

To be published in Part I Section 1 of the Gazette of India, Extraordinary

**GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE**

**NOTIFICATION**

**PRELIMINARY FINDINGS**

New Delhi, dated the 3rd December, 2001.

**Subject:** Anti-dumping investigation concerning imports into India of  
Vitrified/Porcelain Tiles originating in or exported from China PR and UAE

**No.37/1/2001-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. The procedure described below has been followed with regard to the investigations:**

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s SPL Ceramics Ltd., Mundka, Bahadurgarh, Haryana, M/s H&R Johnson India Ltd, Maharashtra and M/s Murudeshwar Ceramics Ltd, Hubli have filed a petition alleging dumping of Vitrified/Porcelain tiles (hereinafter also referred to as subject goods) originating in or exported from Peoples' Republic of China and United Arab Emirates (UAE) (hereinafter also referred to as subject countries).
- ii. The Authority, on the basis of sufficient prima facie evidence submitted by the petitioner, decided to initiate investigations against imports of subject material from the subject countries. The Authority notified the Embassies of the subject countries about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 6th August, 2001 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Vitrified/Porcelain tiles of the description given in the initiation notification (hereinafter also referred to as the subject goods or

- vitrified tiles) and classified under custom Chapter 69 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from the subject countries;
- iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with rule 6(2);
  - v. The Authority forwarded a copy of the public notice to the known importers of Vitrified tiles in India and advised them to make their views known in writing within forty days from the date of the letter;
  - vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Vitrified/Porcelain tiles for the past three years, including the period of investigations.
  - vii. The Authority provided a copy of the non-confidential petition to the known exporters and the Embassies of the subject countries in accordance with rules 6(3) supra;
  - viii. The Authority sent a questionnaire to elicit relevant information, to the known exporters from China PR and UAE as indicated by the petitioner, as mentioned below in accordance with the Rule 6(4):-

#### **UAE**

1. Al Khaleej Ceramics (PSC)
- 2.. RAK Ceramics

#### **CHINA PR**

1. Foshan Shiwan Dongpeng Ceramic Group Co. Ltd.
  2. Eagle Brand Holding Limited
  3. Nanhai City Qiaodong Ceramics Co. Ltd. (Monalisa)
- ix. Response to the initiation notification was received from M/s RAK Ceramics and M/s Al Khaleej Ceramics, UAE and M/s Guangdong Province Tai Shan City Supply & Marketing Cooperative Company, M/s Lihua Ceramics Company Ltd., Nanhai Guangdong and M/s Guangdong New Zhong Yuan Ceramics Company from China PR. None of the other exporters responded.
  - x. As per Rule 6(5) of Rule supra, the Designated Authority has also provided opportunity to the industrial users of the article under investigation, and to representative consumer organizations who can furnish information which is relevant to the investigation regarding dumping, injury and causal link. It was also mentioned in the initiation notification that any other interested party may also make its submissions relevant to the investigation within the time limit set out.
  - xi. The Embassies of the subject countries in New Delhi were informed about the initiation of the investigations in accordance with rule 6(2) with a request to

advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporter was also sent to the Embassies, along with a list of known exporters/producers;

xii. A questionnaire was sent to the following known importers/ wholesale dealers of Vitrified/Porcelain tiles in India calling for necessary information in accordance with rule 6(4):

- M/s Trishla Distributors, Chennai
- M/s Fortune Enterprises, Chennai
- Kent Ceramic Tiles & Co. Pvt Ltd, Chennai
- Bharat Marble, Kolkata
- Sun Earth Ceramics Ltd., Alibagh
- Aries Travels Pvt. Ltd., New Delhi
- Safaal Wasel Exim (P) Ltd., Kerala
- Kajaria Plus Ltd., New Delhi

The response was, however, filed by the following importers of Vitrified/Porcelain tiles as per prescribed proforma: -

- M/s Trishla Distributors
- M/s NITCO, Mumbai
- M/s Kajaria Ceramics, New Delhi
- M/s Safa Al Wasel Exim Pvt. Ltd., Kochi
- M/s Chinar Ceramics(India) Pvt. Ltd., Mumbai
- M/s Kapsons Ceramics (India) Pvt. Ltd., Mumbai

xii. Additional details regarding injury was sought from the petitioner, which were also furnished;

xiii. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;

xiv. The Authority conducted spot verification of the domestic industry to the extent considered necessary.

xv. The cost of production of the domestic industry was also analysed to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) based on the information furnished by petitioner so as to ascertain if anti-dumping duty lower than dumping margin would be sufficient to remove injury to domestic industry.

- xvi. \*\*\*\* in this notification represents information furnished by the petitioner/other interested parties on confidential basis and so considered by the Authority under the Rules.
- xvii. Investigation was carried out for the period starting from 1st April, 2000 to 31st March, 2001.

## **B. PETITIONERS' VIEWS**

2. The petitioner had expressed the following views in the petition with regard to dumping of Vitriified tiles and the injury to domestic industry as a consequence thereof:

### **i) DUMPING:**

In respect of exports from China, petitioner stated that according to the amended rules under Custom Notification No.28/2001(N.T.) dated 31st May, 2001, the Constructed Normal Value is a good indicator for Normal Value in China PR for the purpose of initiation, particularly as the prices are being determined on the basis of international prices of raw materials and petitioner's own production and costing data, and in view of the fact that there are no significant differences in the level of technology or operation.

With regard to UAE, petitioner claimed Normal Value on the basis of price list of one of the major producers, i.e. M/s RAK Ceramics.

The Export Price had been claimed on the basis of imports figures available with the petitioner with their CIF values and adjustments were claimed with regard to ocean freight, marine insurance, inland transport, port handling and port charges.

On the basis of above, the petitioner claimed that there is a huge dumping margin from both the subject countries which indicates that subject goods are coming into India at extremely low and dumped price. Petitioner further claimed that this indicates that the exporters are not even recovering the nominal variable cost.

## **C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

### **VIEWS OF EXPORTERS:**

3. M/s RAK Ceramics, UAE and other exporters have given the following comments:

i. Normal Value

The prima facie evidence of normal value from UAE has been considered from a so-called non-binding price list which does not evidence even a single concluded contract or a sale in the Domestic Market. The alleged price list cannot be an authentic document of evidence of even the indicative prices since RAK Ceramics which is the major exporter from UAE concludes all contracts at a negotiated price. The evidence thus considered is not only bad in law for the lack of evidence of concluded contract but is also misleading and only an assertion which cannot be held as an evidence of normal value in the legal proceedings.

ii. Export Prices

The information on the import prices of the Director of Commercial Intelligence and Statistics, Ministry of Commerce and Industry which are admittedly available upto December, 2000 have been adjudged, unreliable and insufficient. On the other hand the secondary information from a private operator who has apparently supplied a doctored information after manipulation has been relied upon by the complainants as more reliable than the Government of India, Director General of Commercial Intelligence and Statistics. In view of the above, the information on Export prices also is prima facie not an evidence to be recognized in the legal proceedings.

iii. Meaningful Non-confidential

The petition does not give any clue to vital information which in any case in India are public information through the published accounts. In view of RAK Ceramics, in a proceeding like this confidentiality on such information without any reasonable explanation or commercial proprietary is purposely to ensure that the exporters are handicapped to contest the case properly.

iv. Injury

Notwithstanding their right to access such an information RAK Ceramics has submitted that the case on injury has also not only been made but is only full of assertions without an iota of proof of evidence.

- a. Apparently the demand has been consistently increasing. It has been grossly understated in the petition to only satisfy the de minimus test of Imports. The demand in fact has been increasing by \*\*\* % to \*\*\* %. H&R Johnson (India) Ltd., in its Directors Report of April 2000 has clearly admitted the increase in demand by above \*\*\* % for the next few years. The production has been continuously increasing and the employment generation has also increased. The

Sales Prices in absolute terms has also shown stability and growth. In a recent press statement, Mr. K. Chandrashekhar, General Manager has emphasized that the demand of the product concerned will grow by \*\*\*% to \*\*\* % year on year (Times of India 11.9.2001 page 15). Profits are increasing and other parameters of injury apparently show a position of progress and strength except that decline in market share and capacity utilization which are also grossly untrue and have been derived from cover-up operations to mislead the Designated Authority.

- b. Capacity Utilization statistics have to be carefully worked out considering the time of installation, commencement of commercial production, unusual shut down, closures for major overhauling and other unforeseen reasons etc.
- c. It appears that the complainants have with a clear purpose to mislead the Designated Authority, either concealed Vital Information or has not given the correct determination of the Utilization of not only the complainants but also the other manufacturers. Not only this, the complainants themselves concealed major facts i.e., SPL did not disclose the fact that the new expansion plant came into operation on 28th November, 2000 and has been used only 4 months during the year. Further SPL's plant was closed for over 2 months due to major overhauling. Similarly HR Johnson's plant also was inoperative as per reports for about 2 months due to which they had to go for a Run of Kiln Sale. Apparently, the submissions are designed to deliberately mislead and derive wrong conclusions.
- d. The increase in the market share of Exporters is apparently due to opening up of the economy allowing the exporters also to take up a reasonable part of the market share at a price which is not only competitive but also non-dumped which apparently is the case of Imports from UAE.
- e. Thus the assertions that lower capacity utilisation and loss of market share is the conclusive proof of Injury, while the unit price realisation increases, production capacity utilization, sales value & volume and profits (considering same levels of operations, efficiency, productivity and operations, efficiency, productivity and operational cost controls) keeps growing leaps and bounds is a misnomer, as detailed herein after, in the detailed company-wise analysis of various factors of injury. These conclusively rebut the assertions and misleading presentations made through the complainants.
- f. The company-wise analysis of injury indicators based on their annual reports and other available evidence for each individual company conclusively prove that the case of injury has not at all been made out at all even prima facie and as such the case deserves to be withdrawn forthwith.

v. Causal Link

Similarly, no evidence or link has also been established between the so-called dumping and alleged injury whereas only on the basis of simple assertions the petitioners have tried to conclude that there is a causal link.

- a. The Indian industry has neither shown any investment in modernization in order to upgrade their technology which could be competitive for producing goods that are in continuous demand.
- b. There is a case of lower productivity, inefficiencies, increased operational costs, product bottlenecks etc., leading to higher cost and decreased profits which has no relationship with the alleged exports from subject countries.
- c. Apparently the technology used generates high volumes of sub-standard production which leads to lower realization and higher losses.
- d. The domestic manufacturers have very high marketing cost which along with high volume of sub standard goods produced through the non-competitive technology results into low realization and higher losses.
- e. Petitioners themselves have through Directors Reports, Chairman's overview and/ or corporate challenges, analysis etc. admitted the following reasons for loss of production and sales and resultant impacts on margins.
  - Modification and up-gradation of major plants and equipment's leading to loss in 2 months production.
  - Earthquake in Gujarat causing Sales decline.
  - Loss of production due to overhauling of Diesel Generation sets.
  - End of Sales Tax exemption to some units.
  - Teething problems in vitrified plant.
  - Rise in operational cost particularly Raw materials, Power and Labour leading to shrink in margins.
  - Inability to retain the reduction in excise duty
  - Continuous threat, price undercutting from the small scale sector.
  - Unfair competition within the organized sector in India.

The causal link, therefore, is within the domestic industry itself as evidenced and admitted by the complaints themselves, which by no stretch of imagination could be attributed to the exports of subject countries.

#### **VIEWS OF IMPORTERS:**

4. The importers have given the following comments:

- i. Imported product information: The petition is confusing with regard to the product on which the petitioner is seeking duties. The description of the product mentioned in the petition is as under :

"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)".

The ill-defined product description has severely handicapped the other parties from defending their interests.

- ii. Standing of the petitioners : The petitioners have included SPL, Johnson, Murudeshwar, Bell Granito, Restile, Spartek and Sun Earth as the Indian producers of the subject goods. However, when the product itself is not clear, it is not understood how the petitioners have established their standing. In case "ceramic tiles" are within the scope of the present investigations, the following companies also produce ceramic tiles in the Country:

- Kajaria Ceramics
- NITCO
- Orient Ceramics
- Pedder & Pedder
- Regency Ceramics
- Bell Ceramics
- Anantraj Industries
- Gold Coin Ceramics

The above is not an exhaustive list of ceramic tiles producers in India. It is not clear why these producers have not been included in the petition. The tiles produced by these producers have not been segregated from the tiles which are the subject matter of the present investigations.

- iii. Petitioners are importing the product:

One of the petitioner companies itself is importing the subject product. The imports are understood to be through an affiliate company. In any event, this company cannot form part of domestic industry.

- iv. The petitioners have included ceramic mosaic tiles for the purpose of export price calculations. Even the huge price difference between these mosaic (priced at around Rs. 75 per unit) and vitrified tiles (priced at around Rs. 284 per unit) has been ignored by the petitioners. This amounts to combining gold with silver. In any event, the petitioners have no complaint of dumping against ceramic mosaic tiles. Such being the case, the petitioner cannot include this for the purpose of export price calculations.

- v. **Tampering of the data:** From the import information enclosed in the petition, it is evident that the information enclosed by the petitioners is not a copy of the information provided by International Business Information Service, Mumbai, nor have the petitioners clarified anywhere in the petition whether the data received by them from IBIS has been filtered by them. The information provided by IBIS has been used as an evidence . Such evidence could not have been tampered by the petitioners while providing the same to the Designated Authority.
- vi. **Discounts on price list of UAE exporters:** The petitioner have determined normal value in UAE on the basis of price lists in UAE. In case the petitioners claim that prices quoted in the price lists are representative of the prevailing prices, then we request the Designated Authority to kindly rely upon the price lists of the petitioner companies for the purpose of injury and injury margin.
- vii. **Export price:** As stated earlier, the petitioner have, in their zeal to show lower prices, included even CERAMIC MOSAIC TILES for calculating export price. By no stretch of imagination mosaic tiles and vitrified tiles be treated as similar. This tantamount to combining gold with silver. The export price is required to be computed again after removing mosaic tiles.
- viii. **Petition does not deal with all injury parameters:** It is noteworthy that WTO Dispute Settlement Body has held that petitioners are required to give information in respect of all injury parameters. However, it is found that the petitioners have not given information in respect of even those parameters which have been listed in proforma. The petitioners have not provided evidence of injury in respect of following injury parameters:
  - a. Lost contracts
  - b. Employment
  - c. Selling prices
  - d. Price undercutting
  - e. Price suppression
  - f. Price depression
- ix. **Injury and causal link:** There is no injury to the petitioners. The injury, if any, is not due to the alleged dumping of subject goods from subject countries. These are several other factors responsible for injury.
  - a. Alleged increase in imports must be seen alongwith the fact that the import of tiles was under restricted list of imports prior to April, 2000. Further, the imports must be seen alongwith the phenomenal increase in demand, capacity and production. While the imports grew from nil to 1.20 lac sq. meters, the sales of the Indian Producers grew from \*\*\* lacs sq.meters to \*\*\* lacs even as per petition.

The alleged increase in imports must be seen alongwith the attempts of the petitioners to include CERAMIC MOSAIC TILES, not a subject matter of present investigations. Such imports must be excluded by the domestic industry before increase in imports or their share in demand in assessed.

- b. Market share of imports from the two countries was less than 2%, considering the sales volumes of the petitioners and actual imports of subject goods. However, it is noteworthy that the petitioners have not included sales of other Indian Producers for demand assessment. When these sales are added, the market share of imports from the two countries in demand would be even lower. The imports were de-minimis with reference to demand of the product in the country.
- c. It is presumptive to state that the share of imports from the subject countries is already as high as 5.16%, it has been presumed by the petitioners that the rate of increase in imports would be higher than the rate of increase in demand. There is neither a basis nor warrant for such conjecture.
- d. That share of imports in terms of demand as criteria for de-minimis may not have been specifically provided in the Indian Rules. However, rules of other countries, which are quite elaborate and comprehensive, clearly have a provision that volume of imports shall be considered as de-minimis in case the same is less than 1% individually and less than 3% collectively of demand of the product in the country.
- e. It is relevant to point out that even Indian Rules provide for termination of investigations in case the injury is negligible. The injury in this case is negligible since the entire share of imports in demand in the country is less than 1% individually and less than 3% collectively.
- f. Production of the petitioner companies has phenomenally increased. This is an open secret, even when the petitioners have attempted to claim this information confidential.
- g. There is no actual decline in capacity utilization. In fact, there cannot be decline in capacity utilization when the production has phenomenally increased. The alleged decline in capacity utilization must be seen along with capacity additions in the industry in general and petitioners in particular. Since new companies have commenced production, they cannot naturally dream of optimum utilization immediately after commercial production –whether dumping or no dumping. We request the Designated Authority to direct the petitioners to disclose company-wise data on all injury parameters.
- h. Sales volumes of the petitioners shows phenomenal increase. It rather shows sign of a growing and healthy industry.
- i. Cost of production of one of the petitioner company is much lower than its selling price. This company is making significant profits. In fact, the profits of

this company have shown very significant improvement. This implies that either other producers are having higher cost of production (for which the exporters can not be blamed) or selling prices of Indian Producers is lower (for which again the exporters cannot be blamed).

- j. One of the petitioner companies has very recently introduced a tile (brand name " Porselano") which is claimed to be far superior to the alleged dumped product. The price of this tile to the end consumer (Rs. 80 sq.ft. MRP) is far lower than the resale price of imported product.
- k. There are significant capacity additions in the recent period, which is much more than the demand of the product in India. Imports of about \*\*\* sq meters cannot prevent the Indian producers from not utilizing capacity to the extent of about \*\*\*. This cannot be a reason for lower capacity utilization and hence loss of production.
- l. **Petition is full of conjectures:** The petitioners have merely made statements, unsubstantiated with sufficient evidence. The statements on price undercutting, suppression, etc. are mere statements. Even if it is assumed that dumping took place, it is not understood how the petitioners could refer to continued dumping", even when the imports have started now. Evidently, other factors have forced the Indian producers to make losses.
- m. **Profit/loss:** The petitioners have claimed that their profits have declined. The statement must be seen alongwith individual company's performance, decline in capacity utilization by 8.29% (\*\*\*) Lacs Sq. Meter) against imports of \*\*\* sq. meters and effect of the volume of imports on the sales of the domestic industry. The fact is that older companies are running with reasonable profitability, while the newer companies could be making losses due to obvious lower capacity utilization. However, we strongly believe that none of the participating companies should be making losses. None of these parameters can be linked to dumping.
- x. **Huge profits in Past:** The Indian Producers were earlier making huge profits in the past. In fact, Naveen has been posting higher profits year after year in respect of vitrified tiles.

## **D. COMMENTS OF THE DOMESTIC INDUSTRY ON THE ISSUED RAISED BY IMPORTERS AND EXPORTERS**

### **5. (i) Standing:**

It has been stated by the importers that the petition lacks standing as SPL who is one of the petitioners, had either directly or through related companies imported the

alleged dumped products in significant quantities. The contention of the importers is not supported either by the facts or the provisions of law. SPL has not imported the alleged dumped products from the alleged sources during the period of investigation nor prior to that. It is the unambiguous position in law that only those producers who have imported the alleged products may be excluded from the definition of domestic industry. That not being the case, the inclusion of SPL as a part of the domestic industry is perfectly supported by the facts and the law. The determination by the Designated Authority with regard to the standing of the petitioners to file the application on behalf of the domestic producers of vitrified tiles is fully justified and the argument of the importers has no merit whatsoever.

**(ii) Normal Value:**

It has been alleged that the prima facie evidence with regard to the Normal Value is bad in law as reliance has been placed on the non-binding price list of one of the UAE producers. The importers further go on to say that the evidence is bad as the petitioners have not supplied even a single evidence of a concluded contract. The argument of the importers that the petitioners should have produced evidence of concluded contracts is a preposterous proposition on ethical as well legal grounds. The importers are, as per their own admission, aware that UAE producers sell their goods at negotiated prices. If this is true, then the domestic industry cannot be expected legally or in practice to get the confidential documents of two commercial entities. In this connection, the domestic industry has drawn the attention of the Designated Authority to Para 1 (a) of Part III of the Application Proforma wherein it has been unambiguously mentioned that price list can be a reasonable indicator of the Normal Value in the home market of the exporters. Perhaps the importers are not aware that the price list is considered as an excellent prima facie evidence to justify the initiation of an investigation.

**(iii) Export Price:**

It has been alleged by the importers that the domestic industry has submitted unreliable and 'doctored' information to mislead the Designated Authority. In this connection, attention of the Designated Authority has been drawn to the fact that the domestic industry has made all attempts to be as transparent as possible by giving all the data which they could possibly collect in a reasonable manner. Since a large number of importers have imported the product under consideration under different headings for reasons which can only be explained by them, we had to carry out a detailed analysis of the available data. Nonetheless, it is the duty and obligation of the importers to first provide their own import data before they acquire the right to comment upon the data furnished by the domestic industry and accepted by the Designated Authority as sufficient evidence to justify the initiation of an investigation.

It is true that Chapter Heading 69.14 has many other products than the product under consideration but it is equally untrue to say that we have included the same while making the estimates of the imports. In any case, the importers are in a much better position to now give their information to the Designated Authority, if they consider that the information given by the domestic industry is inaccurate. We would also like to submit that the importers have for strange reasons chosen to keep confidential even those figures which are supposed to be a part of the non-confidential version of our petition. Obviously, they do not want us to comment on the propositions made by them.

**(iv) Injury:**

Since the submissions made by the importers are so outrageously mischievous and outrightly false, we consider it appropriate to first deal with them only on the issues of facts at this stage:

- a. In this connection, it may be mentioned that the importers need to be aware of the fact that under the Anti-dumping Rules, the test of de minimus volume is done only as a percent of the total imports and not as a proportion of the total demand. Therefore, there is no reason whatsoever for the domestic industry to understate the demand as suggested by the importers.
- b. In Directors' Report of HRJ, the future demand mentioned is generally indicative of the entire tile industry. Moreover, the importers have conveniently overlooked the following para:

*"However, expected opening up of imports of Wall & Floor Tiles next year and increased competition from small scale sector is likely to keep the market fiercely competitive.*

*Your Company has been preparing itself to face this scenario by continuously upgrading its plants, introducing new value added products and improving its service levels.*

*We are confident that with the strategies adopted and already implemented, the future outlook for your company remains encouraging."*

The Press Statement of Mr. K. Chandrasekhar – General Manager (Sales) made during the launch of "Porselano" (Glazed Porcelain tiles) referred to our expectation that the demand should grow. However, it does not follow that profits are also increasing.

- c. SPL's Vitrified Tiles plant commenced commercial production in March 2000 and not November 2000, as stated by the importers. The importers have deliberately made this statement to bias the Designated Authority against the merits of the case made by the domestic industry.
- d. It may be clarified that the domestic industry had indeed taken into account the capacities of Sun Earth Ceramics & Spartek for calculation of standing of the petitioner industry. Further, the importers, as the rest of their submissions, have made yet another misleading statement. The unit of Madhusudan Ceramics and Sun Earth Ceramics manufacture only Ceramic Glazed Wall / Floor tiles and not vitrified tiles.
- e. During the year 1999-2000 there was no sale of vitrified tiles by SPL. As such the figures are not at all comparable. Further, SPL's realization per MT increased mainly in value added products in glazed tiles segment while the case has been filed only for vitrified tiles. The irrelevance and mischievousness of the contention made by the importers is obvious.
- f. The increase in production capacity during the period of investigation is mainly because of additional floor tiles capacity put up at Kadi plant at Gujarat. In this case, we are concerned only with vitrified tiles.
- g. There was no production loss of vitrified tiles because of plant/equipment maintenance and upgradation.
- h. There is no loss of production of vitrified tiles because of overhauling of diesel generating sets as SPL had enough standby generation capacity to run the particular unit of vitrified tiles.
- i. The earthquake in Gujarat in the month of January 2001 had no effect on production of vitrified tiles as the plant for the same is located in Haryana. The importers have deliberately and knowingly ignored this fact with a view to confuse the issues.
- j. As already mentioned above, the commencement of production of vitrified tiles was in March, 2000. The complainant has wrongly taken the commencement of production in November 2000. This is misrepresentation of facts and there is no concealing of facts by SPL as has been alleged.
- k. The increase in total income during the first quarter of 2001-02 compared to corresponding quarter of previous year was not only because of vitrified tiles sales but also the sales of floor tiles of around Rs. \*\*\* lacs from the new commissioned floor tiles plant at Kadi in November 2000.
- l. The importers/exporters have referred time and again to figures which do not pertain to the production and sale of vitrified tiles and are confusing with production of wall and floor tiles in SPL plants. Thus, there is no relevance of adjustment of profits in view of the above. The growth of exports of SPL is on account of growth in wall and floor tiles exports.

- m. It is apparent from the above that all the contentions of the importers are based on misrepresentation, completely wrong interpretation of facts, figures and Anti-dumping Rules and therefore, has no substance in relation to the period of investigation for vitrified tiles.
- n. HRJ manufactures Wall & Floor tiles in addition to the Vitrified Tiles. The Company has 4 plants in various parts of the country. The achievement shown in the Director's Report are combined achievement and not necessarily only because of vitrified tiles. The details regarding vitrified tiles have already been submitted separately.
- o. HRJ has been continuously adding capacity in last 2 years and therefore production has been increasing due to increase in the installed capacity.
- p. The capacities are added to achieve higher economy of scale particularly in a capital intensive industry. Again the total capacity as mentioned in the Balance Sheet cannot be compared as it comprises of Wall, Floor & Vitrified tiles and therefore is not any indicator.
- q. It is admitted fact that the Thane factory of HRJ is one of the oldest factory of the Company and outdated both in terms of technology as well as product mix. The Thane factory does not manufacture Vitrified Tiles.
- r. Anti-dumping Rules clearly provide that a proper application has to be filed by or on behalf of the domestic industry which accounts for at least 25% of the domestic production. The fact that some of the companies have not expressly supported the application is of no consequence either legally or in an economic sense. The conditions required for an application to form a valid application have been meticulously fulfilled by the petitioners.
- s. The Petitioners are using state-of-the-art Italian technology for producing tiles and the claim is also evidenced from the capital expenditure. Indian industry has been continuously making investment & up-gradation of their manufacturing capabilities. HRJ spent an amount of Rs. \*\*\* Crores in last 4 years. The vitrified tiles factory of HRJ has been set up using the best of the plant & machinery and technology available in the world. The Italian technology for vitrified tiles is undisputedly acknowledged as the best in the world. The plant of HRJ has been supplied by SACMI of Italy, the major supplier of vitrified tiles plant in the world.
- t. Vitrified tiles manufactured by HRJ have been very well accepted as can be seen by the fact that HRJ has received the PSB Certification from Singapore and Balogne Certificate from Italy. Therefore calling their tiles as inferior is totally misleading. In fact HRJ manufactures a high 70% of first quality Vitrified tiles. HRJ products are as good as the best products available in the world and it now exports to countries in Europe, Middle East and Far East.

- u. The Petitioners (HRJ) have not resorted to any sale on Run of Kiln basis. The allegation is strongly objected and also merits a case of defamation. However, the importers should be asked to produce evidence for such a claim.
- v. The tiles being marketed by HRJ as Porselano is indeed Vitrified Porcelain tiles contrary to the claim and due to total ignorance of the importers.
- w. It is strange and shocking to see the argument of the importers that duty should not be imposed in consumer interest. The major exporter from UAE namely RAK Ceramics has itself admitted that they have been supplying 3rd and 4th quality tiles to India. Consumer interest cannot be furthered by bringing 3rd & 4th quality products. Majority of imports are of 4th quality as admitted by RAK Ceramics in their submission and therefore the importers are misleading by making false claim of bringing exclusive/outstanding products.

## **E. EXAMINATION OF THE ISSUES RAISED**

6. The foregoing submissions made by the exporters, importers, petitioner and other interested parties, to the extent these are relevant as per Rules and to extent these have a bearing upon the case, have been examined and considered and have been dealt with at appropriate places in the notification.

## **F. PRODUCT UNDER CONSIDERATION & SCOPE OF INVESTIGATION**

7. The product under consideration claimed by the petitioners and mentioned in the Initiation Notification 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)" originating in or exported from subject countries. Vitrified/Porcelain tiles are glazed and unglazed tiles and 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..

Petitioners have claimed that all types of unglazed tiles are classified in chapter heading 69.07. However, unglazed tiles are also being imported under Chapter heading 69.14, as other articles of porcelain. In addition, glazed porcelain tiles are being imported under Chapter heading 69.14 with various descriptions like G.P. Tiles, Porcelain Tiles, Gres Porcelenato Tiles, Porcelain Vitrified Tiles, etc. It has further been stated that the Glazed Porcelain Tiles, being imported under Chapter heading 69.14 are substitutable with the unglazed tiles of Chapter Heading 69.07 in terms of properties, uses, functions, distribution channels etc. Petitioners have further submitted that Glazed Porcelain Tiles are erroneously being classified under Chapter Heading 69.14 by many importers. These products are rightly classifiable under

Chapter Heading 69.08 as Glazed Tiles. Therefore, petitioners requested that the investigations be carried out against the product under consideration irrespective of the classification under which they are being imported. Customs classifications are indicative only and are in no way binding on the scope of the present investigation.

However, the domestic industry clarified to the Authority that the description in their application as well as the Initiation Notification does not cover industrial tiles even though the same are produced by the process of vitrification. They, therefore, requested that industrial vitrified tiles may be excluded from the scope of the present investigation as the same are not competing or substitutable with the allegedly dumped imports. On an examination of the material available, the Authority accepts the contention of the domestic industry and clarifies that the vitrified industrial tiles are not covered in scope of investigation.

## **G. LIKE ARTICLE**

8. (a) Rule 2(d) of the Anti-Dumping Rules specifies that "Like Articles" means an article which is identical or alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination.

(b) The petitioners have claimed that the goods produced by them are like articles to the goods originating in or exported from subject countries. Therefore, Vitrified/Porcelain tiles produced by the petitioners and imported from subject countries should be treated as 'like articles' in accordance with the Anti-dumping Rules.

(c) The exporters/importers have argued that the tiles imported by them are different in quality. However, no evidence has been adduced by them to indicate that the imported tiles are not substituting the domestically produced tiles either technically or commercially. The Authority notes that the vitrified tiles produced by the domestic industry has characteristics which are similar to those of the tiles imported from the subject countries. The channels of distribution, end-use, etc., also indicate that the imported tiles are like articles to the product under consideration.

(d) In view of the above, the Authority holds that Vitrified/Porcelain tiles produced by the domestic industry and those being imported from the subject countries are 'Like Articles' within the meaning of the Rules.

## **H. DOMESTIC INDUSTRY**

9. The petition has been filed by M/s SPL Ltd., M/s H&R Johnson India Ltd. and M/s Murudeshwar Ceramics Ltd. The petitioners have claimed that they account for almost 60% of the total Indian production in terms of sq. mtrs. of the subject goods. It has been argued that the petitioners do not have the standing to file the application as the production of many other producers of tiles has not been taken into consideration for determining the standing criteria. The importers have specifically named few producers of tiles in support of their contention. The Authority has examined the contentions made by the importers in this regard as well as the evidence available on record. The producers referred to by the importers are not producing vitrified/porcelain tiles i.e., ceramic tiles with less than 3% water absorption and therefore, the question of inclusion of their production for the purpose of standing, does not arise. It has also been mentioned that there are several small scale producers of tiles whose production has also not been accounted for. The Authority hereby clarifies that under the Anti Dumping Rules, the Authority is required to take into account only the production of the product under consideration. In the instant case, the scope of investigation is restricted only to vitrified tiles as defined under the product under consideration, and the standing criteria for the petitioners are adequately satisfied on the basis of the total production of the product under consideration in the country.

## **I. DUMPING**

### **Normal Value**

10. Under Section 9A(1)(C) normal value in relation to an article means:

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –
  - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
  - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)";

Separate provisions have been made in the Anti Dumping Rules for non market economy countries vide amendments notified on 15.07.1999 and 31.05.2001.

## **CHINA PR**

11. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). However, none of the exporters from China responded to the Authority in the prescribed questionnaire format nor have they provided adequate information. The Authority, therefore, holds that none of the exporters from China has cooperated with the Authority as envisaged under the Rules. The domestic industry has furnished information with regard to the normal value in China based on the constructed cost of production. In view of non-cooperation from the exporters from China, the Authority has determined normal value in China on the basis of the constructed cost of production.

### **Export Price**

12. None of the exporters from China has cooperated with the Authority by providing sufficient and complete information with regard to export volume and prices. Large exports of subject goods from China have started very recently and the data are not available from DGCI&S. In view of above, the data has been compiled by the domestic industry from secondary sources. Further adjustments has been given on account of freight, marine insurance, commission, port handling etc., to arrive at net export price on the basis of evidence provided by domestic industry.

### **Dumping Margin**

The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The dumping margin for exports of the subject goods from China comes to 247 % of the export price.

## **UAE**

13. None of the exporters except M/s RAK Ceramics, has provided information in the prescribed questionnaire format.

As regards M/s RAK Ceramics, the domestic industry has made their submissions as follows:

- that the submissions made by the said exporter cannot be taken cognizance of in the absence of a proper non-confidential version of the exporter's response to

the questionnaire. Further, the exporter has not bothered even to give non-confidential version or the indexed form of crucial appendices such as Appendices 4, 5, 6, 8, 9 and 10. In effect, the domestic industry has been deliberately blocked by the exporter from commenting on the price structure, total sales, adjustments etc. claimed by the exporter. The information submitted by the exporter cannot be accepted in the absence of proper non-confidential version. Therefore, the response of the exporter needs to be summarily rejected until they fulfill their legal obligations.

- The exporter has mentioned that the models sold to India are different from the models sold within UAE and to other countries. However, it appears that no specifications have been provided to establish, on the basis of technical parameters, as to how the models are different. The submissions have therefore been made on the basis of self-serving statements and analysis. It is a well-settled principle of anti-dumping that physical differences are allowed to be adjusted only on the basis of the differences in cost which can be attributed to such established differences. Mere statements, conjectures and surmises are not sufficient to classify the products in a manner only to avoid anti-dumping duties. Further, the claims made by the exporter are contradictory. If the sales are to the end-users, where is the question of claiming quantity discount. The exporter has not given the Sales Arrangement as required under Para 'C' itself. Therefore, the information submitted by the exporter needs to be rejected as incomplete and unreliable.
- Under the anti-dumping laws and practice, adjustment on account of quality can be permitted only if the same can be demonstrated by physical attributes. Such claims cannot be permitted on account of differential price realization. The exporter has also not given the details of the actual credit advanced and has combined the domestic sales as well sales to other countries.
- The cost method adopted by RAK is highly objectionable and not sustainable because the cost of the product is the same irrespective of the grade. It is preposterous to suggest that the cost of the product is dependant upon the sales realization, whatever is the grade. Further, RAK itself has admitted that it does not have any cost accounting system and as and when required, "indicative cost" are made. In the same breath they state that there are no material differences between the production cost data supplied in reply to the questionnaire and in the cost data normally determined by using the Accounting System.

14. The above issues have been carefully examined by the Authority. The Authority finds considerable merit in the arguments advanced by the domestic industry. It has been noticed that the information required in the non-confidential version has not been provided as pointed out by the domestic industry. The Authority also notes that the

basis of gradation of different types of subject goods has not been brought out which makes it difficult to make proper comparison to carry out the dumping and injury margin analysis. The Authority also notes that the exporter has not given any cogent reasons for considering different costs for different grades of tiles.

In view of the above, the Authority has decided to ignore the information submitted by M/s RAK Ceramics and other exporters from UAE. The preliminary determination is therefore, made on the basis of the best information available on record.

15. Based on the above, the dumping margin for all exporters from UAE has been worked out as 148% of export price.

## **J. INJURY & CAUSAL LINK**

16. Analysis of injury to the domestic industry has been done on the basis of the information available on record and the verification done by the officials of the Directorate General of Anti-dumping & Allied Duties. The following parameters have been analysed for the purpose of assessment of injury to the domestic industry:

### **Sales Volume & Value**

The domestic industry claimed that the vitrified tiles industry is not very old in India. It was precisely when the industry was hoping to come out of the red in the last financial year, dumping from the subject countries resulted in increase in losses despite some improvement in sales volume and marginal increase in sales prices over the last two years. The Authority observes that there is an increase in the sales volume as well as sales value over the last two years. The unit price realization has also gone up by about \*\*\* % in the period of investigation over the previous year but these increases have to be judged in the context of the additional capacities that had been created during this period and the extent of dumping, landed values vis-à-vis the selling prices of the domestic industry and the return on investment made by the domestic industry.

### **Market share of the imports from China and UAE**

An examination of the import data for the subject goods would indicate that the imports (as a percent of the total imports) from the subject countries namely, China and UAE account for about 71% during the period of investigation.

<b>Year</b>	<b>Imports from subject countries (Sq mtrs.)</b>	<b>Total Imports</b>	<b>% share</b>
1998-99	0.00	121.00	0.00%
1999-2000	0.00	8.22	0.00%

April 2000-March 2001	119570.00	169246.70	70.65%
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The Authority being aware that the imports of the subject goods were restricted in the years 1998-1999 and 1999-2000, decided to carry out an *inter se* trend analysis within the period of investigation. An examination of the import figures indicates that the imports from the subject countries have risen drastically in the second half of the period of investigation as compared to the first half. Of the total imports from the subject countries made during 2000-2001 i.e., the period of investigation, only 6.42% came during the first half while 93.58% was imported in the second half. Thus, it is clear that the imports from the subject countries show an alarming increasing trend within the period of investigation. There is an increase of over fifteen times in imports in the second half as compared to the first half of the period of investigation. The Authority notes that the total imports also show a similar trend over during the very first year of opening up of imports but the change is not as drastic and marked as in the case of the subject countries. The rate of growth of imports within the period of investigation is a sufficient indicator of injury to the domestic industry. This fact has also to be viewed in the context of the abnormally low prices from the subject countries.

Particulars	1st Half		2nd Half		Total for 2000-2001	
	Qty (in Sq mtr)	Value (in Rs)	Qty (in Sq mtr)	Value (in Rs)	Qty (in Sq mtr)	Value (in Rs)
Subject Countries	7681	2870228	111889	23275570	119570	26145798
Other Countries	12999	3709046	36677	11722513	49677	15431559
Grand Total	2068	6579274	148567	34998083	169247	41577357
<b>% share of imports</b>						
From Subject Countries	6.42%	10.98%	93.58%	89.02%	100.00%	100.00%
From Other Countries	26.17%	24.04%	73.83%	75.96%	100.00%	100.00%
Total	12.22%	15.82%	87.78%	84.18%	100.00%	100.00%

### **Market Share of Imports from Subject Countries (% of Total Demand)**

The Authority has calculated the total demand in the country by adding the total imports to the sales of the entire domestic industry including the petitioners as well as other producers of the product under consideration. The Authority notes that the imports from the subject countries could acquire a market share of 3.66% of the total demand in a very short period of one year. Considering that vitrified tiles are in the nature of consumer goods, a market share of 3.66% clearly constitutes a significant proportion. If only the second half of the period of investigation is considered, the market share of dumped imports will be much higher. Moreover, the share of imports from the subject countries could be much more as the current estimates are only from select ports.

Year	Imports from subject countries (Sq mtrs)	Total Demand	% share
1998-1999	0.00	1884870	0.00%
1999-2000	0.00	2372081	0.00%
April 00/Mar 2001	119570	3262558	3.66%

## Production & Lower Capacity Utilization

It has been stated by the domestic industry that the demand for the subject goods has grown in the country at a healthy rate and that its use over the conventional floor and wall coverings is steadily catching up. It has further been claimed that despite the existence of a growing market, their losses have gone up due to indiscriminate dumping by the subject countries. The Authority observes that the capacity utilization by the domestic industry in terms of square meters has gone up over the years. The domestic industry has argued that capacity utilization as a factor of injury cannot be of much significance in a product like vitrified tiles as the same would vary significantly depending upon the product mix of the tiles of different sizes being produced during a particular period. Thus, capacity utilization is not being considered as a valid indicator of the health of the industry for a product like tiles where the installed capacity is also a variable depending upon various factors.

## Selling Price / Profitability

The domestic industry has stated that they have made substantial investments and was trying to establish itself in the last two to three years. It has further been argued that the incidence of dumping to such a large extent has inflicted considerable injury to the domestic industry and their losses have increased at a time when the domestic industry was hoping to get out of the loss making situation. The Authority notes that the domestic industry as a whole had negative returns on their investments. It is also noted that MCL which is making some nominal profits has also not been able to recover a reasonable return on its capital employed. Their per unit profit in absolute terms for the vitrified tiles has also come down in the period of investigation over the preceding period.

Year	Sales Value (Rs. in lakhs)	Cost of Sales (Rs. in lakhs)	Profit/Unit
1998-1999	***	***	***
1999-2000	***	***	***
April 2000-March 2001	***	***	***

## Price Undercutting

It has been claimed that dumping by China and UAE has had a significant impact on the net sales realization of the domestic industry for the subject goods. To hold on to

its market share, the petitioners had to compete with low priced and dumped imports of subject goods from China & UAE. The landed value of the dumped imports also indicates that there is serious price under-cutting taking place.

	China (In Rs.)	UAE (In Rs.)
Average Selling Price of Indigenous Product (Excluding Excise Duty)	100.00	100.00
Landed Value of Imported product (CIF + Basic Customs Duty)	42.56	65.63
Extent of Price Undercutting	<b>57.44</b>	<b>34.37</b>

### **Price Underselling:**

The Authority has also examined the claim of the domestic industry that the domestic industry is suffering on account of losses or abnormally low return on their investments by different units. The Authority notes that price underselling is an important indicator to make an assessment of injury. The Authority has worked out the Non-Injurious Price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. Examination of the available evidence also shows that the domestic industry as a whole has suffered losses on its sales of vitrified tiles. Even the unit which has made some profits has not been able to recover a fair and reasonable return on its investments.

### **Inventories and Stocks**

The analysis of the stocks show that there is an increase in stocks to the extent of about 14% at the end of the year 2000-2001 as compared to the previous year.

The fact of price underselling, extent of price undercutting, changes in the market share and the profitability/ROI parameters clearly indicate that the domestic industry has suffered material injury during the period of investigation caused by dumping from the subject countries.

## **K. CAUSAL LINK**

17. In determining whether material injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts:-

- i. Imports of subject goods from China & UAE at dumped prices forced the domestic industry to reduce its selling prices to un-remunerative level which has resulted in a situation of price undercutting in the Indian market.

- ii. The imports from China & UAE suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable return from the sale of subject goods in India.

## **L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

18. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the petitioner companies and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. However, fair competition on the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti dumping duty is restricted to an amount necessary to redress the injury to the petitioner companies. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the petitioner companies and help maintain availability of wider choice to the consumers of subject material. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.

19. To ascertain the extent of anti-dumping duty necessary to remove the injury to the petitioner companies, the Authority has relied upon non - injurious selling price of subject goods in India by considering the optimum cost of production at optimum level of capacity utilisation for the petitioner companies.

20. Injury caused to the domestic industry from factors other than dumping, if any, have not been considered while recommending the amount of Anti-Dumping Duty necessary to remove the injury to the domestic industry caused by dumped imports.

21. The Authority does not recommend restriction on imports or supplies from any particular source, and therefore, availability of subject goods to the consumers would not be affected in the event of imposition of Anti-Dumping Duty.

## **M. CONCLUSIONS:**

22. After considering the foregoing the Authority concludes that:

- a. Subject goods originating in or exported from UAE and China have been exported to India below 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 countries.

23. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of subject goods originating in or exported from UAE and China.

24. The Authority considered recommending the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry. The average landed price of the imports, for the purpose, was compared with the non-injurious selling price of the petitioner companies, determined for the period of investigations. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. It is considered necessary to impose antidumping duty, provisionally, pending further investigation and final determination on all imports of subject goods originating in or exported from UAE and China.

25. Accordingly, the Authority recommends that provisional anti-dumping duties be imposed on all imports of subject goods originating in or exported from UAE and China from the date of notification to be issued in this regard by the Central Government. The anti-dumping duty shall be the difference between US \$ 13.62 per square metre and the landed value of all the imports of subject goods originating in or exported from China and UAE.

26. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under Section 3, 3A, 8B, 9 & 9A of the Customs Tariff Act, 1975.

## **N. FURTHER PROCEDURE:**

27. The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be interested are being addressed separately by the Authority. They may make known their views, within forty days from the date of the dispatch of this letter. Any other interested party may also make known its views within forty days from the date of publication of these findings.
- c. The Authority would provide opportunity to all the interested parties for oral submissions to be rendered thereafter in writing.
- d. The Authority would conduct further verification to the extent deemed necessary.

e. The Authority would disclose essential facts before announcing final findings.

**(L.V. SATHARISHI)**  
DESIGNATED AUTHORITY