

**MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE)
(DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES)**

NEW SHIPPER REVIEW NOTIFICATION

FINAL FINDINGS

New Delhi, the 30th December 2005

Subject: New Shipper Review of Anti-Dumping duty imposed on imports of Vitrified/Porcelain Tiles requested by M/s. Foshan Chancheng Oulian Construction Ceramics Co. Ltd., China PR (Producer) and M/s. Prestige General Trading, Dubai, UAE (Exporter).

No. 15/2/2003-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:-

1. M/s. H&R Johnson (India) Ltd filed an appeal before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal(CESTA) challenging final findings no. 15/2/2003-DGAD of the Designated Authority dated 30.6.2004 recommending no levy of anti-dumping duty on the new shippers i.e. M/s. Foshan Chancheng Oulian Construction Ceramics Co Ltd., China (Producer) and M/s. Prestige General Trading, UAE (exporter) in the New Shipper Review(NSR) investigation concerning imports of Vitrified Porcelain Tiles from China PR and UAE. While disposing of the appeal, the Hon'ble CESTAT vide their order dated 19.5.2005, has set aside the final findings and directed the designated Authority to examine the confidentiality of information under rule 7 and make 'final findings' afresh in the matter after hearing the interested parties on the basis of the material already on record.

2. Pursuant to the said order, the Designated Authority issued notice dated 8.8.2005 to all the interested parties to show good cause in writing for claiming confidentiality of information already filed under Rule 7 of the AD Rules. In response to the said notice, the following interested parties made submissions during the proceedings:

- a. M/s. Foshan Chancheng Oulian Construction Ceramics Co Ltd China(hereinafter referred to as Foshan) and M/s. Prestige General Trading, UAE(hereinafter referred to as Prestige)
- b. M/s. H&R Johnson (India) Ltd(hereinafter referred to as H&R)

3. M/s. Foshan Chancheng Oulian Construction Ceramics Co Ltd., China (producer) and M/s. Prestige General Trading, Dubai, UAE (exporter) filed the reasons in respect of information they had claimed as confidential during the New Shipper Review investigation. The reasons so filed by the said producer and exporter were made available to the other interested parties. The interested parties were given an opportunity of public hearing on 13.9.2005. Subsequently, interested parties filed written submissions of the arguments made during the public hearing, which were made available to other interested parties. The interested parties were also given an opportunity to file their rejoinders, if any, to the written submissions of other party/ies.

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

5. In accordance with Rule 16 of the Anti Dumping Rules supra, the essential facts/basis considered for these findings were disclosed on 09/12/2005 to interested parties responded in this investigation and comments received on the same have been duly considered in these findings at appropriate places.

6. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

7. On the basis of facts made available to the Authority at the time of New Shipper Review proceedings concluded earlier as also during the current proceedings, this final finding is being issued by the Authority.

B. Views of M/s. Foshan Chancheng Oulian Construction Co Ltd. China PR (hereinafter referred to as ‘Foshan’) and M/s. Prestige General Trading Co UAE (hereinafter referred to as ‘Prestige’).

8. The new shippers have submitted that both Foshan and Prestige had filed non-confidential version of their submissions during the investigation following the custom, usage / practice till then followed by the Designated Authority in the earlier anti-dumping cases. According to the information available in earlier antidumping

cases, an exporter was never asked to furnish reasons for claiming confidentiality of any information submitted by it in its questionnaire response. Both Foshan and Prestige had followed the said usage, custom or practice while submitting non-confidential information during the investigation stage. In a number of other jurisdictions such as European Union, South Africa, Thailand, South Korea, Indonesia etc. also, there is no practice or custom or usage of submitting reasons in respect of information that is claimed as confidential. The only requirement is that the non-confidential version should be meaningful and should give a reasonable understanding of the information submitted in confidence. They have submitted that it is generally understood that what is not made available in the non-confidential version is considered as business sensitive and proprietary information and therefore treated as confidential. Irrespective of the past practice before the Indian Designated Authority and the global practice in other anti-dumping jurisdictions, the producer/exporter has filed detailed reasons in respect of information that has been claimed as confidential during the NSR investigation.

9. Reasons submitted by them shall be evaluated by the Designated Authority taking into account not only the directions of Hon'ble CESTAT but also the relevant provisions of Anti-Dumping Agreement and the corresponding provisions of Indian law on the subject. It is true that Article 6.5 states that the information provided on a confidential basis shall, upon a good cause shown, be treated as such by the authorities. However, since majority of the information submitted in an anti-dumping investigation is by nature confidential, as stated earlier, there is no practice of giving reasons as to why confidentiality is required. In terms of Article 6.5 interested parties providing confidential information shall submit non-confidential summary thereof and in exceptional circumstances, parties may indicate that confidential information is not susceptible of summarization and in such cases they are required to give a statement of reasons as to why summarization is not possible. In the instant case, both Foshan and Prestige had filed non-confidential summaries of the information provided in confidence, therefore, the question of giving reasons as to why the summarization was not possible did not arise.

10. The Designated Authority has given certain instructions in the Antidumping Application Proforma prescribed for the domestic industry based on the Rule 7 of AD Rules which inter-alia states: "*Rule 7 permits an interested party to furnish information on confidential basis. Any information which is by nature confidential (for instance, information the disclosure of which would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information) shall be treated as such. Evidence relating to Normal Value, export price, costing, profitability, specific adjustments in pricing are*

examples of such information which is usually accepted by Designated Authority as confidential. If confidentiality is claimed on any other aspect, which generally is not the above criteria, the applicant should give a brief statement of reasons as to why that particular information needs to be kept confidential. In case such information is furnished on confidential basis without recording any reasons for claiming it to be confidential, the Designated Authority may disregard such information. It is of utmost importance that each page and supplementary information furnished on confidential basis is clearly marked 'confidential' on the basis of it, failing which the request for confidentiality may not be entertained. All documents / arguments / submissions or correspondence made on a confidential basis should necessarily be accompanied by a non-confidential summary, failing which such communication is liable to be ignored without making any further reference to the supplier of such information, in view of the time limits laid down under the law”.

11. There are no such instructions in the Exporters Questionnaire Proforma prescribed by the Authority. However, it is presumed that the instructions given in the Application Proforma for the domestic industry would be equally applicable to the Exporters Questionnaire also regarding confidentiality. According to the said general instruction, it may be seen that evidence relating to normal value, export price, costing, profitability, specific adjustments in pricing are usually accepted by the Authority as confidential. Therefore, while evaluating the reasons given by both Foshan and Prestige in respect of such items, the Authority was requested to treat all such information as confidential.

12. In respect of other information, both Foshan and Prestige had provided reasoning and submitted that the reasons furnished would satisfy the Authority regarding the need for treating such information confidential. They requested the Authority to consider the reasons given by them and to pass appropriate orders upholding all the confidentiality claims made by them.

13. Since the scope of the present proceedings would be limited to material already on record, thus both Foshan and Prestige submitted reasons for the confidentiality claims made in their submissions that were already available on record. They requested the Authority to accept their confidentiality claims and confirm the earlier final findings at the earliest.

C. Views of M/s. H&R Johnson India Ltd (hereinafter referred to as 'H&R')

14. **Views of H&R are summarized below:**

- a. Non-confidential versions of data/information filed before the Designated Authority prior to verification visit, during the verification and after verification were not provided.
- b. Non-confidential version of verification report and comments to verification filed by the producer / exporter were not provided.
- c. Fresh questionnaire responses filed by the producer / exporter in 2004 without any valid certification and while filing questionnaire response stating reasons for seeking confidentiality as directed by CESTAT, no fresh certification was provided by the producer / exporter.
- d. It is imperative that names of share holders are disclosed to the Designated Authority. However, it cannot be kept confidential for the reasons that the names of share holders are required to be disclosed in (a) Articles of Association of the Company; (b) Register of Members, which is required to be made available for inspection before the shareholders meeting; and (c) there is no provision under Chinese Company Law to keep such information confidential. They have also submitted that it is not clear as to how the same company is claiming two different forms of legal status, i.e. a limited company as well as a Joint Stock Company since under the Chinese law these two forms are distinct from one another. Certificate of Registration cannot be claimed as confidential.
- e. The information regarding the change in the name of the company during the investigation was kept confidential was not made available.
- f. Various types of tiles and their product codes were claimed confidential.
- g. Non-confidential version of the documents generated / received in case of sales in the home market and exports to India were not disclosed. Price lists are meant for general public / trade and could not be claimed as confidential.
- h. The actual amount invested in plant and machinery for the product concerned was claimed as business confidential and only index figures were provided in the non- confidential version.
- i. Audited annual accounts such as profit and loss accounts, balance sheets, auditor's report were claimed as confidential documents. This claim of confidentiality is completely misplaced as Article 176 of the Chinese Company law cannot be interpreted to mean that the information cannot be made available to persons other than share holders.
- j. The list of raw material used in the manufacture was claimed confidential. In Appendix 1, the following information i.e, product, invoice date , whether affiliated, details about affiliation, quantity in PCs and square meters, discounts, payment terms, adjustment towards tax etc. were claimed confidential without any reasoning provided . Similarly in Appendix 2, confidentiality was claimed without any reasoning provided. Unit value of indexed figures was not provided in Appendix 2A and no information was

disclosed for first choice and second choice. In Appendix 3, no disclosure has been made regarding size, quantity and value and indexation do not give any meaningful summary. In respect of Appendix 3A, B & C, non-confidential versions made available in this proceeding are distinct from the one that was filed earlier. In Appendix 4, no separate information was provided for all the grades. In Appendices 5, 6 and 7 indexation did not give any meaningful summary.

- k. No non-confidential version of Exhibit 2 to NME questionnaire regarding the ownership of supplier was provided. Non-confidential version of Exhibit B to the NME questionnaire was not provided and no reasons were stated as to why summarization is not possible. The salary/wages of the employees were claimed confidential. With regard to acquisition of value of assets, though the value may be kept confidential, the method of valuation cannot be claimed to be confidential and whether such valuation was done by independent valuers or state was not disclosed. Names of the shareholders and percentage of profit payable to them were also claimed confidential.
- l. With regard to M/s. Prestige General Trading, no reasons for seeking confidentiality regarding the name of the promoter were given. Similarly, no disclosure was made about Mr. Ashish Shah and the kind of investment he has made in M/s. Prestige General Trading.

15. M/s. H&R Johnson India Ltd. has submitted that the following information / data were not furnished by the new shippers during the new shipper review investigation completed earlier though they are required to furnish the following:

- a. Change in the name of the company during investigation due to change in the shareholding and certificate issued after such change was not provided.
- b. In respect of question A1 of the exporters' questionnaire, regarding shareholders whether they are individuals or company was not furnished. In response to Question A3 of the exporters questionnaire, the new shippers did not furnish list of factories involved in the production and sale of goods other than the product concerned. In response to question A5, names of subsidiaries or other related companies in China was not furnished. In response to Question B3 of the exporter's questionnaire, contract terms and price details after expiry of the original contract between Foshan and Prestige have not been furnished.
- c. In response to Question C3 of the exporter's questionnaire, details of trading arrangements were not furnished. In response to Question E5 of the exporter's questionnaire, details of financial accounting system were not furnished. In response to Question E6 (e), new shippers did not provide information relating to any of the arrangements with the suppliers of raw materials and whether they are related to new shippers etc. In response to Sl.No. 4 of NME questionnaire,

no reasons were given as to why local raw materials were cheaper than the imported raw materials. In response to Sl.No. 6 of NME questionnaire, no details about social security were provided by the new shippers.

16. Further, H&R has submitted the following new information / data;

- a. On the basis of revised information given by the producer, H&R has been able to collect evidence which establishes that the said producer did not disclose material information and its linkages with other entities within and outside China, based on number of print outs taken from various internet WEB sites.
- b. Based on website printouts and copies of the business grades, H&R has stated that Foshan did not disclose its relationship with the following companies;
 - i. Shangyuan Construction Ceramic Chief Factory
 - ii. Shangyuan Construction Materials Factory
 - iii. Louis Valentino Procellanato Co Ltd
 - iv. Shangyuan Oulian Construction Ceramic co Ltd
 - v. Better Group (Holdings) Co Ltd
 - vi. Bally Ceramic Co Ltd
 - vii. Foshan Bally Ceramic Co Ltd
 - viii. Guangdong Shangyuan Ceramic Group
 - ix. Hundred Ceramics Group (Control Stock) Limited Company
 - x. Eiffel Building Coporation Co Ltd
 - xi. Sanremo Ceramics Company
 - xii. Vigorboom Ceramics
 - xiii. Guangdong Dongpeng Ceramic Co Ltd

17. In their rejoinder, Foshan and Prestige have furnished explanations and rebuttals to all the issues raised by H&R.

D. Comments on the Disclosure Statement

18. The Authority issued the disclosure statement as required under Rule 16 of the rules supra. The comments received from the interested parties on the disclosure statement are summarized below:

D.1. Comments of the new shipper on the Disclosure statement

19. The new shippers stated that the Authority has rightly observed that it is not appropriate to consider any new information or evidence or new issues that were not presented, raised or considered during the new shipper review investigation concluded earlier. In addition, they reiterated that they have given detailed explanations with

regard to every one of the confidential claims made by them and in particular, the following:

- a. Names of shareholders, amount and percentage of shares held by shareholders represent highly business sensitive information. The sensitivity of the information shall be appreciated in the context of the existing intense competition among new entrepreneurs to enter the lucrative tiles markets in China. Even established players in the industry are also looking for more avenues for expansion. Disclosure of the names and other details of the share holders would greatly jeopardize the interests of the existing shareholders as the information would be used by our competitors in the Chinese markets and others who are looking for new investment opportunities.
- b. Chinese law does not require the disclosure of the names of the shareholders etc to the public in the case of limited companies i.e. limited liability companies. It is required only in the case of companies established by public offers.
- c. Disclosing names of the shareholders and other related details to statutory authorities like registrar of companies or other governmental authorities and disclosing them in statutory documents like Articles of Association of the company or Registrar of the members etc., cannot be compared with disclosure of names to their actual competitors in the market place through the response in an antidumping investigation.
- d. Merely because Rule 22 puts a condition that a new shipper has to show that he is not related to any other person, the new shippers cannot be forced to disclose the names of their shareholders to the opposing interested parties. New shippers have disclosed complete details about the shareholding etc to the Authority which the Authority has also verified.
- e. Further, non-disclosure of names to the opposing interested parties cannot prejudice the rights of the opposing interested parties to effectively defend their interests. There is no merit whatsoever in the claims of other interested parties that any prejudice has been caused to them. We request the Authority to accept our confidentiality claim in this regard.
- f. The Authority has rightly concluded that the new shippers do not have any inhibiting relationship that would have disqualified them from requesting for new shipper review under Rule 22 of the Rules

D.2. Comments of H&R on the Disclosure statement

20. The comments of H&R on the disclosure statement are summarized below:

- a. Paragraph 11 of the Hon'ble CESTAT order expressly requires the Authority to reconsider the proceedings in the light of the confidentiality issue and therefore,

the entire proceedings were to be reconsidered after sorting out issues of confidentiality on documents already on record.

- b. Confidentiality has been erected by the new shipper as a tool to deny legitimate disclosure of information despite clear directions and transparency provisions interpreted by Appellate Tribunal.
- c. It was obligatory for the Designated Authority to ask the new shippers to provide non-confidential version of all the correspondence/data/information exchange with the new shippers.
- d. The term 'related' has been not examined in terms of the law laid down by the Tribunal. It has been interpreted by the Appellate Tribunal to be not confined to familiar relations but would encompass other relations through whom the anti-dumping duties already imposed might be circumvented. In fact, the term 'related' has been misinterpreted to mean 'no inhibiting relationship'.
- e. In so far as prices and quantity order is concerned, the Authority has once again mechanically allowed confidentiality without appreciating that prices and quantities contracted were made non-confidential by the new shippers in the writ proceedings before the Mumbai High Court.
- f. The Authority has allowed the new shippers to keep names of shareholders, etc as confidential on the pretext that it is highly business sensitive especially in the light of intense competition among new entrepreneurs to enter the lucrative tiles market in China even established players in the industry are looking for avenues for expansion for disclosure of the names of shareholders, amount and percentage of shares held by them would give sufficient information about the details of shareholders to those business competitors who are looking for newer investment opportunities. We are surprised to find such reasoning in support of claims of confidentiality as such reasoning has not even been advanced by the producer in China.
- g. They have reiterated their submissions that confidentiality cannot be claimed with regard to (a) names of suppliers of raw materials, utilities; (b) balance sheet; (c) product codes; and (d) documents relating to the change of name of the Chinese new shipper.
- h. The new shippers have blatantly suppressed the fact that one of the new shareholders who acquired the shares on 21.4.2004 was also holding shares in Better Group (holding) Co Ltd who had a number of tiles factories in China as was evident from the evidence placed by us.
- i. They have also reiterated their submissions with regard to the relationship of Foshan with the remaining four companies.

21. The Authority has considered all the submissions of both the interested parties, including the comments on the disclosure statement issued by the Authority, to the extent they are considered relevant to the proceedings.

E. EXAMINATION BY THE AUTHORITY

E.1. Scope of this remand proceeding

22. The remand proceedings were initiated pursuant to the directions of the Hon'ble CESTAT vide their orders dated 19.5.2005. The said order, inter alia, directed the Authority to examine the confidentiality of information under rule 7 and make Final Finding afresh in the matter after hearing the interested parties on the basis of the material already on record. Therefore, the scope of this remand proceeding is limited to material already on record. Hence, the Authority considers it appropriate not to consider any new information or evidence or new issues that were not presented, raised or considered during the New Shipper Review investigation concluded earlier.

E.2. Examination of the confidentiality claims

23. The Hon'ble CESTAT in their order 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.

24. 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.

25. 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.

26. 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.

27. In the light of the above, the Authority has examined the confidentiality claims and has taken guidance from the relevant provisions of WTO Anti dumping Agreement [ADA]. Article 6.5 of ADA talks about two distinct categories of information, namely:

- a. Information which is by nature confidential; and
- b. Information which is provided on a confidential basis

28. The information, which is by nature confidential, has been elaborated in the ADA as: (a) information the disclosure of which would be of significant competitive advantage to a competitor; or (b) information the disclosure of which would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

29. The Authority notes that rule 7(1) states that information shall be treated as confidential “upon the Designated Authority being satisfied as to its confidentiality”.

30. During the new shipper review investigation completed earlier, the Authority did not pass any formal order with regard to the claims of confidentiality made by the interested parties. The Authority is of the opinion that the rules do not require passing of such a formal order regarding the claim of confidentiality. However in view of the directions of the Hon,ble CESTAT, the Authority has passed an formal order on confidentiality in the instant investigation.

31. Notwithstanding the general practice of the Authority mentioned above, pursuant to the order of the Hon’ble CESTAT orders dated 19.5.2005, the Authority has examined the confidentiality claims in this case. The findings of the Authority are given below:

E.3. Examination of individual confidentiality claims

32. The new shippers had treated prices and quantity ordered in Sq. Meters as confidential information in their request for new shipper review. The information relates to volume of intended export sales and its prices and the Authority considered such information confidential by nature.

33. The new shippers had claimed the names of shareholders, amount and percentage of shares held by them as confidential. According to the new shippers, such information was not available to the public and was highly business sensitive especially in the light of intense competition among new entrepreneurs to enter the lucrative tiles market in China wherein even established players in the industry were looking for avenues for expansion and disclosure of the names of shareholders, amount and percentage of shares held by them would give sufficient information about the details of shareholders to their business competitors who were looking for newer investment opportunities. The new shippers argued that the Chinese law did not put any obligation on a Chinese limited liability company to disclose the names of shareholders, amount and percentage of shares held by them to the public. On the other hand, M/s. H & R Johnson argued that the names of shareholders could not be treated as confidential and that the world over the authorities issued questionnaires eliciting information from parties on the name of the shareholders and these were never claimed confidential. The new shippers argued that H&R Johnson did not bring in any evidence to show that the names of shareholders were never claimed confidential in other jurisdictions. On the other hand, the new shippers also brought to the notice of the Authority that the *Guidelines for preparing public versions of Exporters' questionnaire response* issued by European Commission which stated that names of parties could be treated as confidential. H&R Johnson further argued that names of shareholders could not be treated as confidential as the names of the shareholders were required to be disclosed (a) in the articles of association of a company, (b) before the Registrar of Companies; and (c) the register of members which was to be made available for inspection before shareholders meetings. The new shippers submitted that disclosure of names of shareholders to statutory authorities like Registrar of companies and/or disclosing them in statutory documents like articles of association of the company or register of members could not be compared with disclosing the names to their actual competitors in the market place. They further argued that in any case the Chinese company law does not require disclosure of the names of shareholders to the public. H&R Johnson stated that in a new shipper review the names of shareholders acquired greater significance as it was necessary to establish whether the new shippers met the eligibility criteria for seeking new shipper review. The new shippers argued that a mere legal requirement under Rule 22 that a new shipper should not be related to any person who was subject to antidumping duty did not mean that the new shippers should disclose their shareholding pattern to the other interested parties. The confidentiality claims shall be evaluated based on the nature of information per se and not based on the type of investigation i.e. original investigation, review investigation or new shipper review. If the information per se is confidential, it shall be considered so irrespective of whether it is a new shipper review or original investigation

34. After examining the arguments of both the interested parties, the Authority notes that the documents on record do not show any legal prohibition that names of shareholders cannot be claimed to be confidential. Further, H&R Johnson has failed to give any cogent reasons as to why names of shareholders cannot be treated as confidential. The Authority further notes that in an era of global acquisitions, mergers and takeovers, there could be a genuine apprehension that others might use such information for adverse takeovers or other such purposes and thus it may bring in adverse effects on the persons/companies supplying such information. In view of the above, the Authority is satisfied about the claim of confidentiality of information relating to names of shareholders and the amount and percentage of shares held by them.

35. The new shippers claimed that names of suppliers of raw materials, utilities etc should be treated as confidential as such information would reveal the sources of their inputs to their competitors which could in turn give undue significant advantage to their business competitors within China. On examination of claim of the new shipper, the Authority found merit in their contention and accordingly treated such information as confidential.

36. The new shipper from China had submitted that they were a limited liability incorporated under the Chinese Company law and it was not mandatory under the Chinese company law to disclose the annual accounts, auditor's report etc to the public. According to the new shippers, the annual accounts, auditor's report etc were required to be given only to the shareholders of the company under the Chinese Company Law. Accordingly, the producer claimed such information as confidential and the Authority did not find any reason to disagree with the claims of the new shipper.

37. On examination of the claim on product codes, the Authority notes and agrees with the submission of the new shipper that product codes used by an exporter/producer are commercial secrets that contain information relating to method of classifying, arranging and easily identifying various types of products. These codes are not standard codes applicable across the industry but are specific codes designed, developed and applied by a particular producer concerned and the Authority considered such codes as information by nature confidential.

38. The new shipper claimed confidentiality with regard to certain information pertaining to corporate structure, marketing and selling arrangements, accounting and financial practices and other sensitive information pertaining to costs and prices, the disclosure of which would have been of significant competitive advantage to a competitor and would adversely affect the business of the company. The Authority considers information relating to production, costs, sales and prices as 'information by

nature confidential'. Accordingly, Authority accepts the confidentiality claims with regard to Appendices 1 and 2 as they contain transaction wise details relating to sales in the home market and export to India. Appendices 2A, 3, 3A, 3B, 3C, 4, 5, 6, 7, 8, 8A, 8B, 8C and 9 contain summary information relating to volume and value of sales, volume and cost of production, etc in respect of which the new shippers have provided indexed information in the non-confidential version thus, giving a meaningful summary of the information submitted in confidence. Accordingly, such confidential claims are accepted by the Authority.

39. The new shipper claimed confidentiality with regard to number of employees and average wages paid to them. The Authority notes that such information is closely linked to cost of production of the product concerned, thus, by nature confidential. Accordingly, the confidentiality claim is accepted. .

40. The new shipper claimed that information relating to investments made was business sensitive and therefore, provided an indexed version in respect thereof. The Authority considers that the indexed version gives a meaningful and reasonable understanding of the information submitted in confidence.

41. The new shipper claimed confidentiality with regard to the documents generated in the course of sales in their company. The Authority finds that such documents contain business sensitive information pertaining to sale quantities and prices that are by nature confidential. Similarly, the new shippers claimed confidentiality to the price lists issued by them as they were not published price lists but only for the internal use of their company staff. Authority notes that prices are by nature confidential and in any case the price lists are not published ones. Therefore, the Authority treats them as confidential.

E.4. Examination of other issues raised in this remand proceedings

42. The Authority notes that H&R has sought for certain additional information/data from the new shippers. H&R has also presented information by way of printouts from a number of websites and also photocopies of visiting cards of a few individuals. As stated earlier, scope of the current proceedings is limited to material already on record. Therefore, the Authority considers it appropriate not to examine new issues raised earlier. However, with the limited purpose of satisfying itself that the new issues raised during these proceedings did not contain anything that would affect the very basis of the final findings of the Authority, the Authority conducted a prima facie examination of certain new issues that were raised during this proceedings. The findings of the Authority in respect of such issues are given below:

43. It has been submitted by H&R that documents relating to change of name of the Chinese new shipper should have been called for and examined by the Authority. The Authority notes that the same was obtained during the verification visit itself and had been examined by the Authority before arriving at the earlier final findings.

44. It has been submitted by H&R that - (a) there was a special relationship between Foshan and Prestige that was disclosed to the Authority; (b) contracts for sale between the Chinese producer and UAE exporter for subsequent periods were not examined; (c) Chinese producer was having retail sales in China which was not disclosed to the Authority; and (d) Chinese producer did not file Appendix 2B, Appendices 3A, 3B and 3C separately for first choice and second choice and size-wise details of Appendix 6. In response to the submission of H&R, the new shippers argued that (a) there was no special relationship between Foshan and Prestige except that of a commercial relationship between a seller and a purchaser; (b) Contracts for subsequent periods i.e. beyond the period of investigation were not required to be submitted to the Authority; (c) Foshan was not engaged in any retail sales and the invoice presented by H&R was for just 4 pieces of samples sold to another domestic trader that too subsequent to the period of investigation; and (d) Chinese producer did not export the subject goods to India directly and therefore, Appendix 2A was not applicable and a proper Appendix 2B was submitted by the UAE exporter who had exported the product to India during the period of investigation; (e) during the period of investigation Foshan did not sell materials of different choices and therefore, the question of giving choice-wise information did not arise. The Authority notes that these issues have been considered during the original new shipper review investigation itself.

45. H&R has alleged based on print outs from a number of websites and also photocopies of visiting cards of a few individuals that the following companies appear to be related to the new shipper: (a) Shangyuan Construction Ceramic Chief Factory (b) Shangyuan Construction Materials Factory; (c) Louis Valentino Procellanato Co Ltd; (d) Shangyuan Oulian Construction Ceramic co Ltd; (e) Better Group (Holdings) Co Ltd; (f) Bally Ceramic Co Ltd; (g) Foshan Bally Ceramic Co Ltd; (h) Guangdong Shangyuan Ceramic Group; (i) Hundred Ceramics Group (Control Stock) Limited Company; (j) Eiffel Building Coporation Co Ltd; (k) Sanremo Ceramics Company; (l) Vigorboom Ceramics; (m) Guangdong Dongpeng Ceramic Co Ltd. In their rejoinder, the new shipper has clarified as follows:

- a. M/s Foshan Chancheng Oulian Construction Ceramic Co Ltd [referred to as 'Foshan'] has other units manufacturing ceramic tiles, wall tiles, etc. These units are also identified in the market place by their old name i.e. Shangyuan Construction Ceramic Chief Factory or Shangyuan Construction Materials Factory depending upon variations due to translation. The new shipper argued

that Website listings cannot be treated as authentic and more so in a case where the listings have been taken by using internet search engines instead of information from the website of the company concerned .

- b. There was no change in the shareholding pattern of Foshan during the period of investigation. Subsequently, shareholding pattern was changed on 21.4.2004 and a revised business licence was issued on 10.5.2004. The information regarding the change of shareholding pattern was conveyed to the Authority during the verification visit (10-11 May 2004) itself and a copy of the revised business licence was also made available for verification to the Authority. As the new name 'Foshan City Chancheng District Shangyuan Oulian Construction Ceramic Co Ltd' is too long to use it, various persons in the marketing or other departments of the company have been using shortened names such as Foshan Chancheng Oulian Construction Ceramic Co Ltd or Shangyuan Oulian Construction Ceramic Co Ltd. Since they are located in the Guangdong Province, they are also identified as Guangdong Shangyuan Ceramic. All these names represent only one company.
- c. At the time of acquiring the shares in Foshan on 21.4.2004, one of the new shareholder was also holding shares in the following four companies: (i) Better Group (Holding) Co Limited; (ii) Foshan King Better Building Materials Co Ltd; (iii) Mashiq International Logistics Co Ltd; (iv) Foshan Eastar Consulting. However, none of the four companies had exported the product concerned to India during the POI prescribed for the original investigation and in support thereof, the new shipper has presented certificates issued by practicing CPAs individually for every company. The Authority notes that in terms of Section A-5 of the Exporters' Questionnaire Format, the exporters are required to give details of companies that are engaged in the production or sale of the product concerned and since none of these companies are engaged in the production or sale of the product concerned, details thereof are not required to be given by the new shipper.
- d. Better Group (holding) Co Limited is also known as 'Hundred Ceramics Group (Control Stock) Limited Company. In Chinese language it is known as 'Bai Tao Jituan (kong gu) You Xian Gongsi'. When this is translated into English word by word, one get 'Hundred Ceramics Group (Control Stock) Co Ltd' which is nothing but 'Better Group (Holdings) Co Ltd'. This is due to variation in translation methodology. While translating from Chinese into English, one can use a 'word-by-word' translation method or an idea or concept based translation method. Depending upon the translation method adopted, the English names may vary.
- e. On 17-6-2004, one of the shareholders of M/s. Mashiq International Logistics Co Ltd namely started a new company called 'Bally Ceramic Co Ltd'. This is also known with the city name prefix i.e. Foshan Bally Ceramic Co Ltd and

Bally Ceramic became a group company. This development took place after submission of comments on the Disclosure Statement dated 8th June 2004. The new shipper has submitted that this new company was not in existence during the investigation period of the original NSR investigation.

- f. The new shipper has further submitted that during the second half of 2004, Foshan started using the brand name 'Louis Valentino' in the place of the old brand name 'SY' and there is no company called 'Louis Valentino Porcellanato'. It is only a brand name used by Foshan.
- g. Thus, out of the 13 names listed by H&R, the following five names are variants of the name of Foshan Chancheng Shangyuan Oulian Construction Ceramic Co Ltd and they do not represent separate entities:

- 1. Shangyuan Construction Ceramic chief Factory;
- 2. Shangyuan Construction Materials Factory;
- 3. Louis Valentino Porcellanato Co Ltd;
- 4. Shangyuan Oulian Construction Ceramic Co Ltd;
- 5. Guangdong Shangyuan Ceramic Group

- h. The following two companies (four names) are related to Foshan but the relationship came into being effectively after the NSR was completed:

- (1) (a) Better Group (Holding) Co Ltd;
- (b) Hundred Ceramics Group (control Stock) Ltd Co

- (2) (a) Bally Ceramic co Ltd; and
- (b) Foshan Bally Ceramic co Ltd.

- i. Foshan has no relationship whatsoever with any of the remaining four companies referred to by H&R namely (1) Eiffel Building Corporation Co Ltd; (2) Sanremo Ceramics Company; (3) Vigorboom Ceramics; and (4) Guangdong Dongpeng Ceramic Co Ltd. In support thereof, Foshan has filed CPA certificates stating that they are not related to any of the above named five companies. According to the information available with Foshan, M/s. Guangdong Dongpeng Ceramic Co Ltd was a distinct group by itself engaged in ceramic tiles and not related to them.

46. The Authority has made an examination of the submissions made by H&R. The Authority notes that during the NSR investigation itself, H&R had filed extensive information downloaded from the Internet. However, none of this information was made available at the time of the original NSR. The new shippers has argued that this goes to prove that this information reflect subsequent developments which the new shippers could not have made available to the Authority during the investigation itself.

Further, in their rejoinder, the new shippers have stated that the web site print outs should not be fully relied upon as their accuracy and authenticity are not established. As against such internet printout based allegations of H&R, the Authority notes that the new shippers have filed CPA certificates in support of their claim. A perusal of the CPA certificates indicates that the new shippers did not have any inhibiting relationship that would have disqualified them from requesting a new shipper review under Rule 22 of the Rules supra. The Authority also notes that there is no obligation on the part of the new shipper to inform the Authority about related companies that are not engaged in the production or sale of the product concerned as Section A-5 of the Exporters Questionnaire format seeks information pertaining to related companies engaged in the production or sale of the product concerned only.

47. As per the directions of the Hon'ble CESTAT the Authority is required to examine the claim of confidentiality as per Rule 7 based on the material already in the records of the Authority. However, the Authority examined the new facts brought by the interested parties, considered relevant to this investigation and finds that these issues did not have any impact on the final findings issued earlier by the Authority.

F. Recommendations of the Authority

48. Considering the good cause shown by the new shippers in respect of the confidentiality claims made by them as discussed above and having satisfied himself as to the confidentiality of the information presented confidentially in this investigation, the Authority holds and treats such information as confidential within the meaning of Rule 7 of the rules supra.

49. The Authority finds that the detailed re-examination of the confidentiality issues raised in the remand proceeding did not necessitate any alterations to final findings no. 15/2/2003-DGAD dated 30.6.2004 of the Authority.

50. In view of the above, the Authority confirms the earlier final findings No. 15/2/2003-DGAD, dated 30.06.2004 and the earlier recommendation contained therein that no anti dumping duty be imposed on imports of Vitrified/porcelain Tiles falling under Chapter 69 of the Custom Tariff Act, 1975 produced by M/s. Foshan Chancheng Oulian Construction Ceramic Co. Ltd. China PR and exported through M/s. Prestige General Trading, Dubai, UAE.

(Christy Fernandez)
Designated Authority