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

Notification

Dated 28th September, 2012

Final Findings

Subject:- New Shipper Review (under Rule 22) of Anti-Dumping duty imposed on imports of Vitrified/Porcelain Tiles from China PR in respect of M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer), M/s Foshan Z&D Ceramics Ltd.-China PR (exporter)

No. 15/29/2010-DGAD -Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, as amended (hereinafter referred to as AD Rules);

Background

i. M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer)and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) , filed an application before the Designated Authority (hereinafter referred to as the Authority) seeking determination of individual dumping margin under Rule 22 of the AD Rules and requested to initiate a ‘New Shipper’ review investigation with reference to the notification no 37/1/2001 dated 4th February, 2003 in the original anti-dumping case and Final findings Notification No. 15/17/2006 -DGAD dated 21st April 2008 in the SSR anti-dumping case and the Corrigendum issued thereof dated 21st May, 2008 and whereby the Central Government notified the anti-dumping duty vide Notifications No. Notifications Customs No. 73/2003- Customs dated 01st May, 2003 and No. 82/2008-Customs dated 27th June, 2008.

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

iii. The Authority accordingly initiated the New Shipper Review on the basis of request made by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer)and M/s Foshan Z&D

Ceramics Ltd.-China PR (exporter), China, under Rule 22 of the AD Rules vide notification No. 15/29/2010-DGAD dated 21st February, 2011.

2. The procedure described below has been followed.

i. The aforesaid new shipper investigation was initiated in the matter concerning import of Vitrified / Porcelain tiles falling under Chapter 69 of the Customs Tariff Act, 1975 originated in or exported from China PR and UAE where the Authority vide its final finding no. 37/1/2001-DGAD dated 04.02.2003 in the original anti-dumping case and Final findings Notification No. 15/17/2006 -DGAD dated 21st April 2008 in the SSR anti-dumping case and the Corrigendum issued thereof dated 21st May, 2008 had come to conclusion that:

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

b. The Indian industry has suffered material injury;

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

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

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

iv. The Authority recommended provisional assessment of all exports of Vitrified / porcelain tiles by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) , till the completion of the review initiated in accordance with Rule 22 of the AD Rules.

v. The Ministry of Finance issued notification on 23rd May 2011 implementing the recommendations of the Authority vide notification No 41/2011 – Customs, which, *inter- alia*, provided that pending the outcome of the review by the Authority, all imports of vitrified/ porcelain tiles other than vitrified industrial tiles falling under Chapter 69 of the Customs Tariff Act by M/s. M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) would be subjected to provisional assessment till the review was completed.

vi. The Authority sent a copy of exporter's questionnaire including the market economy questionnaire to M/s. Jiangxi Zhengda Ceramics Co. Ltd., China PR (Producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) and to elicit relevant information. The Authority sought

and verified all information it deemed necessary for the purpose of determination of individual dumping margin.

vii. The Authority conducted on-the-spot verification of the data furnished by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) to the extent deemed necessary.

viii. The period of investigation in this New shipper review investigation was 1st January 2011 to 30th June 2011 – 6 months for determination of the dumping margin.

ix. The Authority intimated the embassy of the exporting country in India about the initiation of the New shipper review investigation and gave an opportunity to all the interested parties concerned to make their view known in writing within 40 days from the expiry of the POI i.e. 1st January 2011 to 30th June 2011.

x. The Authority provided an opportunity to all the interested parties to present their views orally in the public hearing held on 5th January 2012. All parties who attended the hearing and presented the views orally were requested to file written submissions and rejoinders thereof.

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

xii. In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received thereon have also been duly considered in the findings.

xiii. *** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules. The information concerning prices and costing filed by respective interested parties has been claimed as confidential and the Authority has treated the same as confidential.

Product under Consideration & Like Article

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

4. The product under consideration in this investigation is a Vitrified/Porcelain tiles as determined in the original case and the Sunset Review case, i.e, “vitrified/porcelain tiles”. No submission has been made by any interested party on the product under consideration and like article. It is noted that the Vitrified/porcelain Tiles produced by the domestic industry is ‘like article’ to Vitrified/porcelain Tiles being exported by M/s. M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter) within the

meaning of the AD Rules. In view of the foregoing, the Authority holds that product under consideration in the present investigation is the same as considered in the original investigation and the Sunset review investigation i.e., “Vitrified/Porcelain Tiles”, classifiable under Chapter 69 of the Custom Tariff Act,1975.

Views expressed by interested parties and examination by the Designated Authority

5. The following submissions have been made by the applicant companies i.e. M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (exporter):

6. The WTO Agreement and Indian Rules allow a producer to seek its own dumping margin in case the said producer satisfies certain conditions. The conditions laid down under the Rules are

- i. The producer should not have exported the product to India during the period of original investigation;
- ii. The producer is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

7. The present application has been made by M/s. Jiangxi Zhengda Ceramics Co Limited (Producer) and Foshan Z&D ceramics Co Limited (exporter), as the two companies satisfy the legal requirements. Applicant producer is producing Vitrified Tiles. The company is involved in domestic sales of the product directly as also through affiliated companies and exports sales of product through affiliated company. The applicant exporter Foshan Z&D Ceramics Co Limited is engaged in domestic sales and exports of the subject goods produced by applicant producer herein.

8. The applicants have furnished complete details of their related companies, whether or not they were producing the product. The producer and exporter companies have filed joint petition for determination of individual dumping margin based on their own data/information in accordance to the AD Rules and they fully satisfy various conditions relating to (1) market economy status and (2) determination or fixation of individual dumping margin and are willing to provide all relevant information to the Authority during the course of the proposed investigations.

9. Applicants satisfy the requirements as under:-

- a. The Applicant Producer (M/s. Jiangxi Zhengda Ceramics Co Limited) has got business license on *** and set-up plant thereafter.
- b. The producer commenced commercial production with effect in ***.
- c. The Applicant producer could not have exported subject goods to India during the period of investigation of original investigation either directly or indirectly through any other company or trading house etc., given that the producer company itself has been incorporated only after the original investigation period.
- d. The plant itself is new and was not producing the product under consideration before. Question of purchase of the plant from other producer does not arise.

- e. The exporter company was incorporated on ***. Therefore, this company could not have exported subject goods to India during the period of investigation of earlier investigations either directly or indirectly through any other company or trading house etc.
- f. In a situation where both the companies were not in existence and have not exported during the original investigation period or sunset review investigation period, the only condition remains to be seen is whether the applicants are related to any other entity that had exported during the investigation period of original investigation or sunset review investigation period.

10. Details of related companies and their shareholders are on record and detailed information with regard to nature of business activities of related companies is also on record of the Authority. Jiangxi Zhengda Ceramics Co Limited (“the producer company”) is a privately held company incorporated in Pingxiang City, Jiangxi Province, of China PR on ***. On the other hand, Foshan Z&D Ceramics Co Limited (“the Company”) is a privately held company incorporated in Foshan City, Guangdong Province, the People’s Republic of China (“the PRC”) on ***.

11. Following are the shareholders of the company.

SN	Name of Share holder	Shareholding Percentage
Producer M/s Jiangxi Zhengda Ceramics Co Limited		
1	Ms. Jin Hongying	***
2	Foshan Zhengda Glaze Co Limited	***
3	Zhu Baolin	***
4	Total	***
Exporter M/s Foshan Z&D Ceramics Co Limited		
1	Ms. Jin Hongying	***
2	Foshan Zhengda Glaze Co Limited	***
3	Total	***

12. All the above shareholders are private individuals and do not have any relationship with the state either directly or indirectly. The company has related exporting company namely Foshan Z&D Ceramics Co Limited (applicant herein), which has export licence and exports to India are made through Foshan Z&D Ceramics Co Limited.

13. Foshan Z&D Ceramics Co Limited have also filed questionnaire response and provided complete information. The factory of the producer company is located at Ceramic Industry Zone, Xiangdong District, Pingxiang City, Jiangxi Province of China.

14. Financial accounting period of the company M/s Foshan Z&D Ceramics Co Limited is 1st January to 31st December. The company has furnished complete copy of audit report and income statement which contains all notes and auditors opinion. Company is a multi-product company involved in production of products other than the subject goods. The company maintains combined record for all products as a whole. The cost is prepared on actual basis. The company records and maintains the accounting system in accordance with the General Accepted

Accounting Practice of China PR. The annual accounts of the company are audited by practicing CPAs every year. In conducting their audit, the auditors follow the Chinese Independent Auditing Standards. The auditors have certified that the statement of accounts conform to the Accounting Standards for Business Enterprises and the Accounting Regulations for Business Enterprises.

15. Foreign currency transactions are translated into RMB at the exchange rates stipulated by the People's Bank of China ("the stipulated exchange rates") at the transaction dates.

16. Sand, Clay and Misc Chemicals are raw materials used for production the subject goods. All inputs are purchased and sourced domestically. Cost of materials includes transportation charges, duties and other expenses associated with obtaining the materials used in production. Raw materials used in production of product concerned are primarily sourced from unaffiliated suppliers.

17. Clay and Sand are the major the raw materials for production of the subject goods, which are sourced from various unaffiliated suppliers and the prices thereof are determined as per market forces. The power is supplied by the companies owned by the government, and the rates for power are charged, at uniform rates applicable to all the units depending upon actual usage.

18. There is no restriction or any condition imposed by the government. The company is free to decide its sourcing. Sourcing of key raw materials is decided based on quality of inputs required and price is secondary. Once quality is tested and passes, only than a supplier is approved and even after that input is received, it is tested regularly for quality test and every time, it has to pass the test.

19. Various Chinese rules and regulations and laws are equally applicable on the company. The bankruptcy and property laws of the country are equally applicable on the company.

20. There is no role for the local/regional authority or State to determine the price or quantities. The prices and volumes are determined as per demand and supply and cost of production of e subject goods.

21. All prices are negotiated by the company independently with its customers. The Chamber of Commerce is not at all involved in the setting of export prices or quantities of the subject goods. The company negotiates the price with customers directly and no organization outside of the company is involved in price setting.

22. Labour is organized as per requirement and production plan of the company and wage paid by the company is as per company policy. The remuneration/pay included monthly base salary, overtime pay and shift work allowance. The salary is paid out on monthly basis. The final payer is the company. The employees are under government mandated social security scheme including pension, un-employment, on-job injury, maternity, medial and housing fund. The company covers the social security and housing fund for employees as per government regulation.

The company has been never involved in barter trade.

Views of other interested parties

23. The Authority forwarded a copy of the initiation notification to all the interested parties soliciting their comments on the New Shipper Review Investigation. However, none of the interested parties have responded to the initiation notification. The Authority also informed the other interested parties of the public hearing held on 12th January, 2012 and provided them with an opportunity to make submissions in order to defend their interests and to facilitate the Authority to arrive at a decision in respect of New Shipper Review Investigation. Neither any other interested party participated in the oral hearing on 12th January 2012 nor has any other

interested party made any submissions during the course of the investigation. In the absence of any response from any other interested party, the Authority has proceeded to make its recommendations based on available facts on record.

Examination by the Authority

24. The Authority initiated the New shipper review keeping in view the provisions of Rule 22 of the AD Rules, which read as follows:

If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product.

(2) The Central Government shall not levy anti dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee form the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review”.

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

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

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

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

27. In the instant case, the following applicants filed an application before the Authority seeking individual dumping margin and requested for initiating the New shipper review:

- a) M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer)
- b) M/s Foshan Z&D Ceramics Ltd.-China PR Company Limited (exporter)

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

29. The applicants provided a copy of the business license of M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and that of M/s Foshan Z&D Ceramics Ltd.-China PR Company Limited (Exporter) before initiation of investigation. .

30. It was verified whether any other company besides M/s Foshan Z&D Ceramics Ltd.-China PR Company is related to the M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer). During the on-the spot verification, it was found that M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR were related to M/s Foshan Zhengda Glaze Co. Ltd. by virtue of shareholdings. These companies have been registered with the Chinese authorities. The list of related entities and their legal structure and business activities have been elaborated in these findings. The verification of the records did not reveal that the new shippers operate under any other name.

31. The claims with regard to eligibility of the applicants as new shipper were examined to know whether the company has directly or indirectly exported the product to India in the investigation period of the original investigation or of the sunset review investigation. The applicants were asked to establish their claim that the company or any of its related company had not exported the product concerned to India in the investigation period of the original investigation or of SSR investigation. The company submitted a certificate confirming that none of the related entities in existence at the time of earlier investigation and the SSR investigation has exported the subject goods to India.

Methodology For Determination of Normal Value , Export Price and Calculation of Dumping Margin

32. The Authority notes that the Company M/s Jiangxi Zhengda Ceramics Co Limited produces vitrified tiles and ceramic tiles. The company sells the subject goods in their domestic market directly as also through related companies. In case of exports, all exports to India have been made through the applicant related exporting company namely M/s Foshan Z&D Ceramics Co Limited. One of the related companies is also involved in sales of the product in domestic market. The company furnished information with regard to the sales made by the related company as well. It was submitted by the company that there was no difference in the product sold in the domestic market and that exported to India. All sales made in domestic market were made on ex-factory basis. The company furnished transaction-wise information relating to the sales made in domestic market and the exports made to India.

Examination by the Authority

33. Normal value under the Act is defined as under:

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 to] 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) :

34. Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

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

36. The Authority sent market economy treatment (MET) questionnaire and exporter's questionnaire to M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (Exporter) China PR. The two companies filed their response in support of their claim of market economy treatment and requested for determination of Normal value as per para 1 to 6 of the Annexure-I of the AD Rules and requested that the same be determined on the basis of the sales price of the subject goods in the domestic market.

The applicant producer and the exporter also furnished the detailed information as per performa forwarded by the Authority. In view of their claim of MET treatment, on-the-spot verification was carried out at the premises of the responding producer and exporter. The Chinese producer has claimed individual treatment on the grounds that they were operating under market economy conditions irrespective of the prevailing economy situation in the country, without any direct or indirect State interference or influence in their business activity.

37. The AD Rules provide that the normal value concerning imports originating from a NME such as China PR, shall be determined in accordance with para 7 & 8 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.”

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

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

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

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

(3) The designated authority shall consider in each case the following criteria as to whether:

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

system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

- c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
- d. the exchange rate conversions are carried out at the market rate.

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph”

- (4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti dumping investigations, by a country which is a member of the World Trade Organization.

39. Detailed questions regarding ownership, management, control, determination of commercial and business policies and on financial situation etc. were addressed to the applicant. The responses filed by the applicants were analyzed to determine whether the applicants exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The applicants provided information in respect of M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.- China PR (exporter) .The Authority sought general and certain specific information with regard to the following parameters from the applicants:-

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

40. Verification at the premises of the applicants companies was conducted by the Authority. The producer / exporter companies were asked to provide complete details of all the related companies, including their present and past ownership, establishment date, product involved, the manner in which these companies were set up, source of funds, etc. It was seen that M/s Jiangxi Zhengda Ceramics Co. Ltd is undertaking responsibility for production of the subject goods, whereas M/s Foshan Z&D Ceramics Ltd.-China PR undertakes the exporting activity.

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

42. It was found that the M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR are having common shareholding i.e, the shareholdings are controlled by common set of persons. The shareholders of these companies are private individuals holding Chinese identity.

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

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

Legal structure of the applicants:

44. The Authority has verified legal structure of the applicant and it has noted as under: It was explained by the company officials present that primary business of the related companies were not associated with the production and sale of raw materials required for production and sales of subject goods. Prior to sunset review investigation, only one related company was involved in sales/trading of product concerned, which also did not export to India. The following are the related companies of applicant producer:-

SN	Name of Company	Nature of activities Business
1	M/s Foshan Z&D Ceramics Co Limited	the responding exporter
2	M/s Foshan Jinhaida Ceramics Co	Exporter of product concerned

	Limited	not to India
3	M/s Foshan Bravo Ceramics Co Limited	makes domestic sales of product concerned
4	M/s Foshan Jinhui Stone Ceramics Co Limited	makes domestic Sales of product concerned
5	M/s Foshan Dashijie Ceramics Co Limited	makes domestic sales of product concerned
6	<u>M/s Foshan Zhengda Glaze Co Limited</u>	Produces and sells Glaze stains, Colors, body stains, glaze, frits, luster etc.
7	M/s Danling Zhengda Glaze Co Limited	Produces and sells Glaze ceramics raw materials etc.
8	M/s Zibo Binbo Glaze Factory	Produces and sells Glaze ceramics raw materials etc.
9	M/s Heidi Ceramic Materials Co Limited	Produces and sells Glaze ceramics raw materials etc.
10	M/s Hubei Jinhaida Ceramics Company Limited	It has acquired land but is not producing anything as of now.
11	M/s Zhaoqing Z&D Ceramics Company Limited	It has acquired land, but is not producing anything as of now.

45. It was noted that the applicant producer was established on ***. The shareholders of the company are:

SN	Name of Share holder	Shareholding %
1	Ms. Jin Hongying	***
2	M/s Foshan Zhengda Glaze Co Limited	***
3	Zhu Baolin	***
4	Total	100%

46. However, the following related companies are involved in trading of the subject goods, produced by applicant producer:-

- i. M/s Foshan Z&D Ceramics Company Limited (the applicant exporter herein): – From the English translation of the Business license, it has been noted that the company was established on ***. The company is involved in facilitating domestic sales of products produced by applicant producer; and also exporting the goods.
- ii. M/s Foshan Jinhaida Ceramics Company Limited – The company is involved in exportation of the subject goods produced by related companies. However, the company never exported to India.
- iii. M/s Foshan Bravo Ceramics Company Limited – The company is involved in sales of the subject goods in domestic market of China PR.
- iv. M/s Foshan Jinhui Stone Ceramics Company Limited - The company is involved in sales of the subject goods in domestic market of China PR.
- v. M/s Foshan Dashjie Ceramics Company Limited - The company is involved in sales of the subject goods in domestic market of China PR.

47. It was stated that no other related companies were involved in production or sales of the subject goods. The companies, mentioned below, came into existence, in the dates mentioned against each:-

Company	Date of Incorporation
M/s Foshan Jinhaida Ceramics Company Limited	***
M/s Foshan Z&D Glaze Company Limited	***
M/s Danling Zhengda Glaze Company Limited	***
Heidi Ceramics Materials Co Limited	***

48. With regards to the claims of the petitioners that these companies were not involved in exportation of the subject goods to India in the period of investigation, based on the documents submitted to the Authority, it noted the following:-

- a. On the basis of exports sales of M/s Foshan Jinhaida Ceramics Company Limited, it was noted that the company had not exported the subject goods to India in the investigation period of sunset review investigation.
- b. That though M/s Foshan Z&D Glaze Company Limited was in existence in period of investigation of sunset review investigation, but the company has not been involved in

production or sales of the subject goods. The business license of the company, which was revalidated in ***, stated that the company is involved in production and sales of raw materials and not the subject goods.

- c. In respect of M/s Danling Zhengda Glaze Company Limited, the VAT return filed before the VAT department in China PR for *** indicated that company has not exported any product. Besides, business license of the company indicated that is involved in production and sales of raw materials and not of the subject goods.
- d. In respect of M/s Heidi Ceramics Materials Co Limited. The business license showed that the company was involved in production and sales of Ceramic glaze / Ceramic colour, which is a raw material and is not engaged in the production of PUC.

49. Besides, the companies also submitted declarations that they have not exported the subject goods to India during the POIs of the earlier investigations and that they were not related to any exporter/producer who had exported the subject goods to India during the POIs of the earlier investigations.

Investment

50. The source of investment made by the shareholders was also examined. In ***, 1st company namely M/s Foshan Zhengda Glaze Company Limited was started with a initial investment of RMB 5 Lac. Initial investors of the M/s Foshan Zhengda Glaze Company Limited were Mr. Yu Fang and Mr. Zhang Yanchun. On ***, Ms. Yu Qingjiu purchased *** shares of this company after payment of *** RMB. Subsequently, on ***, the capital of the company was increased to RMB *** Million. The enhanced capital was sourced by the promoters from a related company M/s Jiangxi Zhengda Ceramics Co. Ltd., which is an applicant producer in the present investigation. The company furnished the requisite bank documents regarding capital contribution by the respective share holders in the company. The applicant producer company i.e. M/s Jiangxi Zhengda Ceramics Co. Ltd. is the first and only company of the group which is involved in production of the subject goods. In this company, during the POI, *** equity is held by M/s Foshan Zhengda Glaze Company Limited and remaining *** equity is with other private individuals. As on date, *** equity of the company is held by M/s Foshan Zhengda Glaze Company Limited and the remaining equity is held by private individuals.

Financial Accounts

51. The Annual Accounts of the company are audited regularly by the Auditors and no adverse comments were found in their Auditor Report with regard to the accounting practices followed by the company. As certified by the Auditors both the applicant companies were found to be maintaining their accounts as per Generally Accepted Accounting Principles of the subject country. The Applicant producer and exporter maintain monthly profit & loss statement, which is required to be filed along with VAT returns. The profit & loss statement for each of the months of the investigation period was examined. The Chinese producer determines a separate profitability of the subject goods and other goods. On examination of the records, it was found that the company was able to post profits on the subject goods.

Selling Price

52. The issue of selling price determination has been examined. It was found that M/s Jiangxi Zhengda Ceramics Co. Ltd has been selling the subject goods in the domestic market and freely decides regarding the output and sales depending upon the market demand and nothing adverse had been found in this regard from their records. The Authority notes that the entire export sales to India of the goods produced by M/s Jiangxi Zhengda Ceramics Co. Ltd were effected by M/s Foshan Z&D Ceramics Ltd.-China PR (exporter). No evidence of possible role of State in determination of domestic or export price could be found. It is found there are variations in prices depending upon customer, volume, type of product involved etc. It was explained by the company that there is no price list either for the domestic or the export sales as it varies from customer to customer which entirely depends on demand and supply position in the respective markets.

Raw Materials

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

Electricity

54. It is noted that the company procured electricity from State-owned company M/s. PingXiang Xiangdong Rural Power Supply Co., Ltd. Since electricity procurement was obtained from State-owned enterprise, the Authority examined the tariff rates at which the company was getting electricity. Sample invoices were collected and tariff paid by the company was ascertained. It was found that the electricity has been charged according to the consumption pattern and the prevailing prices charged by the concerned electricity supply company.

55. The exchange rate conversions were also verified from their books of accounts and found that the export remittances were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction. During the verification visit, the export invoices were verified to see whether the realized amounts are credited into their books of accounts. The Authority observed that exchange conversions have taken place at the prevailing rate.

Technology and plant & equipment

56. It was seen that the technology for production of the subject goods is well known in China PR, given significant tiles production in China PR and a very large number of tiles producers. It was seen that the company possessed requisite technology to produce the product. As regards the plant, equipment and technology, it was explained that these were purchased from the market on market driven prices. The Press and Kiln are the major machinery for production

of tiles. One of the Press had been sourced from Italy; whereas kiln was sourced from a domestic supplier i.e. Keda.

Labour

57. As regards engaging labour, the company claimed that they took all employment decisions and have full freedom with regard to its mode of hiring employees. The terms of engagement of labour were generally governed by the labour contract entered between the company and the employee. They claimed that the Chinese Government did not provide any benefit like housing, medical care etc. The company provided accommodation and the cost of the same was reflected in the books of accounts as an expense. Salary was paid every month, which included basic pay, and incentive for good work.

58. The bankruptcy and property laws were examined and found that the company is free to acquire property. The company claimed that bankruptcy law is applicable to a firm when a firm becomes bankrupt and the details regarding the settlement of the dues is governed by law maintained under bankruptcy law. No evidence of any violation of bankruptcy law of China PR and property law of China PR were found during the course of the verification.

Finance expenses:

59. Company has raised borrowings from various financial institutions, the interest cost at the bank rates have been worked out on such funds outstanding during POI and added to cost of production of the subject goods.

Output – Production:

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

Sales Volume:

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

62. Following further parameters were verified:

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

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

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

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

NORMAL VALUE

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

The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

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

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

64. As stated, the Authority had sent exporter's questionnaire to M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Z&D Ceramics Ltd.-China PR (Exporter) for the purpose of determination of normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. In response to the questionnaire, the new shippers filed the information in exporter questionnaire. It is noted that during the investigation period, M/s Jiangxi Zhengda Ceramics Co. Ltd produced the subject goods and that the material has been exported through M/s Foshan Z&D Ceramics Ltd.-China PR Co. Ltd. The company has exported four sizes / types of the subject goods to India during the period of investigation. Further, the detailed information regarding the domestic sales of all sizes/ types of the subject goods in their home market has

been provided. The Authority found the domestic sales have been made to both related and unrelated parties. A comparative analysis of the sales realization to the related and unrelated parties indicated that the sales to the related parties were at a price higher than the sales to unrelated parties. Therefore, these sales appear to be in the ordinary course of trade and have been considered for determination of the Normal Value.

65. The applicants have also provided break-up of the costs of production of all the sizes/models/types of the subject goods that have been produced during the period of investigation. The transaction-wise domestic sales were verified from their records during the course of on-the-spot verification. The element-wise cost of production was also verified and reconciled from the books of account maintained by the company. The same has been adopted for determination of the Normal value. An analysis of the profit and loss account of the company shows that the company has made an overall profit on the sale of subject goods during the period of investigation. The Normal Value based on domestic sales has been determined after applying 80/20 test, so as to determine that these sales are in the ordinary course of trade. For the models/types of vitrified tiles exported to India and sold in the domestic market the Authority notes that based on 80/20 test on the ordinary course of trade, the domestic sales have been made in the ordinary course of the trade. Accordingly, the Normal Value has been considered by the Authority based on ex-factory sales price of respective grades / sizes during the POI.

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

Size / Series	Quantity (Sq. Meter)	Value (RMB)	Average Price RMB / Sq. Meter
1000*1000 J	***	***	***
800*800 J	***	***	***
800*800 N	***	***	***
800*800 P	***	***	***

EXPORT PRICE:

67. In response to the questionnaire, the exporters have furnished invoice-wise/ size-wise details of exports made to India during the period of investigation in Appendix-2. The exporters have also furnished copies of invoices in support of the same. The adjustments have been considered based on verified data and are being allowed to arrive at the ex-factory export price to India. The exports to India made by M/s Foshan Z&D Ceramics Ltd, to Indian customers were verified from the original records and reconciled along with the adjustments claimed by them. Export price has been determined separately for each type of vitrified tile exported to India by the applicants. The export price accordingly has been worked out as under:

Size / Series	Quantity (Sq. Meter)	Value (RMB)	Average Price RMB / Sq. Meter
1000*1000 J	***	***	***
800*800 J	***	***	***
800*800 N	***	***	***
800*800 P	***	***	***
Total for POI	***	***	***

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

Size / Series	Normal Value	Export Price	Dumping Margin	RMB/Sq. Mtr. Dumping Margin (%)
1000*1000 J	***	***	***	***
800*800 J	***	***	***	***
800*800 N	***	***	***	***
800*800 P	***	***	***	***
Total for POI	***	***	***	-12.67%

Thus, the dumping margin of the applicants has been found to be negative.

Comments to Disclosure Statement

69. In response to the disclosure statement, no response has been received from any of the interested parties except on behalf of M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) Company Limited, China PR and exporter M/s Foshan Z&D Ceramics Ltd.-China PR Co. Ltd. Both the exporter and producer have broadly concurred with the essential facts, as contain in the disclosure statement. Further, both the parties have also furnished an undertaking to the Authority which inter-alia states as under:

- 1. The Company hereby undertake that it would periodically (quarterly or half-yearly basis) furnish the transaction wise domestic sales and export sales data and such further information that may be asked by the Designated Authority and would also be amenable to the verification of the same as may be deemed fit by the Designated Authority. And that if during the verification it is found that the applicant is dumping the subject goods, then the duty would be applicable from the data of dumping so found. In case of non-cooperation, the residual duty could be made applicable to us.*
- 2. We further undertake that we shall only export the goods manufactured by the applicant producer and in case of breach of the same, the residual duty would be applicable from the date of breach so found*

3. *The company would closely monitor its price and shall not resort to dumping of the product at a price significantly below the normal value.*
4. *The volume of exports made by the exporting company will not exceed installed capacity of our plant.*
5. *In the event of any export made in the name of present set of applicant companies where the goods were indeed produced by some other producers in China, the Designated Authority shall have right to withdraw these recommendations and recommend imposition of anti-dumping.*

Examination By The Authority

70. The Authority has noted the undertaking furnished by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) Company Limited, China PR and exporter M/s Foshan Z&D Ceramics Ltd.-China PR Co. Ltd. and accepts the undertaking. The Authority further notes that in the event of non-corporation or refusal to offer for verification or in the event of violation of any of the conditions as set out in the undertaking, furnish by both the parties, the Designated Authority shall have right to withdraw the proposed recommendation and to recommend for imposition of Anti-Dumping duty.

Conclusions and Recommendations

71. Having conducting this review in terms of Rule 22 of the Rules and after considering the foregoing, the Authority concludes that:

(i) The producer M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) Company Limited, China PR and exporter M/s Foshan Z&D Ceramics Ltd.-China PR Co. Ltd. have established themselves as new shipper of the subject goods to India and therefore, are eligible for individual dumping margin.

(ii) Dumping margin of vitrified porcelain tiles manufactured by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer) Company Limited, China PR, and supplied to M/s Foshan Z&D Ceramics Ltd.-China PR (Exporter)and subsequently exported to India by routing the same through during the period of review was found to be negative.

Therefore, in terms of Rule 22 of the AD Rules, the Authority recommends that no anti-dumping duty be imposed or levied on imports of vitrified/porcelain tiles falling chapter 69 of Customs Tariff Act 1975 produced by M/s Jiangxi Zhengda Ceramics Co. Ltd.- China PR (producer), China PR, and supplied to M/s Foshan Z&D Ceramics Ltd.-China PR Co. Ltd. (Exporter)and subsequently exported to India by it.

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

(Vijayalaxmi Joshi)
Designated Authority