

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

NOTIFICATION

Dated the 21st.April, 2008

FINAL FINDINGS (SUNSET REVIEW)

Subject: Antidumping investigation (Sunset Review) involving import of Vitrified/Procelain Tiles originating in or exported from China –PR and UAE.-

No. 15/17/2006 -DGAD:- Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for determination of Injury) rules 1995 (hereinafter referred to as rules;

A. Background of the case

2. And whereas, on the basis of a duly substantiated petition filed by the Domestic Industry, in terms of section 9A (5) of the said Act, requesting for continuation of the duty for a period of another five years,, the Designated Authority (hereinafter referred to as authority) initiated sunset review investigation in the above said matter on 30.4.2007, to examine whether the expiry of the duty would lead to continuation or recurrence of dumping and injury. Investigations were carried out for the period of investigation (POI) from 1st January 2006 to 31st December 2006. However injury analysis has been carried out for the years 2003-04, 2004-05 and 2005-06 and the period of investigation.

3. In the original investigation, the Final Findings were issued on February 2003 with recommendation of duty @US\$ 8.28 per SQ.M.in respect of exports from China PR, US\$ 0.74 per SQ.M in respect of exports by RAK Ceramics UAE and US\$ 5.54 per SQ.M in respect of all other exporters from UAE. Provisional duty was imposed by Department of Revenue vide DOR Notification No.50/2002 dated 2.5.2002 and Notification after final determination was issued by Department of Revenue vide Customs Notification No.73/2003 dated 1.5.2003.

B. PROCEDURE

4. In these proceedings, the procedure described below has been followed:

- i) After initiation of the review the Authority sent questionnaires, along with the initiation notification, to the known exporters/producers in the subject country in accordance with the Rule 6(4), to elicit relevant information.
- ii) Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;
- iii) The Embassy of the subject country in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to

- advise the exporters/producers in their country to respond to the questionnaire within the prescribed time.
- iv) Questionnaires were sent to the known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4),
 - v) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;
 - vi) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.
 - vii) Responses were received from following producers / exporters.
 - viii) The review application was filed by Strategic Law Group on behalf of the following domestic producers.
 - a. H & R Jhonson (India) Ltd.
 - b. City Tiles Ltd.
 - c. Restile Ceramics Ltd.
 - d. Antique Granito Ltd.
 - e. Asian Granito India Ltd.
 - f. Deco Light Ceramic Ltd.
 - g. Oracle Granito Ltd.
 - h. Gokul Ceramics Pvt. Ltd.
 - i. Regent Granito (India) Ltd.
 - ix) Communications were sent to all the above named Domestic Producers seeking inputs on various issues related to the case. The responses received from them were considered and for the sake of this investigation all the above named producers constitute the Domestic Industry.
 - x) The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
 - xi) The Authority held a public hearing on 23.10.2007 and again on 7.12.2007 to hear the interested parties orally, which was attended by representatives of the domestic industry as well as those of responding producers and exporters. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this disclosure;
 - xii) The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.
 - xiii) The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing are discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in relevant paragraphs. Comments made by various

interested parties at the post disclosure stage have been taken into account and have been dealt at appropriate places in these findings.

- xiv) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.

B.1 General

4.1. It has been alleged by some interested parties that the Authority had already made up its mind before issuance of disclosure statement.

4.1.1. The purpose of the disclosure statement is to disclose to all interested parties the essential facts which would form the basis for the decision by the Authority. Authority has invited comments on the disclosure statement from various interested parties and the same have been taken into account in the present findings.

4.2. A number of interested parties have disputed the claims made by other parties with regard to confidentiality of information. Some interested parties have demanded disclosure of information relating to constructed normal value.

4.2.1. 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 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.

4.2.2. 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.

4.2.3. 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.

4.2.4. In the light of the above, the Authority has examined the confidentiality claim of the interested parties and has taken guidance from the relevant provisions of WTO Anti dumping Agreement. Article 6.5 of WTO Agreement deals with two distinct categories of information, namely:

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

4.2.5. The information, which is by nature confidential, has been elaborated in the Agreement as (a) information, disclosure of which would be of significant competitive advantage to a

Competitor; or (b) information, 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.

4.2.6. 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”. The Authority has examined the confidentiality claims in this case. The Authority has permitted confidentiality on information such as costs, prices, customer’s identities, ownership and shareholding pattern, annual reports, etc. and all information incidental thereto or resulting there from, wherever the same is not publicly disclosed by the interested party.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product involved in the original investigation was Vitrified / Porcelain Tiles. This being a Sunset review, therefore, the investigation covers the product covered in the original investigation.

6. The product under consideration in the present petition 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" (hereinafter referred to as subject goods). 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.

7. 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, use, 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 have requested that the investigations be conducted 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.

8. The domestic industry also produces Vitrified / Porcelain Tiles having similar characteristics and specifications. No argument has been extended, by any interested party, on the issue of product under consideration or like article and therefore, the Authority holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject country is like articles as per 2(d) of Anti Dumping Rules.

D. DOMESTIC INDUSTRY

9. In the original investigation the application for anti-dumping investigation was filed by M/s. H & R Jhonson (India) Ltd, M/S Murudeshwar Ceramics Ltd. and M/S SPL Limited on behalf of the domestic industry. In the present sunset review the information/data has been provided by nine manufacturers i.e. H & R Jhonson (India) Ltd., City Tiles Ltd., Restile Ceramics Ltd., Antique Granito Ltd., Asian Granito India Ltd., Deco Light Ceramic Ltd., Oracle Granito Ltd., Gokul Ceramics Pvt. Ltd. and Regent Granito (India) Ltd. These manufacturers

taken together account for the production of a major proportion of the subject goods in India and therefore constitute Domestic Industry for the purpose of present investigation.

9.1. A number of interested parties have reiterated in their post disclosure submissions that the applicant companies did not constitute domestic industry, nor the petition satisfied standing requirements. It has also been argued that the injury to the domestic industry has not been determined in respect of “all Indian Producers”. It has been claimed that the production of the participating companies does not constitute a major proportion in Indian production. It has been argued that there are about 21 producers in the organized sector commanding 55% of total production and remaining production is accounted for by producers in the unorganized sector. Only 9 companies in the organized sector have cooperated with the Authority.

9.2. The Authority notes that sunset review investigations are initiated under Section 9A (5) and Rule 23. Requirements for initiation of sunset review and fresh investigations are different. Requirement of standing, as prescribed under Rule 5 of the Rules are not mandatory in case of sunset review. On the contrary, the Hon’ble High Court has held that it is the duty of Designated Authority to carry out sunset review. Such being the case, the Authority does not find any merit in the arguments that the standing requirements were not met at the stage of initiation.

9.3. With regard to scope of the domestic industry, the Authority has found that the production of the participating companies constitutes “a major proportion” in Indian production. The participating companies constitute “domestic industry” within the meaning of Rule 2(b). The Hon’ble Supreme Court has not held that the Designated Authority should terminate the investigations and not determine injury to the domestic industry in those situations where the information on injury to the domestic industry is available from domestic producers commanding less than 100% of domestic producers. The Authority had made reasonable efforts in procuring information with regard to 100% of domestic producers. However, information has not been provided by these other domestic producers. Authority considered whether any other information available with the Govt. of India (such as cost audit reports) could be useful. However, no such information could be used for the reason that the product is not covered under cost audit records. The information on record does not suggest that the performance of the domestic producers not included in the injury analysis could be different from the performance of the companies considered as “domestic industry”. Under the circumstances, the Authority has concluded that the performance of the defined “domestic industry” is representative of the “domestic industry as a whole”.

INITIATION OF THE REVIEW AND ARGUMENTS RAISED

E.1. Views of Applicant Domestic Industry

10. Domestic industry has submitted that despite anti-dumping duty on Vitrified / Porcelain Tiles, dumping has not ceased to exist from any of the sources on which anti dumping duties were imposed initially. It has been claimed that injury to the domestic industry has continued despite the imposition of anti dumping duties and has claimed it to be a clear case for enhancement of duties. It has been pleaded that if anti dumping duties are removed; the impact of dumping would be much more serious as the domestic industry would be forced to match the prices offered by exporters resulting in direct losses and injury to the domestic industry. It has been alleged that exporters from the subject countries have also indulged in the dumping during the years prior to POI and it has further been claimed that there is no change in the pricing behaviors of the exporters.

11. In their submissions the domestic industry has sought the shelter under Annexure-II of the Anti Dumping Rules for determination of injury and it has been pleaded that it shall involve an objective examination of volume of dumped imports and its effect, both on the domestic prices as well as the domestic producers of the subject goods. Domestic Industry wants the authority to note that the situation has improved from their angle after the imposition of anti dumping duties thus substantiating the fact that anti dumping duties have been effective and there has been a positive impact on the DI though the impact is claimed not to be there to the desired extent, in view of the continued injurious dumping. On the volume front, the market share of the subject countries in respect of imports has been claimed to have increased from 51% in the base year i.e. 2003-04 to 89% during POI. It has further been claimed that the landed value of product under consideration from the subject countries is much lower than the prices the domestic industries ought to have realized on the sales of subject goods and the net sales realization of the domestic industries. It has further been pleaded that many of the petitioners are new players in the industry and hence the data for the previous year's not being available, a proper comparison of the domestic industry as a whole is not feasible and will lead to erroneous conclusion. Both productivity per employee as also employment and wages are claimed to have increased. Further profitability as well as return on investment and cash flow is stated to have improved and domestic industry is stated to have been able to recover the losses. On the profitability front it has been claimed that the domestic industry has not been able to realize the desirable selling price in spite of anti dumping duties being in place.

E.2. Views of the other interested parties

12. No other interested party from amongst the domestic producers / consumers submitted their response to the initiation. From amongst exporters M/s Al Khaleej Ceramics PSC, Dubai , RAK Ceramic, UAE, Guangdong Newpearl Ceramic Group Co. Limited (and its related companies), Foshan Chancheng Jinyi Ceramics Co. Limited, Joyson Ceramic Material Co. Limited and Able Ace Malaysia, Guangdong Dongpeng Ceramic Co. Limited and Winto Ceramic Co. Ltd., Foshan Chancheng Oulian Construction Ceramics Co. Ltd. China (producer) and Prestige General Trading, Dubai (Exporter), Heyuan Wanfeng Ceramics Co. Ltd. China (Producer), Foshan Lungo Ceramics Co. Ltd. China (Exporter in China) and Enerprise Trading FZE, UAE(Exporter in UAE) and Qing Yuan Southern Building Materials and Sanitary Wares Co. Ltd. (producer in China) and New Zhongyuan Import and Export Co. Ltd. of Guangdong (Exporter in China) submitted a response to the initiation. Apart from the response in the form of exporter's and market economy questionnaire, where ever required, no other specific issues were raised at this stage.

E.3. Examination by the Authority

13. On the issue of initiation of the investigation, the Authority holds that there is no ambiguity in so far as the initiation of the sunset review investigations are concerned, and after having received duly substantiated petition from the Domestic Industry, same has correctly been initiated within the Rules prescribed and Authority.

14. The Authority takes note of arguments put forth by the domestic industry regarding continued injury to the domestic industry and likelihood of recurrence of dumping and injury in case of withdrawal of the duties. These arguments have been taken into account while analyzing the injury to the domestic industry as also threat of recurrence of dumping and injury to the domestic industry.

E. Submissions made post - Public Hearing.

F.1. Views of Applicant Domestic Industry

15. . Subsequent to the conclusion of public hearing, domestic industry has made following further submissions applicable as a whole to more or less all the responding exporters/producers

- i. Meaningful summary of the response to the manufacturers questionnaire, as provided under the Indian law have not been filed and questionnaire responses have been filed after the expiry of prescribed forty days from the date of notification.
- ii. Pricing behaviour of the exporters is likely to be manipulated in view of the expected sunset review
- iii. Rule 5 of Anti Dumping rules regarding concept of collective outputs of more than 50% does not apply in a sunset review.
- iv. Improvement of various injury factors, per se, is not directly relevant in a sunset review.
- v. Authority should examine likely behaviour of exporters/producers in case the duties are allowed to lapse.
- vi. Subject countries have been found to be dumping subject goods during POI and dumping margins have been very significant during POI as also prior to POI.
- vii. The subject exporters have been dumping the subject goods to other countries like Pakistan and authorities over there have determined significant dumping margins from subject countries.
- viii. Anti dumping duties in force in other jurisdictions is likely to lead to a large scale diversion of subject goods to India.
- ix. Information regarding capacities/demand/sales projections and likely prices in other markets have not been provided
- x. Philippines Government has imposed safeguard duty and Korea RP has imposed anti dumping duty on more or less the same exporters.
- xi. Exporters/producers have been supplying different information in different proceedings before authority in India and various other jurisdictions
- xii. Exporters/producers have suppressed facts about related parties in their response.
- xiii. Huge surplus capacities available in subject countries are likely to be diverted to India.
- xiv. China is a non-market economy country and has been treated as such in the original investigations. The authority cannot grant any individual normal value in view of the interpretation resorted to by the authority in Reliance Industries case.

xv. On the issue of cumulative imports from China & UAE not being appropriate as the imports from UAE are less than 3% it has been contended that in the case of review Rule 11 has been applied only “mutatis mutandis” in terms of Rule 23 (3) of Anti Dumping Rules. It has been pleaded that while carrying out a likelihood test, neither the existence of dumping or injury during the review period is mandated as provisions relating to de minimus do not *apply* to review cases. It has further been stated that if the injury during the original investigation had been done on a cumulative basis, it is a sufficient reason to do the same in a review investigation as well. It has been contended that in any case actual dumping and injury during the period of review is of little consequence in a sunset review as the test is for future period only. On the issue of price effect it has been argued that paragraph (iv) of Annexure II of the Rules clearly lays down that the authority is required to evaluate the effect of dumped imports as a factor affecting the prices of the domestic industries.

xvi. The DI has pleaded that the present sunset review under Section 9 A(5) of the Customs Tariff Act, 1975 has been supported by domestic producers accounting for more than 70% of the domestic production. They have claimed that, nevertheless, Rule 5 of the Anti-dumping Rules is not applicable to the sunset review and hence the concept of collective output more than 50% does not apply. .

xvii. They have pleaded that the concept of injury in the original investigation and the sunset review investigation are different and distinct. While in the original investigation, the injury is required to be established before imposition of Anti-dumping duties, in a sunset review investigation, since the anti-dumping duties are already in existence, the ‘likely’ continuance or recurrence of injury has to be ascertained and the injury analysis has to focus on the future likely situation of the domestic industry if duties are allowed to expire.

xviii. With respect to dumping, they have submitted that all the subject countries have been found to be dumping the subject goods during the period of investigation and the dumping margins have been very significant. Their plea is that apart from significant dumping margin from all the subject countries, the dumping has not ceased to exist despite the Anti-dumping duties being in force. According to them, the exporters from the subject countries have also indulged in the dumping during the years prior to POI. These facts, according to DI establish beyond an iota of doubt that there is no change in the pricing behaviour of the exporters and they will continue to export at dumped prices once the duties are removed and the impact of the dumping would be much more serious and the domestic industry would be certainly injured.

xix. According to DI it is also important to note that the subject countries are dumping the subject goods not only in India but also in other countries such as Pakistan etc. and the Authorities in the said countries are stated to have determined the significant dumping margin from the subject countries suggesting a probability of continuance and recurrence of dumping once the duties are withdrawn. According to them, since exporter/producers from the subject Countries are currently faced with Anti-dumping Duties in other jurisdictions and that their export markets have been curtailed in such other countries, there is a strong likelihood of large scale diversion of subject goods to India at dumped prices, in the event the Anti-dumping duties are withdrawn at this stage.

xx. It has been brought to the notice that, while Philippines have safeguard duties on vitrified tiles, Korea has imposed anti-dumping duties on vitrified tiles where more or less the same exporters are involved. Conduct of the exporters/producers from the subject

countries has been questioned. It has been alleged that these producers / exporters have failed to supply material information and on the contrary, contradictory and different information in different proceedings before not only Authority in India but also in various other jurisdictions has been submitted. It has been alleged that it is strong indicator of their intentionally damaging and injurious behavioral pattern, and its unlikely redemption.

xxi. It has been alleged that the conduct of the exporters/producers is suspect and driven by predatory pricing pattern with the intent to dump the subject goods and cause injury to domestic industry.

xxii. Concluding their arguments it has been stated that, since response as filed in India ex-facie appears to be materially different from that urged before other jurisdictions, the exporters/producers be required to file before this Authority, their response and NCV of such response as filed in the tiles investigation carried out in Pakistan.

16. With regard to the response filed following issues pertaining to specific exporters/producers have been highlighted.

Foshan Chanchang Oulian Construction Ceramics Co. Ltd.

i. Company is still operating old name ‘Nanhai Shangyuan Construction Ceramic Company’ though they have claimed to have changed to ‘M/s Foshan Chanchang Oulian Construction Ceramics Co. Ltd.’ The company has a number of related companies operating either from the same address/building/having similar telephone nos./common employees in certain cases and the information to this effect has been concealed. Some of the related companies named for this purpose are Shangyuan Construction Ceramic Chief Factory, Shangyuan Construction Materials Factory, Loius Valentino Procellanto Co. Ltd., Shangyuan Oulvan Construction Ceramic Co. Ltd., Bally Ceramic Co. Ltd., Better Graph (Holdings) Co. Ltd., Eiffel Building Corporation Co. Ltd., Sanremo Ceramics Company, Vigorbroom Ceramics, Guangdong Sompeng Ceramic Co. Ltd., Foshan Bally Ceramic Co. Ltd., Kingkong Building Material Co., China Ceramic City Import and Export Co. Ltd.,

Heyuan Wanfeng Ceramic Co. Ltd.

i. While in the new shipper application they claimed not to be related to any company, the information is at variance in the present SSR as they have claimed / admitted relationship with 20 companies.

ii. It is not clear whether these 20 related companies also include Quing Yuan Building materials and Sanitary wares Co. Ltd. And New Zhongyuan Ceramics import and export Co. Ltd.

Foshan Lungo Ceramics Co. Ltd.

i. In the new shipper proceedings the exporter had claimed itself to be a private enterprise under the Chinese law whereas in the present proceedings it has been claimed to be a limited liability company. On the contrary they have also claimed to have undergone no change in the structure of the company since its inception

Joyson Ceramics Materials Co. Ltd.

i. They have suppressed information about their affiliation with M/s Foshan City Source Ceramics Ltd. and Source Latter Ceramics LTD.

The exporter has misled the authority by making false statements about the nature of their business at a time of making the new shipper review application. The exporter is a manufacturer as per evidence attached with the new shipper review submissions.

M/s Qing Yuan Southern Building Materials and Sanitary Ware Co. Ltd.

i. The exporter in its original application dated 28.2.2003 seeking new shipper review claimed that it is not related to any company. Whereas in the present sunset review questionnaire response it has admitted that they are related to as many as twenty companies. Without filing of questionnaire response by related companies and without verification of their information and statements no conclusion can be drawn for this producer.

ii. Ownership details have completely changed from the ones that were provided during the new shipper review proceedings. In the new shipper proceedings it was stated that the company has Shareholders while in the sunset review response it has been stated that SBMS is 100% owned company A which is 100% owned by Company B and inter alia 100% by Company C which in turn 100% owned by Macao Passport Holder. Therefore providing this misleading information needs to be explained.

M/s New Zhongyuan Ceramics Import & Export Co. Ltd.

i. It has been admitted that the exporter company was set up in 1995 while this fact was suppressed from the authority while filing an application under new shipper review.

ii. It appears that it is a part of NZY Group which has admittedly twenty companies and the names of such twenty companies have been claimed confidential.

iii. It is not clear whether Heyuan Wanfang is also part of this Group of Twenty as the same is related to NZY.

17. In their rejoinder submission the domestic industry has further pleaded that in a sunset review even if conclusion is that there is no injury, the authority still under obligation to examine likelihood of injury if the duties were removed. The relevance of current injury has been claimed to be relevant only to the extent the same is a reasonable basis for concluding likelihood of continuation of recurrence of injury.

18. In respect of the exporters from UAE, who have claimed to be exporting to India at highest prices has been contradicted by stating that interested parties have not understood the legal concept of dumping as otherwise such submissions would not have been made. With regard to imports made on behalf of Jinyi Combination as reference to IBIS data it has been pleaded that the said IBIS data has not been made available to the domestic industry. As far as responses from Chinese exporters are concerned it has been pleaded that complete information has not been provided by them and therefore market economic treatment status claimed by them is not sustainable. On the issue of not revisiting market economy status granted to certain

Chinese producers/exporters in various new shipper reviews it has been pleaded that let over a period of time changes in a company may take place due to operations like joint ventures, mergers, acquisition etc., which might lead to a considerable change in the legal structure of the company and therefore this needs to be looked into afresh

F.2. Views of the Responding Exporters/Producers.

M/s Al Khaleej Ceramics PSC, Dubai

19. They have submitted that petition is not substantiated by positive evidence and allegations in the petition contradict the import statistics and share of import of subject countries to total production is claimed to be incorrect. To that extent the petition is claimed to have failed in the accuracy test. Although the petitioner has claimed as prices having declined over the injury period the fact of the matter is that prices from UAE have been increasing and have increased from Rs. 489 per sq. m. in 2003-04 to Rs. 655 per sq. m. in POI. In fact UAE prices are claimed to be twice a price from the rest of the world and thrice the Chinese prices. Further import volumes as per the petition itself from UAE have come down from under 5% in 2003-04 to less than 0.5% in POI. Further it has been claimed that allegation of dumping are primarily made against China and there is no allegation against UAE and individually UAE does not undercut or undersell. It has been pleaded that in the likelihood analysis made by the Domestic Industry allegation is exclusively against China and not even a passing reference has been made to UAE and even prima facie evidence of likelihood of recurrence of dumping from UAE has not been furnished. In their submissions they stated that UAE has only two producers exporters out of which RAK has already set up an Indian subsidiary with an installed capacity of 20,000 sq. m. per day and their expansion plans are to set up a capacity of 1,00,000 sq. m. per day. Apart from RAK it is claimed that another unit Al Khaleej Ceramics is smaller player operating in more than 100% capacity and maintains highest price. It has further been pleaded that UAE is not facing anti dumping duties elsewhere that could have become a reason for UAE exporters diverting their manufactured subject goods to India. They have, therefore, requested that UAE may be excluded from the purview of the sunset review.

RAK Ceramic, UAE

20. According to their submissions Domestic Industry has not made any comment with regard to the information and documents submitted by RAK in accordance with Exporters Questionnaire to the Designated Authority; thus indicating that the Domestic Industry has no specific allegation against RAK and also with regard to its submissions and therefore they are making their submissions as Rejoinder to the Written Submissions only on the general submissions of the Domestic Industry for the subject countries.

21. With regard to the likelihood of recurrence or continuance of dumping and injury to the Domestic Industry after the cessation/discontinuance of anti dumping duty against the UAE, they have submitted that :

- i. Based on the import data with regards to the import of the subject goods from UAE it is clear and apparent that the volume of exports from UAE are decreasing and export price is rising significantly every year. Further it has also been stated that after the completion of the original anti dumping investigation, RAK has already established its own subsidiary company in India to produce the subject goods at its plant at Hyderabad with an installed capacity of 20,000 sq. mts. per day and the same is going to be increased to 30,000 sq.mts. Per day. Moreover, RAK is also stated to be in the process of setting up

an additional production unit in Gujarat with an installed capacity of 20,000 sq. mts. per day.

ii. Considering the facts and circumstances with regard to trend of volume of exports from UAE, its export prices, capacities being installed by RAK in India, its future expansion plans in India and share of RAK in the imports of subject goods into India, there is no likelihood of recurrence or continuation of dumping from UAE and consequent injury to the Domestic Industry on account of imports from UAE.

iii. There are no surplus capacities in UAE for dumping into India, rather RAK is creating additional capacities in India.

iv. The producers/exporters of the subject goods in UAE are not facing anti dumping investigations anywhere in the world except India.

22. They have finally requested that designated authority terminate the sunset review against UAE.

Guangdong Newpearl Ceramic Group Co. Limited (and its related companies), Foshan Chancheng Jinyi Ceramics Co. Limited, Joyson Ceramic Material Co. Limited and Able Ace Malaysia.

23. Above said producers/exporters in their written submissions have questioned the claim put forth by the domestic industry that the review is supported by more than 70% of the domestic production as no information on this account has been furnished. It has been pleaded that petitioner has interchangeably used recurrence and continuation. They have contended the claim of the domestic industry that the rules require a mere opinion and not a categorical positive finding. The basis of assumption by the domestic industry that a significant volume of as high as 50 lakh sq. m. would have been sold in the relevant period at fictitious prices keeping in view the sunset review has been questioned. The claim of the domestic industry that analysis in a sunset review is of lesser degree or on different parameters has also been questioned. The claim of dumping has been negated on the ground that authority has granted market economy treatment to a number of Chinese companies and primarily only those Chinese companies are making exports to India.

Guangdong Dongpeng Ceramic Co. Limited and Gungdong Winto Ceramic Co. Ltd.

24. In the first place they have contradicted the petitioners' claim of constituting either the domestic industry or accounting for more than 50% of the total collective output and thus challenging the claim of the petitioners to have standing for the purposes of filing the SSR petitions. It has been claimed that while conducting a SSR investigation the Authority has to first determine whether there has been any change in various parameters such as the normal value, export price, dumping margin, fixation of non-injurious price and injury to domestic industry etc., and analyse and project the effect of repeal or expiry of anti-dumping measures thereafter.

Foshan Chancheng Oulian Construction Ceramics Co. Ltd. China (producer) and Prestige General Trading, Dubai (Exporter), Heyuan Wanfeng Ceramics Co. Ltd. China (Producer), Foshan Lungo Ceramics Co. Ltd. China (Exporter in China) and Enerprise Trading FZE, UAE (Exporter in UAE) and Qing Yuan Southern Building Materials and

Sanitary Wares Co. Ltd. (producer in China) and New Zhongyuan Import and Export Co. Ltd. of Guangdong (Exporter in China)

25. It has been argued that the claim of domestic industry that price behaviour of exporters during the POI for a sunset review is likely to be manipulated and suspect and untrustworthy is an unwarranted presumption as the law does not provide for any such presumptive rejection of the prices of the exporter. It has further been pleaded that improvement in various injury parameters is a clear indicator of whether any injury is likely to continue or likely to recur and therefore argument of recurrence is entirely frivolous and liable to be rejected. On the issue of investigations in other jurisdictions, it has been submitted that product under investigation in Pakistan was quite different from that covered by India. Pakistan covered 'ceramic tiles' while India covered only 'vitrified/porcelain tiles' only. None of the exporters filing this rejoinder participated fully with Pakistani authorities to get an individual dumping margin. and Pakistani decision is not relevant for the Indian investigation. Regarding Philippines having safeguarded duties on vitrified tiles has been contested. As per the report issued by the Philippines it is claimed that the product concerned is 'Ceramic Floor and Wall Tiles' and not vitrified tiles. Further the claim that Korea has imposed anti dumping duties on vitrified tiles where more or less the same exporters are involved has been contested. They have pleaded that the period of investigation was different and product range also did not remain the same.

26. With regard to the claim of the domestic industry that submissions of Foshan Chancheng Oulian Construction Ceramic Co. Ltd. are dishonest and misleading following has been pleaded:-

- i. Authority issued final findings on 30th June 2004 at the end of the new shipper review recommending exempting levy of anti dumping duty on the imports from Oulian.
- ii. Ministry of Finance issued the necessary notification on 28th July 2004.
- iii. Domestic Industry challenged the findings and the MOF notification before the CESTAT (Appeal No. C/79/2005-AD).
- iv. CESTAT set aside the final findings and the MOF notification and remanded the matter back to the authority on 19th May 2005.
- v. On remand, the authority confirmed on 30th December 2005 its earlier findings.
- vi. Immediately upon CESTAT setting aside the MOF notification, Ministry of Finance did not implement the same by issuing another notification rescinding the earlier notification.
- vii. Thus, MOF notification exempting anti dumping duty on imports from Oulian continued to be in force.
- viii. Because of such continuance, there was no need for the Ministry of Finance to issue a fresh notification consequent upon the fresh final findings issued pursuant to the remand order.

- ix. The importer in India presented these facts before the CESTAT in a customs case and the CESTAT on 8th January 2007 found it appropriate to grant a stay in the said case.
27. Further, Various allegations made by the domestic industry particularly with regard to Information about related companies considered in the NSR and the remand proceedings have been rebutted as follows.
28. Domestic industry has reproduced verbatim their submissions made in the NSR remand proceedings held pursuant to the CESTAT decision. Those submissions had been dealt with by the authority in the final findings of the NSR. There is no warrant to revisit those issues in this sunset review. Domestic industry has stated that the recommendations contained in the final findings have not been accepted by the Central Government by way of issue of customs notification. They allege that since the recommendations were not accepted, the conclusions reached therein cannot be said to be final. This inference is incorrect.
29. Central Government had already issued the customs notification implementing the recommendations of the designated authority. Subsequent to the remand order by the CESTAT, central government did not rescind the earlier notification. The said notification was in force. In the remand proceedings, the authority had confirmed its earlier findings. Pursuant to the findings in the remand proceedings, no antidumping duty was leviable on the imports from this responding exporter. Since the earlier notification itself was in force, there was no need for issuing yet another notification. Therefore, the contention that the findings of the authority were not final is untenable.
30. They have further re-iterated their submissions in the remand proceedings and concluded their submissions as under:
- i. As admitted by the domestic industry itself, the above submissions have been considered by the authority in the earlier proceedings and thereafter, a decision to grant zero dumping margins in the new shipper review case was granted to our company.
- ii. They have confirmed that they are not related to Kingkong Building Material Co Ltd who has filed the questionnaire response. The submission made by the domestic industry is stated to be without any basis as no fresh disclosures have been made in this sunset review about related companies.
- a. A new company in the name of Bally Ceramic Co Ltd is stated to have been started in 2004 by one of the shareholders of the responding company and the business licence stated to have been surrendered after a brief period in 2004 itself.
- b. They have contested the allegations made by the domestic industry that they have made any contradictory submissions.
- c. In their submissions it has been re-iterated that Better Group (Holding) Co Ltd is an investment company. Though the business registration certificate shows the nature of business as 'Trade and investment', the trading operations are carried out by other

entities in the group. As stated in the questionnaire response, China Ceramic City Import and Export Co Ltd is a company registered in HongKong and not in China. They have referred to Question No. A 5 of the Exporters' Questionnaire asking for information about related companies that are involved with the 'product concerned'. And since no related company is involved with the product concerned and hence there is no need to give any answer to this question. They have stated that allegation that they have suppressed information about the related companies is unfounded and unwarranted.

d. Concluding their submissions they have submitted that it is undisputed that the Designated Authority has recommended zero antidumping duty so far as they are concerned in the first final findings at the end of the new shipper review and also in the final findings issued after remand. Hence the question of levying any antidumping duty by Ministry of Finance does not arise. They have further submitted that issues raised by the domestic industry have no relevance whatsoever for this sunset review.

F.3. Examination by the Authority

31. The Authority takes note of arguments put forth by the domestic industry regarding continued injury to the domestic industry and likelihood of recurrence of dumping and injury in case of withdrawal of the duties, other arguments related to the review as also arguments to the contrary put forth by responding producers / exporters from the subject countries. The Authority also takes note of various submissions made by the domestic industry about delay in submission of the response by various producers / exporters and concludes that the domestic industry has no locus standi on raising this issue, particularly when the Domestic Industry itself did not adhere to the time schedule prescribed for submission of information relating to production cost etc. because of which the Authority was forced to call an early public hearing to actually understand whether the domestic Industry was actually interested in pursuing the investigation. Authority further holds that it was only at this stage that the domestic industry came up with detailed information in the form of C1 and CII etc and case could be investigated further.

32. On the issue of allegation that the responding exporters had concealed the facts about similar investigations having been initiated in other countries, the Authority concludes that the investigations in Pakistan and Philippines were against Ceramic Tiles as a whole and were not restricted to Vitrified tiles, the product under consideration the present investigation. Therefore those investigations cannot be considered as relevant to the present investigation.

33. On the issue of different submissions having been made by responding producers / exporters made before various authorities in other countries, Authority concludes that no conclusive evidence has been provided by the domestic industry on these issues for the Authority to take a view on the same and the Authority has no reason not to accept the rebuttal given by the responding exporters, as detailed above in this disclosure statement. Further with regard to concealment of facts about relationship, the submissions made by the responding exporter are sufficient for the Authority to conclude that these issues are a repeat of their submissions made in the new-shipper review, the Authority having addressed these issues in the NSR findings, concludes that these issues need not be taken note of once more and need not be re-visited. Authority further holds that on the issue of relationship with companies, not into manufacturing of the subject goods, the response to Question No. A 5 of the Exporters' Questionnaire is perfectly in order as put forth by the responding exporter. The Authority further holds that in case any of the interested parties comes up with any allegation against any of the other interested parties; the Authority will take note of the same only if the same is substantiated

by accompanied documentary evidence and a mere reference to website address will not be treated as sufficient evidence for the Authority to take note of the same..

34. Authority has taken into consideration all other arguments, both from Domestic Industry and the responding exporters / producers as detailed account while analyzing the injury to the domestic industry as also threat of recurrence of dumping and injury to the domestic industry.

F. Dumping Determination: Normal Value, Export Price and Dumping Margin

35. The Authority sent copies of the questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). None of the producers/exporters from Taiwan and Japan have filed any response to the questionnaire.

36. As per Para 7 of Annexure 1 of AD Rules, the Authority is required to determine normal value on the basis of 'price or constructed value in the market economy third country or the price from such a third country to other countries, including India, or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product.' No data or information was made available by the domestic industry about normal value in market economy third country. Exporters/Producers have also not responded in this case. The Authority, therefore, in absence of any other option, has relied upon the fact available as per Rule 6(8).

G.1. Examination of Response to Market Economy Treatment Questionnaire

G1.1. China PR.

37. The Designated Authority, as per Para 8 (2) of the annexure 1 of Anti-Dumping Rules, for the purpose of assessing the normal value, proceeded with the presumption that any country that has been determined to be or has been treated as a non-market economy for the purposes of anti-dumping investigations by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economy country. In the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by WTO members such as EU and USA. In the instant case China PR was proposed to be investigated as a non-market economy country.

38. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals, reflecting supply and demand, and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) The exchange rate conversions are carried out at the market rate.

39. The Authority sent copies of the questionnaires to all the known exporters for the purpose of determination of normal value. Following Producers / Exporters have responded to the Market Economy Questionnaire re-butting non-market economy status in each of their individual capacity and on the contrary claiming Market Economy Treatment for the purposes of this sun-set review.

1. Foshan Chanchang Oulian Construction Ceramics Co. Ltd.
2. Foshan Haohang Ceramic Co. Ltd. (FHC)
3. Heyuan Wanfeng Ceramic Co. Ltd.
4. Foshan Lungo Ceramics Co. Ltd.
5. Foshan Huachengechang Ceramic Co. Ltd. (HCC) and Guangdong
6. Dongpeng Ceramic Co. Ltd. (DCC)
4. Foshan Chancheng Yinyi Ceramics Ltd.
8. Joyson Ceramics Materials Co. Ltd.
9. M/s Saint Louis Ceramic Co. Ltd.
10. M/s Kingkong Building Material Company Ltd.
11. M/s Qing Yuan Southern Building Materials and Sanitary Ware Co. Ltd.
12. M/s New Zhongyuan Ceramics Import & Export Co. Ltd.
13. M/s Guandong Winto Ceramics Co.Ltd.
14. M/s. Guangdong Newpearl Ceramic Group Co. limited ,comprising of M/S Foshan Shanshui Huiwanjia Ceramic Company Limited and M/S Foshan Summit Ceramic Company Limited (Producers) and M/S Foshan Newpearl Trade Co. Ltd.(Exporter)

40. Treatment as a Market / Non-market economy to each of these responding producers / exporters is discussed as per details enumerated below:

G.1.1.1.Examination of market economy treatment of these Chinese exporters investigated earlier

41. The Authority notes that the following companies have been examined in detail vide notification details mentioned below -

SN	Final Notification No. & date	Fidings Name of the companies
1.	15/2/2003-DGAD Dated 30.12.2005	Foshan Chanchang Oulian Construction Ceramics Co. Ltd.(producer)and Prestige General Trading,Dubai (Exporter)
2.	15/19/2004-DGAD	Heyuan Wanfeng Ceramic Co. Ltd.(producer), Foshan Lungo Ceramics Co. Ltd. (Exporter in Cina) and Enterprise Trading FZE,

		UAE (Exporter in UAE)
3.	15/15/2004-DGAD	M/s Qing Yuan Southern Building Materials and Sanitary Ware Co. Ltd (producer in China) and New Zhongyuan Ceramics Import & Export Co. Ltd of Guangdong (Exporter in China)
4.	15/3/2005-DGAD Dated Octobe 3,2007	M/s. Guangdong Newpearl Ceramic Group Co. limited comprising of M/S Foshan Shanshui Huiwanjia Ceramic Company Limited and M/S Foshan Summit Ceramic Company Limited (Producers) and M/S Foshan Newpearl Trade Co. Ltd.(Exporter)

42. Based on detailed investigations done by the Authority, it was concluded for the above mentioned companies that these companies were entitled for market economy treatment. The petitioners had opportunity to rebut the determination made by the Authority in the present investigations as also before CESTAT. The petitioners have however not challenged the determination earlier made by the Authority based on justifiable reasons. Petitioners alleged false claims having been made by some of these responding exporters. The claim was examined in detail, in particular with regard to the alleged concealment of facts about relationship of these responding exporters with some other companies. The Authority notes that these very allegations were made by the domestic industry in the new shipper Review, as above and the Authority had given a detailed justification on each of these issues raised by the domestic industry. In the submissions made in the present sun set review, the same issues have been highlighted once more and no new facts supported by material documentary evidence have been brought to the notice of the Authority. Barring this, the petitioners have not provided any cogent reason, justifying re-determination of market economy treatment claims for the above mentioned companies. The Authority therefore does not deem it necessary to re-visit the issue and has not reinvestigated the determination earlier made and proposes to grant market economy treatment to these companies for the purposes of present review.

43. Notwithstanding the above stand, in respect of Heyuan Wanfeng Ceramic Co. Ltd.(producer), Foshan Lungo Ceramics Co. Ltd. (Exporter in China) and Enterprise Trading FZE, UAE (Exporter in UAE), the Authority holds that impact of final Judgment of Hon,ble High Court, once pronounced, shall be applicable to this case in the event of such judgment questioning the market economy treatment already granted to this producer / exporter combination. Till such time, the present findings for this producer/ exporter combination as detailed in the subsequent paragraphs here in after shall remain applicable

44. Authority also notes that during the course of present SSR investigations, New Shipper Review investigations were conducted based upon a petition filed by the following producers/exporters.

1. M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan, China PR, also known as Bioma Ceramics (producer)
2. M/s Shye International Ltd, Hong Kong(Exporter)

45. Authority notes that although investigations in the said new-shipper review have been completed, the final findings in this new-shipper review have not been issued because of the interim order on issue of the same by the Hon'ble High Court of Delhi.

46. In view of the interim order of the Hon,ble High Court in this NSR and in view of the fact that so far as above said exporter / producer combination have not made sales to India during POI, but have exported subject goods to India in post POI period, Authority having taken the submissions on record, and holds this combination as a cooperating exporter. The Authority further holds that operation of the said order of the Authority in this NSR shall remain subject to the final judgment by the Hon'ble Delhi High Court, and shall be equally applicable to the present SSR.

47. Authority also notes that during the course of present SSR investigations, New Shipper Review investigations were also conducted based upon a petition filed by the following producers/exporters.

1. M/S Foshan Chan Cheng Jin Yi Ceramic Co. Ltd., China (Producer)
2. M/S Foshan Jayson Ceramic Material Company Ltd.,China (Exporter)
3. And M/S Able Ace (M) Sdn. Bdh. Malaysia,(Exporter)

48. The Authority issued final findings in this new shipper review vide Final Findings Notification No. 15/14/2006-DGAD dated March 28, 2008. In these final findings, these producers/ exporters have been treated as operating under market economy conditions and have been given as Market economy treatment. Therefore the Authority holds to continue market economy treatment to these producers/ exporters for the purpose of present investigation.

G.1.1.2.Examination of market economy treatment of these Chinese exporters not earlier investigated

49. Response to questionnaire was filed by the following exporters/producers from China, who were not investigated by the Authority before with regard to their entitlement of market economy treatment. The Authority has therefore investigated market economy treatment claims of these companies in detail. Detailed on the spot verifications were also conducted to verify the claim of market economy treatment by these companies.

1. M/S Foshan Huanshengchang Ceramic CO.Ltd. (HCC) (Producer) and related Company Guandong Dongpeng Ceramic CO. Ltd.(DCC)(Exporter),
2. Guandong Winto Ceramic Co. Ltd..

50. Detailed questions regarding ownership, management, control, determination of commercial and business policies and on financial situation etc. were addressed to these companies. The responses filed by these companies were analyzed to determine whether these companies exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The Authority sought general and certain specific information with regard to the following parameters from each of the companies concerned:-

- Ownership details
- Shareholding patterns
- Information on promoter/holding company/companies
- Constituents of Board of Directors, their legal status and person/party being represented by them.

- Raw Material Inputs and Costs
- the existence or otherwise of any minimum wage stipulation by the State and if the enterprises are free to decide wages as per market demand.
- Production Facilities and Costs
- Loans and subsidies
- Barter Trade/ Counter Trade
- Profit Distribution
- Bankruptcy and property laws
- Exchange rates conversions

51. In order to examine whether there was any degree of State influence or interference over the allocation of resources and decisions of the applicant, whether directly or indirectly, the ownership pattern of these companies petitioner was examined in detail. The claims/ counter claims of the interested parties were taken into account and details in this respect were verified. The Authority examined the composition of Board of Directors of these companies, including their related companies, identity of each person in the Board, their functions, other position held by these persons etc. to determine whether there was any interference or involvement of the State in the management and working of the companies. The Authority relied upon the relevant provisions relating to constitution of Board of Directors, Board of Supervision, General Manager, their functions & powers, appointment & dismissal, autonomy of the company in matters of appointment etc and the role which State or State owned/controlled persons/bodies plays, if any, in such companies whether directly or indirectly. That apart, details about procurement / purchase of machinery/equipment, land, building and all other assets were assessed during spot verification.

52. The above named companies, as detailed in Para 49 above, were however not found to meet the requirement for grant of market economy status based upon the verification carried out by a team of officers on account of the following reasons:

M/S Foshan Huanshengchang Ceramic CO.Ltd. (HCC) (Producer) and related Company Guangdong Dongpeng Ceramic C0. Ltd .(DCC)(Exporter),

- i. As per Business license, Shiwang Dongpeng Ceramics Group Co. Ltd. was established on 11th November 1997 with a very high registered capital registered capital as Limited Liability Company. However the market value of equipments was transferred only at 70% of the said market value.. Similarly, the market value of various cars was transferred at RMB just 4% of the market value of the same.
- ii. Since June 2000, the shareholding was transferred by collectively owned Enterprise to individuals, but the representatives of the company showed their inability to trace the source of funding.
- iii. Regarding bidding process followed during 2000, no documentary related to bidding process followed could be presented.
- iv. As per asset valuation report of CPA, valuation amount was only 56% of the Net assets book value after adjustments.

Guangdong Winto Ceramics Co. Ltd.(producer as well as exporter)

- i. The company was established on March 3, 1999 as a limited liability company but the business license of 1999 was not available with the company.
- ii. Regarding the land and building were stated to be taken of rent and lease with effect from November 1. 1998 from Foshan Ceramic Industry and Trade Group Company which inter-alia is stated to have procured the same from Huada Company as per lease contract copy annexed to the MET response. As per the

Business license (Photocopy produced during verification) which was issued on 18.8.2006, Foshan Ceramic Industry and Trade Group Company Ltd. were established during 1987. The legal status of this company during 1987 could not be explained. Further there was no explanation as to when the Huada's Dormitory was built.

- iii. As per the fixed assets, Ceramic Roller Kiln (10 Nos.) were stated to be self built assets and installed on 31.12.2005 whereas the company was in production of tiles since 2000. Company could not clarify as to how they were manufacturing tiles without a kiln the year 2000 to 2005.
- iv. Nearly 34% of the total assets were stated to be self built but the details and break up into its various components could not be provided for verification.

53. Therefore the Authority holds these producers / exporters to be operating under non-market economy conditions.

54. That apart Questionnaire response was also filed by the below named producers / exporters

- 1. Foshan Haohang Ceramic Co. Ltd. (FHC), China.
- 2. Foshan Hongyun Trade Co. Ltd., China.
- 3. Saint Louis ceramic Co. Ltd., China.
- 4. Kingkong building Material Co. Ltd., China.

55. The Authority notes that the above named producers/exporters had shown their intention to co-operate with the Authority for the purposes of present investigation and had also sent a written consent for verification to be carried by DGAD in respect of the submissions made by them. However, the team of officers who were deputed to carry out verification of these producers / exporters was informed in writing that these producers/ exporters have withdrawn the consent of verification given earlier. Therefore the verification of these producers/ exporters could not be carried out. The Authority therefore declares these producers/exporters as detailed in Para 51 above as non-cooperating exporters for the purposes of the present investigation.

G.1.1.3. Normal value in case of companies satisfying market economy status

56. 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);

57. The normal value in respect of companies who have been granted/ are being granted market economy treatment / have been determined on the basis of their verified questionnaire response. The Authority has adopted following methodology for determination of normal value in respect of these companies –

- i. The Authority first verified whether these companies had sufficient domestic sales in the ordinary course of trade. In those cases where profitable domestic sales were more than 80% of total domestic sales, normal value has been determined based on weighted average of the selling price in the domestic market. In those cases where profitable sales were below 80% of total domestic sales, only profitable domestic sales have been adopted for determination of normal value by the Authority. The Authority has done separate comparison of normal value with export price in respect of different types of the subject goods. Price adjustments have been claimed in respect of inland freight, commission where ever applicable, which the Authority has verified and allowed on the basis of verified claims.
- ii. In those cases where the exporter did not have sufficient domestic sales, verified cost of production of the exporter, along with reasonable addition for selling, general & administrative costs have been adopted by the Authority. Reasonable profit has been added to such cost of production to determine normal value.

G.1.1.4.Normal value in case of companies not satisfying market economy status

58. For those Chinese producers/exporters who have not been able to satisfy the parameters laid down under Para 8 of Annexure-I, the Authority has determined the normal value in accordance with Para 7 of Annexure-I. Normal value for these companies has been determined on the basis of adopting weighted average consumption norms for Raw Materials in respect of all the cooperating producers in China whose verification was carried out and adopting international prices for raw materials and conversion cost in India, duly adjusted, Selling, general & administrative costs. Normal value thus worked out by the Authority is *** as against *** claimed by the domestic industry in their petition.

G.1.1.5.Normal value in case of non cooperative exporters/producers

59. In respect of non-cooperating producers / exporters, the Authority is unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 of antidumping Rules for determination of normal value for the Chinese exporters. Therefore, the normal value in respect of all non-cooperating exporters/producers from China PR has been determined at the same level as that of cooperative exporters from China not satisfying market economy status.

G.1.1.6.Export price in case of responding exporters

60. For all those exporters/producers that have cooperated with the Authority, and provided relevant information based upon exports to India, the Authority has determined export price on the basis of verified information. Export price for each responding exporter has been determined, separately, on the basis of weighted average import price in India during the investigation period, by the Authority.

61. In respect of cooperating exporters viz. M/S Foshan Huanshengchang Ceramic CO.Ltd. (HCC) (Producer) and related Company Guandong Dongpeng Ceramic CO. Ltd .(DCC)(Exporter) and Guangdong Winto Ceramic Co. Ltd. who had declared to have exported the subject goods to India during POI, but were actually found to have exported Ceramic Tiles and not vitrified Tiles (PUC) during verification, and had exported the subject goods to third countries, the likelihood of either continuation or recurrence of dumping cannot be determined based upon the sales to third countries. The Authority notes that in the context of anti dumping rules, likelihood of continuance or reoccurrence is for determination of individual dumping margins and is applicable to only such exporters who have been exporting the subject goods to India. Since these exporters have not exported subject goods to India, individual dumping margins cannot be determined based upon exports to third countries. To that extent the Authority holds that export price for determination of dumping margin in respect of these producers / exporters will be the same as is applicable to the residual category of non-cooperating exporters.

G.1.1.7.Export price in case of non cooperative exporters

62. The Authority notes that the total import volumes as per petitioners and as per trade data available as per DGCI&S are lower than total exports reported by the Data Source EXIM. Further the assumption is on likelihood of dumping from such exporters who may not have been exporting to India and on the contrary may be having substantial sales to third countries and likelihood of these new exporters to export the subject goods to India at prices at lowest sale price of export to third countries and thus sell them to Indian markets at dumped prices.. Therefore, the Authority has determined the export price for the non cooperative exporters on the basis of lowest average export price reported by the cooperative exporters, selling the product under consideration to the third countries. The Authority has made Price adjustments on account of ocean freight, port expenses, and marine insurance, and inland freight, credit cost, packing expenses and non-refundable VAT as incurred by these exporters based upon the actual verified data.

G.1.1.8.Comparison methodology

63. The Authority has compared normal value with export price separately for each type of subject goods. In the absence of any claims by the petitioners, the Authority considered the parameters used by each of the responding exporters for distinguishing between different types and found the same appropriate in respect of each of these exporters. Accordingly, the Authority has done comparison between the normal value and export price separately for each known type.

G.1.1.9.Dumping margin

64. Considering the normal value and export price determined as explained above, the Authority has determined the dumping margins for individual exporters, which are as follows.

G.2.1. Exporters accorded Market Economy Treatment:

S.NO.	Name Of the Producer/Exporter	*Normal Value (INR)	*Net Export Price (INR)	*Dumping Margin (INR)	Dumping Margin %
1.	Foshan Chanchang Oulian Construction Ceramics Co. Ltd.(producer)and Prestige General Trading,Dubai (Exporter)	***	***	***	<u>Negative</u>
2.	Heyuan Wanfeng Ceramic Co. Ltd.(producer), Foshan Lungo Ceramics Co. Ltd. (Exporter in Cina) and Enterprise Trading FZE, UAE (Exporter in UAE)	***	***	***	Nil
3.	M/s Southern Building Materials and Sanitary Ware Co. Ltd of Qinguyan City (producer in China) and New Zhong Yuan Ceramics Import & Export Co. Ltd of Guangdong (Exporter in China)	***	***	***	<u>Negative</u>
4.	M/s. Guangdong Newpearl Ceramic Group Co. limited comprising of M/S Foshan Shanshui Huiwanjia Ceramic Company Limited and M/S Foshan Summit Ceramic Company Limited (Producers) and M/S Foshan Newpearl Trade Co. Ltd.(Exporter)	***	***	***	<u>Negative</u>
5.	M/S Foshan Chan Cheng Jin Y Ceramic Co. Ltd., China (Producer) M/S Foshan Jayson Ceramic Material Company Ltd.,China (Exporter)andM/S Able Ace (M) Sdn. Bhd Malaysia,(Exporter)	***	***	***	<u>Negative</u>

G.1.1.10.Exporters accorded Non-Market Economy Treatment:

S.NO.	Name Of the Producer/Exporter	*Constructed Normal Value (INR)	*Net Export Price (INR)	*Dumping Margin (INR)	Dumping Margin %
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1.	M/S Foshan Huanshengchang Ceramic CO.Ltd. (HCC) (Producer) and related Company Guangdong Dongpeng Ceramic CO. Ltd .(DCC)(Exporter),	***	***	***	150-200%
2.	Guangdong Winto Ceramic Co. Ltd..	***	***	***	150-200%
3.	All other producers / exporters from China PR	***	***	***	150-200%

*Note Conversion table for currencies during POI

1 US \$ = Indian Rupees 45.67 and 1 US \$= RMB

64.1. In response to the disclosure statement, the producers /exporters as detailed at Sl. 1 and 2 in the above table have reiterated their claim for market economy treatment. The exporters have reiterated that the goods exported by them were vitrified tiles. The exporters have claimed that failure to provide bill of entry filed by the importer should not be held against the exporter to conclude that the goods involved were not vitrified tiles. It has further been submitted that in any case, if the Authority considers that the exporter has not exported vitrified tiles to India during the relevant period, the dumping margin for the exporter should be determined based on its exports to other countries.

64.2. The Authority has examined the views of the exporters. Authority holds that correct establishment of the product exported to India is the starting point in determination of dumping margin. In a situation where the product was attracting anti dumping duty in excess US \$ 8 per SQM and where the selling price of the domestic industry were in the region of ****, CIF import price of other exporters from China ranged between **** to ****, an issue that is germane to entire investigation is whether at all the goods exported by the company were vitrified tiles. If the goods exported were not vitrified tiles, question of determination of individual dumping margin cannot arise. The exporters made a claim of having exported vitrified tiles and the entire investigation with regard to the company proceeded on this basis until at the stage of on the spot verification. It is also relevant to note that the exporters at no point in time during the course of the investigations claimed or admitted that the goods exported by them were ceramic tiles and dumping margin could be determined on the basis of third country sales. In fact, the exporters have all along claimed, even after the verification, that the goods involved were vitrified tiles. At the time of spot verification, therefore, the exporters were directed to establish that the goods exported were indeed vitrified tiles. The exporter was found to be producing and selling significant volumes of both ceramics and vitrified tiles. While the Authority appreciates that it may not be feasible for the exporters in general to provide bills of entries filed by the importers, it cannot certainly be a situation where the exporter cannot establish that the goods exported were vitrified tiles. Further, it does not appear reasonable that in the product of this nature, that it is impossible for the exporter to obtain bills of entries from the importer and provide the same to the Designated Authority. The Authority also notes in this regard that it is not for the Authority to prescribe documents or evidence in this regard. It is for the exporter to consider what document in its possession would establish that the goods exported were indeed vitrified tiles. The exporter has however, failed to establish that the goods exported were vitrified tiles.

64.3. As regards consideration of exports to third countries as a reasonable basis for determination of dumping margin, the Authority notes that entire investigations until the stage of on the spot verification proceeded on the basis of the claim that the goods exported were vitrified tiles. Even at the time of spot verification, when it was pointed out by the Officers that sufficient documentary evidence was not provided that the goods exported were indeed vitrified tiles, the exporter did not modify its position and did not make a request for consideration of third country sales. On the contrary, the exporter made assurance that efforts would be made to inconclusively establish that the goods exported were indeed vitrified tiles. Even after completion of the verification and until issuance of the disclosure statement, the exporter has not eventually admitted that the goods exported were not vitrified tiles. Under the circumstances, it is noted that the information on record now does not permit determination of dumping margin on the basis of exports to third countries. It is also relevant to point out that it is not a situation where the exporter has admitted having exported ceramics tiles. It is a situation where the Authority finds that the exporter has failed to establish that the goods exported were vitrified tiles.

G.2. United Arab Emirates

65. The Authority has taken note of the submissions made by such exporters from UAE who have been exporting the product under consideration manufactured in that country. They have claimed that prices from UAE have been increasing and have increased from Rs. ***per sq. m. in 2003-04 to Rs*** per sq. m. in POI. In fact UAE prices are claimed to be twice a price from the rest of the world and thrice the Chinese prices. They have further claimed that import volumes as per the petition itself from UAE have come down from under 5% in 2003-04 to less than 0.5% in POI. Further it has been claimed that allegation of dumping are primarily made against China and there is no allegation against UAE and individually UAE does not undercut or undersell. It has been pleaded that in the likelihood analysis made by the Domestic Industry allegation is exclusively against China and not even a passing reference has been made to UAE and even prima facie evidence of likelihood of recurrence of dumping from UAE has not been furnished. In their submissions they stated that UAE has only two producers exporters out of which RAK has already set up an Indian subsidiary with an installed capacity of 20,000 sq. m. per day and their expansion plans are to set up a capacity of 1,00,000 sq. m. per day. Apart from RAK it is claimed that another unit Al Khaleej Ceramics is smaller player operating in more than 100% capacity and maintains highest price. It has further been pleaded that UAE is not facing anti dumping duties elsewhere that could have become a reason for UAE exporters diverting their manufactured subject goods to India. They have, therefore, requested that UAE may be excluded from the purview of the sunset review.

66. The Authority has also taken note of the submissions dated February 7, 2008, made by domestic industry thru their legal representatives APJ-SLG Law Offices confirming that from import statistics, it is primarily imports from China which continue to cause injury to the Domestic Industry. They have also confirmed that imports from UAE are at much higher prices and may not really be the cause of continued injury to the domestic industry.

67. In view of the common stand taken by the domestic industry as well as responding exporters from UAE that export prices from that country are high, the Authority therefore concludes that no dumping is taking place in respect of exports to India from UAE. The Authority also concludes that in view of setting up of huge manufacturing capacities in India by these very UAE exporters, there is no scope for likelihood of dumping in future.

H. Injury determination

H.1. Continuation of injury

H.1.1. Views of the Domestic Industry

67. The authority has considered the submissions of the Domestic industry that despite anti-dumping duty on Vitrified / Porcelain Tiles, dumping has not ceased to exist from any of the sources on which anti dumping duties were imposed initially. Their submissions that injury to the domestic industry has continued despite the imposition of anti dumping duties and that if anti dumping duties are removed; the impact of dumping would be much more serious as the domestic industry would be forced to match the prices offered by exporters resulting in direct losses and injury to the domestic industry have also been considered. The allegation of the domestic industry that exporters from the subject countries have also indulged in the dumping during the years prior to POI and that there is no change in the pricing behaviors of the exporters has also been considered by the Authority.

68. The Authority has also taken note of the submissions of the domestic industry seeking shelter under Annexure-II of the Anti Dumping Rules for determination of injury, where it has been pleaded that it shall involve an objective examination of volume of dumped imports and its effect, both on the domestic prices as well as the domestic producers of the subject goods. The Authority has also considered their submissions that the situation has improved from their angle after the imposition of anti dumping duties thus substantiating the fact that anti dumping duties have been effective and there has been a positive impact on the DI though the impact is claimed not to be there to the desired extent, in view of the continued injurious dumping.

69. On the volume front, the submissions made by the domestic industry that the market share of the subject countries in respect of imports has increased from 51% in the base year i.e. 2003-04 to 89% during POI, landed value of product under consideration from the subject countries is much lower than the prices the domestic industries ought to have realised on the sales of subject goods and the net sales realisation of the domestic industry, many of the petitioners are new players in the industry and hence the data for the previous year's not being available, a proper comparison of the domestic industry as a whole is not feasible and will lead to erroneous conclusion, both productivity per employee as also employment and wages have increased, profitability as well as return on investment and cash flow have improved and domestic industry is able to recover the losses and the domestic industry has not been able to realise the desirable selling price in spite of anti dumping duties being in place have all been considered by the Authority.

70. Authority has also considered the argument put forth by the domestic industry that while arriving at the opinion of likelihood of continuance or recurrence of dumping and injury, it is necessary to bear in mind the effect and influence of the anti dumping duties already in place against the subject countries and the likely future behaviour of the exporters if the duties are allowed to lapse and the Authority is also required to examine whether the trend/behavioral pattern of dumping continues to persist despite Anti dumping duties in place as also to bear in mind that since the exporter/producers in subject countries are fully aware of the proximity of impending sunset review, hence their pricing behavior is likely to be manipulated/determined and hence suspect and untrustworthy and therefore, the improvement in the various injury factors, *per se*, during the period of investigation is not directly relevant.

71. The Authority appreciates the concern of the Domestic Industry that the criterion 'likely' is also different from the actual threat of material injury (i.e. it is to be clearly foreseen and imminent) and analysis of likelihood of continuance or recurrence of injury in a sunset review investigation is that of lesser degree and on different parameters, for the reason that the circumstances in the sunset review investigations are necessarily affected by the measures in force and consequently, the various injury factors cannot be construed and interpreted in the same manner as in the original investigation and thus, in case there is any possibility of recurrence or continuance of injury to the domestic industry, the duties are required to be continued.

H.1.2. Views of the producers and Exporters

H.1.2.1. United Arab Emirates

72. The Authority has considered the submissions made by the exporters from UAE that with regard to the likelihood of recurrence or continuance of dumping and injury to the Domestic Industry after the cessation/discontinuance of anti dumping duty against the UAE, based on the import data with regards to the import of the subject goods from UAE, it is clear and apparent that the volume of exports from UAE are decreasing and export price is rising significantly every year. Authority has also considered that after the completion of the original anti dumping investigation, RAK has already established its own subsidiary company in India to produce the subject goods at its plant at Hyderabad with an installed capacity of 20,000 sq. mts. per day and the same is going to be increased to 30,000 sq.mts. Per day. Moreover, RAK is also stated to be in the process of setting up an additional production unit in Gujarat with an installed capacity of 20,000 sq. mts. per day. The submissions that considering the facts and circumstances with regard to trend of volume of exports from UAE, its export prices, capacities being installed by RAK in India, its future expansion plans in India and share of RAK in the imports of subject goods into India, there is no likelihood of recurrence or continuation of dumping from UAE and consequent injury to the Domestic Industry on account of imports from UAE and there are no surplus capacities in UAE for dumping into India, rather RAK is creating additional capacities in India and the producers/exporters of the subject goods in UAE are not facing anti dumping investigations anywhere in the world except India have also been considered by the Authority.

H.1.2.1. China PR.

73. The submissions of Producers/exporters from China PR that the claim put forth by the domestic industry that the review is supported by more than 70% of the domestic production as no information on this account has been furnished has also been considered. Their pleadings that petitioner has interchangeably used recurrence and continuation, that the rules do not require a mere opinion and not a categorical positive finding, that analysis in a sunset review is not of lesser degree or on different parameters has also been considered by the Authority. Their claim that there is no evidence that revocation of duties would lead to likelihood of continuation or recurrence of injury and that the claim of domestic industry that price behaviour of exporters during the POI for a sunset review is likely to be manipulated and suspect and untrustworthy is an unwarranted presumption as the law does not provide for any such presumptive rejection of the prices of the exporter has also been considered by the Authority. Authority has also considered their pleadings that improvement in various injury parameters is a clear indicator of whether any injury is likely to continue or likely to recur and therefore argument of recurrence is entirely frivolous and liable to be rejected and further it cannot be presumed that injury is recurring because there is continuance of dumping.

H.1.3.Examination By The Authority.

74. The Authority has taken note of and considered various arguments raised both by the Domestic Industry as well as responding exporters/producers. Authority has found that there are huge surplus capacities in China PR, which came to notice during verification of the responding exporters. In respect of one of the exporters the total sale in the domestic market and export taken together constituted on 52% of their production during POI. In respect of yet another exporter the surplus was in the vicinity of 15%. Authority has also noticed that these producers were not utilizing the total installed capacity and Foshan in China PR itself is designated as a ceramic city where volume of production is huge. The Authority therefore concludes that likelihood of recurrence of dumping and consequential injury to the domestic industry is inevitable as the withdrawal of duties will in all likelihood lead to the surplus capacities finding their way into Indian market at dumped prices and cause of injury to the domestic manufacturers in India.

75. The Authority further concludes that in view of the submissions made by UAE producers and Exporters as also supplemented by the Domestic Industry, the likelihood of dumping form UAE and consequential injury to the Domestic Industry is ruled out.

76. Annexure II of the AD Rules provides for an objective examination of both,
 (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and
 (b) the consequent impact of these imports on domestic producers of such products.

77. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

78. For the purpose of injury analysis the Authority has examined the volume and price effects on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

H.1.4. Volume Effect

Share of Imports from subject countries (% of total imports, % of total demand and domestic production):

_Source-IMPEX and response of cooperating exporters as complete data from DGCISS was made available for imports from China and UAE and not other sources imports into India.

79. The following table depicts that the share of imports from subject countries in total imports has increased from 51% in the year 2003-04 to 95% in the period of investigation despite the fact that there were anti-dumping duties in existence against the subject countries. It is also noted that during the POI, imports from subject countries have increased to about 22 times of the imports in the base year. It is also seen that total imports in terms of volume from

UAE during POI comprises of just 0.23% of the imports from subject countries and imports from China comprise of 99.76% whereas share of imports from china has increased from 46% in 2003-04 to 94% during POI.. Therefore Authority notes that imports volumes from amongst subject countries are primarily coming from China PR and UAE barely contributes to these imports. Authority also notes that in comparison to the total demand in India, exports from China PR have increased from 13% in 2003-04 to 37% during the period of investigation. It indicates that the imports from China have been able to capture a substantial share of demand in the domestic market despite the fact that the anti-dumping duties were in existence against the subject countries.

	April 03 to March 04	April 04 to March 05	April 05 to March 06	POI
Imports from China (SQM)	667568	4091666	8264685	14644196*
Indexed	100	613	1238	2194
Imports from UAE (SQM)	71548	50584	13994	33849
Imports from Subject Countries (SQM)	739116	4142250	8278679	14678045
Imports from other Countries	718732	728413	4407434	852169
Total Imports (SQM)	1457848	4870663	12686113	15530214
% Share of China in imports	46%	84%	65%	94%
Total Demand (SQM)	5349535	16288195	32323848	39540899
% share of Imports from China in total demand.	12.47%	25.12%	25.57%	37.04%

* As per responding exporters selling to India at un-dumped prices.

80. The Authority also notes that imports from subject countries as a percentage of domestic production have also increased from 27% in 2003-04 to 89% in period of investigation.

% Domestic Production

	April 03 to March 04	April 04 to March 05	April 05 to March 06	POI
Imports from China PR (SQM)	667568	4091666	8264685	14644196
Production (SQM)	2428724	6928439	12663766	16362978
% Share	27.48%	59%	65.26%	89.49%

81. The Authority notes that the imports from subject countries have increased, not only in absolute terms but have also increased in relation to total imports, total demand and domestic production. The Authority also notes that overall demand in the country has grown up from 100 (Indexed) in base year to 739 (Indexed) during the period of investigation, by huge 639% over the injury investigation period as is evident from the table given below.

	2003-04	2004-05	2005-06	POI
Total Demand (SQM)	5349535	16288195	32323848	39540899
Indexed	100	304	604	739

Output & Capacity Utilization:

	April 03 to March 04	April 04 to March 05	April 05 to March 06	POI
Capacity (SQM)	6287727	12969142	20382160	22286960
Production (SQM)	2428724	6928439	12663766	16362978
Capacity Utilization%	39%	53%	62%	73%

82. From the table above, the Authority notes that the domestic production as well as capacity utilization of the domestic industry has increased over the injury investigation period. The capacity utilization of the domestic industry increased from 39% in 2003-04 to 73% during the period of investigation. The Authority also takes note of the submissions of the domestic industry that after the protection in terms of imposition of anti-dumping duties against injurious dumping, there have been substantial investment and expansion in the Vitrified Tiles industry in the country. As against about five producers at the time of the original investigations, the number of producers in the country today is close to twenty. This has been confirmed by one of the responding producers and exporters from UAE who has already set up a manufacturing plant in India and is in the process of setting up another one. Therefore, the Authority takes note of these submissions and the submissions made by the Domestic Industry that the comparison of the capacity and production of the domestic industry in the base year with the capacity and production in the period of investigation in absolute numbers may not be appropriate to analyze the injury suffered by the domestic industry with respect to these factors.

83. Authority also takes note of the submission of the Domestic Industry that the unutilized capacity of the domestic industry during POI is as high as 27% despite the fact that the demand in the country has increased by 639%.

Changes in Market Share of the domestic industry:

	April 03 to March 04	April 04 to March 05	April 05 to March 06	POI
Total Demand (SQM)	5349535	16288195	32323848	39540899
Sales of DI (SQM)	***	***	***	***
Market share of DI %	***	***	***	***
Indexed	100	282	535	610
Sales Value (Rs. Lacs)	***	***	***	***

84. From the analysis on domestic sales as above, it is seen that the sales of the domestic industry in the POI as compared to base year have increased over the injury investigation period by 510% but their market share has come down in POI as compared to immediately preceding year as well as base year

Price Effect:

Effect of dumped Imports on Domestic Prices:

	April 03 to March 04	April 04 to March 05	April 05 to March 06	POI
Landed Value from China (Rs. / SQM)	***	***	***	***
Indexed	100	88	92	84
Landed Value from UAE(Rs. / SQM)	***	***	***	***
Indexed	100	92	103	130
Landed Value from Subject Countries (Rs. / SQM)	***	***	***	***
Domestic Selling Prices (Rs. / SQM)	***	***	***	***
Indexed	100	75	66	75

85. Authority notes that the landed value from China has declined over the injury investigation period in spite of the fact that the anti-dumping duties were in existence. Indexed at 100 in the base year 2003-04, it stands at 84 during POI. On the other hand, the landed value from UAE has increased and is more than the net sales realization of the domestic industry. Indexed at 100 in the base year 2003-04, it stands at 130 during POI. The domestic selling prices have come down from 100 indexed in the base year 2003-04 to 75 during POI. It indicates that the domestic prices have been depressed. The Authority concludes that this is yet another indicator that, although, likelihood parameter is evident in case of China PR, no such eventuality of exports at dumped prices from UAE in future is evident.

Price Underselling and Price undercutting:

Price Undercutting			
	Subject Countries	China	UAE
Domestic Selling Prices Rs. / SQM	***	***	***
Landed Value from Subject Countries Rs. / SQM	***	***	***
Price Undercutting (Rs./SQM)	***	***	***
Price Undercutting (%)	50.13%	50.9%	(-84.73%)

86. The authority has made the price undercutting analysis by comparing the weighted average net sales realization with the weighted average landed value for the subject countries and China PR separately. The landed value for the subject countries is derived by adding landing charges and basic custom duty into the CIF prices. From the above analysis the Authority concludes that there is significant price undercutting from China, on the contrary there is a negative undercutting from UAE. The Authority concludes that the domestic prices have had an impact due to imports from China and imports from UAE have not undercut the prices of the domestic industry.

87. The Authority also concludes that price underselling from China is also significant and the exports from China are being made at such prices that removal of anti-dumping duties is likely to lead to continuance or recurrence of injury to the domestic industry as is evident from the following table:

Price Underselling			
	Subject Countries	China	UAE
Desirable Selling Prices/ NIP Rs. / SQM	***	***	***
Landed Value from Subject Countries Rs. / SQM	***	***	***
Price Underselling (Rs./SQM)	***	***	***
Price Underselling (%)	65-75%	65-75%	(-54%)

Profitability, Return on Investment and Cash Flow:

88. The Authority notes that profitability as well as cash flow and return on investment have declined over the injury investigation period, possibly due to the presence of dumped imports causing injury to the domestic industry as noted from the following tables:

	2003-04	2004-05	2005-06	POI
Profit/Loss (Rs./SQM)	***	***	***	***
Profit/Loss (Rs. Lacs)	***	***	***	***
% Profit/Loss On Sales	17.33%	-2.67%	1.08%	8.39%

	2003-04	2004-05	2005-06	POI
Profit/Loss (Rs. Lacs)	***	***	***	***
Add Depreciation	***	***	***	***

Cash Profit (Rs. Lacs)	***	***	***	***
Cash Profit as % of Sales	21.71%	3.11%	4.91%	12.08%

Return On Capital Employed:

	2003-04	2004-05	2005-06	POI
Profit/Loss (Rs. Lacs)	***	***	***	***
Add Interest (Rs. Lacs)	***	***	***	***
Profit Before Interest (Rs. Lacs)	***	***	***	***
Capital Employed (Rs. Lacs)	***	***	***	***
ROCE (%)	***	***	***	***
Index	100	30	47	83

89. Authority also notes that profitability of the domestic industry has significantly improved during POI over preceding two years but the same is still lower than the base year of the injury period. Similar trends are reflected in the cash profit and return on capital employed of the domestic industry.

	2003-04	2004-05	2005-06	POI
Production(SQM)	2428724	6928439	12663766	16362978
Employees	***	***	***	***
Production (SQM / Employee)	***	***	***	***

90. The productivity per employee during the period of investigation has increased as compared to the base year as per following table. Thus, the Authority concludes that decline in productivity is not a cause of injury to the domestic industry because productivity has improved progressively during injury period.

Employment and Wages:

	2003-04	2004-05	2005-06	POI
No of Employees	***	***	***	***
Wages Total (Rs. Lacs)	***	***	***	***
Wages /Employee (Rs.)	***	***	***	***

91. The Authority notes that the number of employees engaged by the domestic industry has increased over the injury investigation period, the wages paid to them have also increased over the same period and concludes that increase in total wages cost has been neutralized to a large

extent by higher labour productivity as increase in per employee wage-bill during POI is less than 6% over 2003-04.

Magnitude of Margin of Dumping:

92. The Authority notes that dumping margin from China is significant and concludes that significant dumping margin gives an indication about likely future behaviour that dumping would continue from China and the domestic industry would be injured.

Growth:

93. The Authority notes that market share of the domestic industry over the injury investigation period has declined as compared to immediately previous two years whereas the increase in the total demand is as high as 472%. The growth with respect to profitability of the domestic industry is also negative. The Authority concludes that the domestic industry has been prevented from achieving a reasonable growth in the increasing demand, and to increase its profit, due to the presence of dumped imports. The Authority further concludes that in view of the increasing imports, declining landed values, significant dumping margins, price undercutting and price underselling the dumping from China would further increase and injure the domestic industry severely in case the duties are discontinued.

Inventories:

94. The Authority notes that the closing stock as well as the average stocks has increased over the injury investigation period causing injury to the domestic industry.

	2003-04	2004-05	2005-06	POI
Closing Stock (SQM)	***	***	***	***
Indexed	100	276	452	458
Average Stock	***	***	***	***
Indexed	100	245	471	627

Ability to Raise Capital Investments:

95. It has been stated by the domestic industry that the composition of the domestic industry has undergone a change. It is also stated that the new capacities are also in pipeline for the subject goods by some of the domestic producers. Those apart, UAE producers have also set up new manufacturing plants and some more are in the pipeline. The Authority, therefore, concludes that the ability of the domestic industry to raise capital investment is not affected.

95.1. In their post disclosure submissions a number of interested parties have claimed, based on performance of the domestic industry over the injury period in respect of various injury parameters that the domestic industry has not suffered continued injury, nor there is any evidence that the domestic industry is likely to suffer injury in the event of revocation of anti dumping duties.

95.2. The Authority holds that the performance of the domestic industry during the current injury period was such that it could not be concluded that the domestic industry has not suffered continued injury and injury to the domestic industry is unlikely to continue or intensify in the event of revocation of anti dumping duties. The Authority holds that the following evidence on record clearly establishes that the injury to the domestic industry is likely in the event of revocation of anti dumping duties –

- i. As per claims of one of the responding exporters, there are more than ***vitrified tiles plant in China.
- ii. Information provided by the responding exporters itself showed as follows
 - a. production during the POI ***SQ.M
 - b. domestic sales and export sales *** SQ.M
 - c. surplus*** SQ.M

95.3 Interactions with the Chinese exporters during the course of spot verification showed that the Govt. of China is promoting tiles industry in a big way. Foshan city has become synonym with “Tiles City”. Thrust of most of the plants is onto exports.

95.4 The Authority compared the landed price of imports from China with the cost structures of the domestic industry. The results are as follows –

- i. Landed price of imports from China ***
- ii. Direct cost for Indian Producers ***
- iii. Full cost of production for Indian Producers ***

95.5. The Authority notes that should the domestic industry be forced to sell the goods at prices matching with the landed price of imports, the same implies that the constituents of the domestic industry would not even recover even costs directly associated with production and sale of the subject goods. Thus, revocation of anti dumping duties shall lead to significant financial losses for the domestic industry. This would further adversely impact return on investments and cash flow situation of the domestic industry. Further, in a situation where the domestic industry is forced to sell the product at prices below direct costs associated with production and sale of the subject goods, it is evident that the domestic industry would loose sales volumes. Loss of sales volumes in short run would adversely impact the profitability, as the incidence of overhead costs would increase on the volumes produced for sale. Thus, in the immediately foreseeable future, the domestic industry would be in a situation where its sales and consequently production & capacity utilization would suffer heavily. Further, this would adversely impact the profits, return on capital employed and cash flow. The domestic industry is therefore clearly likely to suffer injury in the event of revocation of anti dumping duties.

95.6. Authority notes that the data on imports as per responding exporters who have been exporting to India at un dumped prices is far more in terms of volume than the volume of imports reflected in various data sources i.e. EXIM and DCCI&S. The Authority therefore concludes that the injury analysis, primarily done in respect of Un-dumped imports is in order in a likelihood scenario because the dumped imports will, in all likelihood come to India, at least at the same price at which the un-dumped imports are coming and therefore injury analysis with reference to un-dumped imports is a fair comparison for arriving at the injury to the domestic industry.

I. Causal link

96. The Authority notes that production capacities with the Chinese producers are far in excess of existing demand in China. Even if exports to other countries are accounted for, the existing capacities are far in excess of current demand. In fact, even responding exporters have been operating much below installed capacities. It is thus evident that the Chinese producers are faced with sufficient freely disposal production capacities for the product under consideration. On volume account, therefore, there is clearly likelihood of significant increase in import volumes with the revocation of present anti dumping duties. As regards prices, the Authority notes that the product is sold at widely varying prices. Even same type of tiles has been sold at significantly varying prices. Further, the export price from China is so low that the landed price of imports would be significantly below the selling price of the domestic industry and non injurious price determined for the domestic industry. Revocation of anti dumping duties would therefore lead to significant price undercutting by the dumped imports. Given existence of significant price undercutting and significant freely disposal production capacities with the Chinese producers, it is evident that the market would witness significant increase in the dumped imports. Since the profitability of the domestic industry is already not very good and further since direct costs forms a very high proportion in the total cost of production, it is evident that any significant price pressure on domestic industry would lead to a situation where the domestic industry would not be able to recover even direct costs associated with the production and sale of the product under consideration. In fact, the landed price of imports in the event of revocation of anti dumping duties would be below the direct costs associated with production and sale of the product concerned. Should the domestic industry sell at prices matching with the landed price of imports, it is evident that the domestic industry would not recover even the direct costs associated with production and sale of the product concerned. Injury to the domestic industry is therefore inevitable in the event of revocation of anti dumping duties.

97. As stated above the Authority holds that the revocation of anti-dumping duty shall lead to continuance of dumping and / or injury.

J. FINAL FINDINGS:

98. Having regard to the issues raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

i. There is no dumping taking place from UAE. As has been admitted by the domestic industry in their submissions, the prices of the subject goods manufactured and exported to India are very high and are not a cause of injury to the domestic industry.

ii. The majority of Exports from subject countries are from amongst the ones who do not sell the subject goods in India at dumped prices. Even these undumped exports have been a cause of recession for the domestic industry. Therefore considering withdrawal of duty already in place is, in all probability going to result in huge quantities of subject goods finding their way into India at dumped prices.

iii. The subject goods are likely to enter Indian market at dumped prices from China PR, should the present measures be withdrawn. Thus, it has not been established that the continued imposition of the duty to offset dumping is unnecessary,

iv. In spite of the antidumping measures in place, there exists significant current injury to the domestic industry. There is also no evidence on record to suggest that dumping or the injury to the domestic industry would cease to exist or is not likely to recur in case the anti-dumping duties are discontinued. On the contrary huge surplus capacities in China are most likely to find their way into India at dumped prices.

99. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation or resumption of dumping and injury on account of imports from China PR if the duties are revoked, the Authority is of the opinion that continuation of the measure is necessary against import from China PR. However, in view of the current level of dumping from subject countries and injury suffered by the domestic industry the anti dumping duty in force needs to be revised. Therefore, the Authority considers it necessary and recommends continuation of anti dumping duty on imports of subject goods from subject countries equal to lower of Dumping / Injury Margins, whichever are lower

100. Accordingly, the Authority recommends that definitive anti dumping duty as set out in the table below be imposed on imports of subject goods originating in or exported from subject countries. The duty is recommended to be imposed, denominated in Indian Rupees, as per table detailed below:

K. Duty Table

Sl. No	Heading/ Sub-heading/Tariff item	Description	Specification	Country of origin	Country Of export	Producer	Exporter	Duty Amount (INR)	Unit
1	2	3	4	5	6	7	8	9	10
1.	69.07 Or 69.08 Or 69.14	Vitrified / Porcelain Tiles as described in Para 6 & 7 of this notification	Any	China PR	UAE	Foshan Chanchang Oulian Construction Ceramics Co. Ltd	Prestige General Trading, Dubai	NIL	Square Meter
2.	DO	DO	ANY	China PR	ANY	Foshan Chanchang Oulian Construction Ceramics Co. Ltd	Any Other Than the exporter in row 8 of Sl. No.1 above	155	Square Meter
3.	DO	DO	ANY	China PR	China PR	Heyuan Wanfeng Ceramic Co. Ltd ,	Foshan Lungo Ceramics Co. Ltd.	NIL	Square Meter
4.	DO	DO	ANY	China PR	UAE	Heyuan Wanfeng Ceramic Co. Ltd	Enterprise Trading FZE, UAE	NIL	Square Meter

5.	DO	DO	ANY	China PR	ANY	Heyuan Wanfeng Ceramic Co. Ltd	Any Other Than the exporter in row 8 of Sl. No.3 and 4 above	155	Square Meter
6.	DO	DO	ANY	China PR	China PR	M/s Southern Building Materials and Sanitary Ware Co. Ltd of Qinguyan City	New Zhong Yuan Ceramics Import & Export Co. Ltd of Guangdong	NIL	Square Meter
7.	DO	DO	ANY	China PR	ANY	M/s Southern Building Materials and Sanitary Ware Co. Ltd of Qinguyan City	Any Other Than the exporter in row 8 of Sl. No.6 above	155	Square Meter
8.	DO	DO	ANY	China PR	China PR	M/s. Guangdong Newpearl Ceramic Group Co. limited comprising of M/S Foshan Shanshui Huiwanjia Ceramic Company Limited and M/S Foshan Summit Ceramic Company Limited	M/S Foshan Newpearl Trade Co. Ltd.	NIL	Square Meter
9.	DO	DO	ANY	China PR	ANY	M/s. Guangdong Newpearl Ceramic Group Co. limited comprising of M/S Foshan Shanshui Huiwanjia Ceramic Company Limited and M/S Foshan Summit Ceramic Company Limited	Any Other Than the exporter in row 8 of Sl. No.8 above	155	Square Meter
10	DO	DO	ANY	China PR	China PR	M/S Foshan Chan Cheng Jin Yi Ceramic Co. Ltd.	M/S Foshan Joyson Ceramic Material Company Ltd.,	NIL	Square Meter
11.	DO	DO	ANY	China PR	MALAYSIA	M/S Foshan Chan Cheng Jin Yi Ceramic Co. Ltd.	M/S Able Ace (M) Sdn. Bdh. Malaysia,	NIL	Square Meter
12	DO	DO	ANY	China PR	ANY	M/S Foshan Chan Cheng Jin Yi Ceramic Co. Ltd.	Any Other Than the exporter in row 8 of Sl. No.10 and 11 above	155	Square Meter
13	DO	DO	ANY	China PR	ANY	ANY Other	ANY	155	Square Meter

101. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

R. Gopalan
Designated Authority