shipper which is totally in defiance of the order of the Hon'ble Supreme Court in Reliance Industries case.

(Ixvi) The Designated Authority ought to have examined the names of such directors and ought to have checked whose interest they represent. No data or information it appears has been filed regarding them or sought by the authority.

(Ixvii) The paragraphs dealing with legal structure of the applicants are fresh disclosures and did not form part of the application or questionnaire response. They same could not have been taken on record if they were not facts under consideration in terms of the application or questionnaire response.

(Ixviii) The authority cannot determine individual dumping margin based on normal value of one entity and export price of another entity.

(Ixix) The exporter was required to provide addresses of all its related entities in the application and exporter questionnaire response.

(Ixx) The producer has made negligible sales to ensure that they are able to show negative dumping margin for a prospective period by shrewd planning. Such an approach clearly goes to show *mens-rea* of the producer to circumvent duties by managing their export price and normal value for 6 months.

(Ixxi) No reasons for seeking confidentiality on related entities have been filed. In view thereof we are unable to comment on the basis on which it has been claimed that such entities could not have exported subject goods during the original investigation.

(Ixxii) It has been stated in the disclosure statement that domestic industry was notified about initiation. None of the producers in India received any such intimation about initiation though names of most of them were available on record of the Designated Authority through the Sunset Review Investigations.

(Ixxiii) Copy of the verification report along with comments filed by the producer/exporter to such verification report have also not been provided or made available.

(Ixxiv) In view of the suppression of details about relationship, clearly, the authority was misled and further could not have ascertained even prima facie the authenticity of such claims. Hence, the Designated Authority may terminate the new shipper review immediately having been initiated based on suppression of material information from the Designated Authority.

(Ixxv) There is no mention as to how the authority reached a conclusion that electricity was bought at prevailing electricity charges. No details about examination of water rates in China have been recorded.

(Ixxvi) The exchange rate in China is controlled by the Chinese Government and is admittedly kept at an artificially controlled level. There is ample research on the subject which clearly reveals that the Chinese Yuan is under-valued by at least 30%.

(Ixxvii) No examination appears to have been done to examine whether rent paid for land was in terms of market rate as the same obtained from State controlled Committee.

(Ixxviii) On what basis did the Designated Authority come to a conclusion that exporter from Singapore did not export in original period of investigation and sunset review investigation period. No data has been furnished or examined to reach such conclusions.

(Ixxix) On what basis did the Designated Authority come to a conclusion that the raw material was procured from open market without any state control.

(Ixxx) No examination appears to have been undertaken to look at normal value of the trader from China.

(Ixxxi) The methodology adopted for normal value calculations is flawed. No proper disclosure has been made on the methodology adopted with proper non-confidential version of such calculations.

(Ixxxii) Conclusions on export price are misleading as names of entities are not mentioned for conclusions drawn.

(Ixxxiii) It has been recorded that major suppliers of major raw materials were neither related with the applicant companies nor were they state-owned enterprises. While stating so, the basis of reaching such conclusions has not been recorded as no

information about such entities has been filed for the Designated Authority to reach such conclusions.

(lxxxiv) The new shipper mis-declared vital information prior to the initiation and also during the entire investigations with a view to mislead the Authority.

(lxxxv) The declarations certifying that the information provided was true and correct was actually false.

(lxxxvi) We find that the Designated Authority has not even called upon the producer/exporters to file complete information before proceeding for verification.

(lxxxvii) Even basic information has not been provided to the interested parties in violation of the specific provisions of law and the principles of natural justice.

(lxxxviii) The exemption granted to Applicants may be withdrawn immediately and they may be compelled to pay the anti-dumping duties otherwise applicable to all other non-cooperative exporters from China.

#### **Examination By The Authority**

70. Having gone through the submissions of APJ-SLG Law Offices on behalf of M/S H&R Johnson, and while examining the issues raised in the post disclosure submissions, the Authority notes that most of the issues in post hearing submissions have been reiterated by the domestic industry. It has also been noted that in most of the cases, mere allegations have been made without placing any material on record of the Authority. The examination of the submissions made at post hearing stage have been done at disclosure stage and the same has also been recorded in this finding. However, The Authority has dealt with all relevant submissions made to the disclosure statement in these findings.

i. The Authority has the jurisdiction to file SLP in Hon'ble Supreme Court against the orders passed against his recommendations. The final decision in this case has to be left to be taken by the Apex Court and the H&R Johnson cannot sit on Judgement on this issue.

ii. In respect of the issue relating to prospective POI, the same was discussed while issuing the Disclosure Statement and also been recorded in the findings

iii. Authority has provided sufficient opportunity to all interested parties during the course of investigation to make their submissions.

iv. Regarding copy of the submission etc., it has been noted that these are available in the public file. The onus is on the interested parties inspect to inspect the Public File

maintained as per rule 6(7) and the Authority is under no obligation to send this information individually to the interested parties or their consultant.

v. The allegations made by them that the Authority ignored the submissions made by them, is a mere statement and not substantiated with any material facts. However, the information made available by them has been considered by the Authority while conducting and concluding the investigations.

vi. The Authority holds that conclusions including that there was no change in constitution of the company have been drawn on the basis of verified data and material on record and not purely based on the claims of the new shippers as alleged.

vii. The issues related to the related entities and Anjaneya Trading as a new shipper have already been dealt with in the disclosure statement. The statement that non-disclosure of information about the related parties alone ought to have formed the basis of termination of the present proceedings is without substance. In this regard, the Authority holds that investigation of the New Shipper Review was initiated on the basis of declarations by the applicants that no exports were made by the applicant or related parties during the original POI and during POI of SSR investigation and supporting evidence was submitted in this regard. The Authority has followed the established procedure in this regard and relied upon back-up material. As has been noted above, no material has come to the notice of the Authority indicating that any export was made by the applicant or related party during the original POI or during the POI of SSR. Therefore, the statement made by the domestic industry is a devoid of any merit.

viii. The Rules do not prevent the Authority to fix the date of Public Hearing before the expiry of 40 days of expiry of POI. In any case the PH was held only after the expiry of 40 days time from the date of expiry of POI. Public hearing also provides an opportunity to the interested parties to express their views. The Exporter verification was conducted from 2nd to 6th March 2009 after receiving the post hearing comments of the interested parties.

ix. The issue of confidentiality has been discussed at length in the Disclosure Statement and the same has also been recorded in this findings.

x. The Authority after examination concludes that the VAT return was one of the methods to ascertain whether the exporter made any sale to India during POI. Further, the details of sales made by M/s Foshan Henry during the period of Investigation of Sunset Review were also verified to ascertain whether any export was made during that period to India. After examination, no material came to the notice of the Authority

indicating that the Foshan Henry made any exports of subject goods to India during the POI of SSR investigation.

xi. On the issue of Importer Questionnaire not having been issued to the known importer, The Authority holds that the producer & exporter in China PR and trader/exporter in the Singapore filed the application. The sale invoices of parties in this distribution arrangement were verified to rule out any compensatory arrangement and to ascertain correct export price. Nothing has been noticed indicating that any loss was made during the sales transactions. Therefore the Authority did not deem it necessary to call for the response from the importer. In any case there is no obligation for the importer to file a response. Moreover, mis-declaration of the export price amounts to circumvention and anti-circumvention is not the jurisdiction of the Authority.

xii. As regards allegation of non recording of findings in the disclosure statement in respect their submissions, the Authority notes that it has recorded its findings on all relevant submissions made by the domestic industry wherever deemed necessary.

xiii. The Authority has described in detail the methodology followed for determination of Dumping Margin in the disclosure statement.

xiv. The Authority has recorded in detail the initial setting up of the plant of the applicant producer.

xv. Regarding the information and facts collected by the Authority during verification not having been disclosed and the verification report not having been kept in the public file, the Authority holds that the information collected on confidential basis cannot be disclosed or placed in the public file. However, information about the verification conducted was indicated in the disclosure statement.

xvi. On the issue of minimum quantities and circumvention not having been addressed. the Authority holds that without legal backing, it is not possible to insist on minimum requirement of the quantity. About the circumvention, the law would take its own course in case the circumvention comes to notice of the enforcement agencies.

xvii. On the issue of deficiency letters or correspondence exchanged with the new shipper not made available in the public file, the Authority holds that all correspondence before initiation of investigation is kept confidential however after initiation of investigation application and other major submissions are made available in the public file. However, it is practically not possible to place all the letters in the public file, which may not have major bearing on the investigation.

xviii. The Authority has disclosed the methodology followed for examination of the market economy status of the Chinese producer/ exporter in detail in the disclosure statement as well as in these findings.

### Conclusions and Recommendations

71. Having conducting 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 Lihua Ceramics Company Limited, China PR, exporter M/s Foshan Henary Trading Company, China PR and M/s Anjaneya Trading PTE Limited Singapore have established themselves as new shipper of the subject goods to India and therefore, are eligible for separate dumping margin.

(ii) Dumping margin of vitrified porcelain tiles manufactured by M/s Foshan Lihua Ceramics Company Limited, China PR, and supplied to M/s Foshan Henary Trading Company, China PR and subsequently exported to India by routing the same through M/s Anjaneya Trading PTE Limited, Singapore, during the period of review was found to be negative.

72. Therefore, in terms of Rule 22 of the Rules, the Authority recommends that no antidumping duty be imposed or levied on imports of vitrified/porcelain tiles falling chapter 69 of customs tariff act 1975 produced by M/s Foshan Lihua Ceramics Company Limited, China PR, and supplied to M/s Foshan Henary Trading Company, China PR and subsequently exported to India by M/s Anjaneya Trading PTE Limited, Singapore.

73. 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