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**File No.15/20/2011-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi**

Dated 24th July, 2013

Final Findings

Subject:- New Shipper Review under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for the purposes of imposition of the anti dumping duties on dumped imports of Vitrified/ Porcelain Tiles originating in or exported from China PR by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter).

No. 15/20/2011-DGAD -Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the 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 the AD Rules);

BACKGROUND

2. M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter) filed an application in accordance with the Customs Tariff Act, 1975 (hereinafter referred to as the Act), as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules) before the Designated Authority (hereinafter referred to as the Authority) requesting for determination of individual dumping margin for the purposes of imposition of the anti dumping duties recommended by the Authority on dumped imports of Vitrified/Porcelain Tiles originating in or exported from China PR vide Final Findings Notification No 37/1/2001-DGAD 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 Sunset Review anti-dumping case and the corrigendum issued thereof dated 21st May, 2008 and levied by the Central

Government vide Notifications No Customs No. 73/2003-Customs dated 01st May, 2003 and No 82/2008-Customs dated 27th June, 2008.

3. The Act and the AD Rules made thereunder require the Authority to undertake a New Shipper Review for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation of the earlier case of anti-dumping investigation concerning imports of the subject goods from the subject country and that the applicants is / are not related to any of the exporters and producers in the exporting country who are subjected to the antidumping duty. 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 at the stage of initiation of the investigation, found it sufficient to justify the initiation of a New shipper review investigation in accordance with the provisions of Rule 22 of the AD Rules. The Authority accordingly initiated the New Shipper Review under Rule 22 of the AD Rules vide Notification No. 15/20/2011-DGAD dated 19th April, 2012.

4. 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 where the Authority vide its Final Findings Notification No 37/1/2001-DGAD 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 Sunset Review anti-dumping case and the corrigendum issued thereof dated 21st May, 2008, had, inter-alia, 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; and
- c. The injury has been caused cumulatively by the imports from the subject countries.

5. 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/ 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.

6. The Authority recommended continued imposition of antidumping duties on imports originating from China PR 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 82/2008-Customs, dated 27th June, 2008.

7. In the present Review, the Authority recommended provisional assessment on all exports of the subject goods made by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter) till this Review was completed, in accordance with the Rule 22 of the AD Rules and having regard to Notifications No. 73/2003-Customs dated 01-05-2003 and No. 82/2008-Customs dated 27th June, 2008.

8. The Ministry of Finance issued Notification No 35/2012–Customs (ADD) dated 10th July, 2012 implementing the recommendations of the Authority, which, *inter- alia*, provided that pending the outcome of the review by the Authority, all imports of vitrified/ porcelain tiles falling under Chapter 69 of the Customs Tariff Act by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter) would be subjected to provisional assessment till the review was completed.

PRODUCT UNDER CONSIDERATION & LIKE ARTICLE

9. 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.

10. The product under consideration in this investigation is Vitrified/Porcelain tiles as determined in the original investigation and the Sunset Review investigation. 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 Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation. Ltd., Hong Kong (Exporter) within the meaning of the AD Rules. In view of the foregoing, The Authority, therefore, 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.

PROCEDURE FOLLOWED IN THE INVESTIGATION

11. The procedure described below has been followed in this investigation:

- i. The period of investigation in this new shipper review investigation was from 1st January 2012 to 30th June 2012 (6 months for determination of the dumping margin).
- ii. 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, 2012 to 30th June, 2012.
- iii. The Authority sent a copy of exporter's questionnaire to M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) who had exported the subject goods to India through M/s Sheenway Corporation Ltd., Hong Kong (Exporter). The Authority also sent the market economy treatment questionnaire to M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) to elicit relevant information.
- iv. M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter) submitted the exporter's questionnaire response. M/s Foshan Qiangbiao Co. Ltd, China PR (Producer), however, did not submit the market economy treatment questionnaire response.
- v. M/s J S W Industries, Mumbai, an importer of the subject goods, also submitted importer's questionnaire response.
- vi. Copy of the Initiation Notification was also sent to the domestic producers of the subject goods in India seeking necessary information.
- vii. None of the domestic producers of the subject goods in India responded to the Initiation Notification.
- viii. The Authority provided an opportunity to applicants as also the domestic producers of the subject goods to present their views orally in an Oral Hearing held on 31st October, 2012. In the said Oral Hearing, none of representatives of the interested parties except the representatives of the applicants participated.
- ix. The Authority conducted on-the-spot verification of the data furnished by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter).

x. 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.

xi. A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 4th July, 2013. The post Disclosure Statement submissions received from the interested parties have been considered, to the extent found relevant, in this Final Findings Notification.

xii. *** in the Final Findings represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.

SUBMISSIONS MADE BY THE APPLICANTS/OTHER INTERESTED PARTIES AND EXAMINATION BY THE AUTHORITY

Submissions made by the applicants

12. The following submissions have been made by the applicant companies, i.e., M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter):

i) The two applicant companies satisfy the legal requirements for New Shipper Review under the Rules. The primary business of the producer Foshan Qiangbiao Co. Ltd, China PR is the production and sales of 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 company certifies that neither M/s Foshan Qiangbiao Co. Ltd, China PR (producer) nor any of its related organisations has exported the subject goods to India either directly or indirectly during the period of investigation of the original investigation and the sunset review investigation.

ii) Since no other interested party has attended the Oral Hearing and raised any objection within the specified time limit, the matter of new shipper review should be completed early.

iii) Details of installed capacity and the production carried out have been submitted to the Authority in Appendix 4 to the replies filed with the Authority. Further, the exports to India during the POI which is very small as the correction notification (correcting the name of the exporter applicant) was only made on 29th June, 2012 allowing very little period for exports.

iv) M/s Sheenway Corporation Ltd., Hong Kong (Exporter) has been involved in exporting many other types of goods (including electronic goods and solar panels) and that the business of tiles comprises a small part of the total business of M/s Sheenway Corporation Ltd., Hong Kong.

Submissions made by the other interested parties

13. None of the other interested parties has responded to the Initiation Notification. As mentioned above, the Authority also provided an opportunity to the applicants as also the domestic producers of the subject goods who were the applicants in the sunset review investigation to present their views orally in an Oral Hearing held on 31st October, 2012 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 parties participated in the Oral Hearing nor 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 the facts available on record.

Examination by the Authority

14. The Authority initiated the New Shipper Review keeping in view the provisions of Rule 22 of the AD Rules, which reads 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".

15. Rule 22 specifies the circumstances under which a New Shipper Review 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.

16. It is evident from the above that the intention under 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 review) investigations. The purpose of the new shipper review provision is, therefore, to provide an opportunity to such producer/exporter to claim individual dumping margin considering that these exporters have been granted residual dumping margin during the original (including the Sunset review) investigations.

17. 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 Foshan Qiangbiao Co. Ltd, China PR (Producer), and
- b) M/s Sheenway Corporation Ltd., Hong Kong (Exporter)

18. The claims with regard to eligibility of the applicants as new shipper were examined to know whether the companies had 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 companies or any of their related company(s) had not exported the product concerned to India in the investigation period of the original investigation or of SSR investigation. The companies provided certification that neither they nor any of their related exporters or producers in the exporting country exported the subject goods to India during the investigation period of the original investigation or of SSR investigation. They also certified that none of their related exporters or producers in the exporting country was subjected to anti dumping duties. The Authority also did not find any adverse material regarding their claim of being a new shipper.

19. The Authority noted that the applicant producer company M/s Foshan Qiangbiao Co. Ltd, China PR was established on 4.1.2007. The Authority noted that the primary business of the producer company M/s Foshan Qiangbiao Co. Ltd, China PR is the production and sales of

vitrified tiles. The company has two units, one for polishing of the tiles and the other for production of the biscuits. The polishing unit was set up in the year 2007 and the biscuit making unit was set up in 2010. The basic raw materials for the manufacture of tiles are sand, mud and clay. Further, some other chemicals are also added at the biscuit making stage. The biscuits are manufactured at company's unit located at Heynn, Guangdong, which are transferred to the polishing unit located at Foshan, Guangdong. The finished product is sold by the company through various channels in the domestic market as well as in the export market. There are only two promoters of the company who are private individuals, each holding shares in the ratio of ***:***. Further, the Authority also notes that the applicant exporter company M/s Sheenway Corporation, Hong Kong was incorporated on 15.5.2008. There are two promoters of the company who hold equity capital of the company in the ratio of ***:***.

METHODOLOGY FOR DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND CALCULATION OF DUMPING MARGIN

Examination by the Authority

20. 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) :*

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 transshipped 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".

21. 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 the 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. However, this is a rebuttable presumption in terms of the relevant AD Rules.

22. The AD Rules provide that the normal value concerning imports originating from a Non Market Economy (NME) countries such as China PR, shall be determined in accordance with paras 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.”

23. 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 sub-paragraph (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”.

24. The Authority, vide its letter No. 15/20/2010-DGAD dated 20.4.2011 had sent exporter’s questionnaire as well as market economy treatment (MET) questionnaire to the India based Legal Representatives of M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter). While both the applicant companies submitted the required information in the prescribed proforma, no response to the market economy questionnaire was filed by the producer company M/s Foshan Qiangbiao Co. Ltd,

China PR in the prescribed proforma in response to the letter No. 15/20/2010-DGAD dated 20.4.2011

25. The Authority, during the verification visit drew the attention of the company to the Initiation Notification No. 15/20/2011-DGAD dated 19.4.2012 and the letter No. 15/20/2010-DGAD dated 20.04.2011 addressed to the company calling for various information, in the prescribed proforma, including the questionnaire for claiming the market economy status (MET). The company representatives were specifically asked to clarify whether any claim for MET has been submitted by them post initiation of the investigation and specifically with respect to the letter dated 20.04.2011 from the Authority. In response to the same, the company admitted during the verification that they have not submitted any claim for MET in the prescribed proforma. The legal representative of the company, however, clarified that before initiation of the investigation, certain specific queries were raised by the Authority in the case and these were appropriately replied to. He further claimed that the written submissions were also filed by the company before the initiation of investigation in response to the issues raised by the Authority. At this stage, the Authority requested the company to furnish the copies of communications, if any, submitted to the Authority prior to the initiation of the investigation. However, no documents / communications in this regard could be furnished by the legal representative of the company at the time of the verification.

26. As mentioned above, no claim for market economy treatment (MET) was submitted by the company post initiation of the investigation called for by the Authority vide its letter No. 15/20/2010-DGAD dated 20.4.2011. During the visit, the company M/s Foshan Qiangbiao Co. Ltd, China PR was requested to furnish the originals of the documents in support of its various claims as per the exporter's questionnaire. The Authority examined the data and documents in respect of details of investments in land & building, investment in plant & machinery, the source of funding of business activities including sources of investment made by the company in the plant and machinery and other assets, shareholders' funds, loans and advances, domestic sales, export sales, VAT refund in respect of exports, cost and finance records, production records etc. Based on the verification of the data/information submitted by the producer company M/s Foshan Qiangbiao Co. Ltd, China PR, a detailed verification report was issued by the Authority calling for the comments of the applicant companies. The verification report, inter-alia, pointed out significant discrepancies in the data for the period of investigation with regard to grade-wise quantity of production of the subject goods; the adjustments in respect of interest cost; the adjustment in respect of opening and closing stocks of the raw materials; the non-availability of certain relevant documents in support of various claims by the producer company M/s Foshan Qiangbiao Co. Ltd, China PR etc. The producer company admitted to the discrepancies pointed out by the verification team of the Authority in its exporter's questionnaire response, in particular Annexure-V, Annexure-VI, Annexure-VII, Annexure- VIII and the Balance Sheet and Profit & Loss Account of the producer company for the period of investigation. The company admitted during the verification that the discrepancies, as pointed out by the verification team of the

Authority would require appropriate alteration/modifications in the exporter's questionnaire response. The relevant documents in this regard could not be furnished by the producer company till the conclusion of the verification. While some of these documents were submitted by the company post verification on 18th February, 2013, the other documents/record were received from the company in response to the comments on the verification report on 29.4.2013.

27. In their response to the verification report, vide their letter received by the Authority on 29.04.2013, the representatives of the applicants referred to a letter (dated 11.10.2011), addressed to the Authority whereby they claimed that upon a request from the officer in charge of the case at that time on behalf of the Authority, they had submitted the details of MET personally on 13.10.2011. Further, in their letter giving comments on the verification report received by the Authority on 29.04.2013, the representatives of the applicants also mentioned that upon their insistence to submit the formal MET questionnaire response, the officers categorically mentioned to them that as they have verified almost all the information required for MET, the company need not file the copy of the letter submitted earlier and further that the request for companies MET treatment is examined in the whole process of verification and the company need not bother in view of the fact that China as a country is being treated as Market Economy Country by India since last three years and also in the current proceedings concerning vitrified tiles. In this regard, the Authority denies the claims of the legal representatives of the applicants that during the process of verification they were assured of admission of their claim with regards to MET as the purpose of verification process is not to give any kind of assurance but to verify the information/data already filed with the Authority from the records of the applicants. The Authority further notes that the said letter which is claimed to be submitted to the then officer in charge on 13.10.2011, is neither available in the record of the Authority nor the representatives of the applicants have been able to produce any acknowledgement to that effect at the time of verification. The Authority also notes that the MET questionnaire, as sent to the applicant along with letter No. 15/20/2010-DGAD dated 20.04.2011, elicits comprehensive and positive affirmations along with the supporting evidence/documents on various parameters from the applicant company. The fact remains that in the instant case, the same has admittedly not been filed by the applicant company post initiation of the investigation and that is why the representatives of the company wanted to submit the formal MET questionnaire response during the course of verification.

28. The Authority noted that the claim for investments in plant & machinery and land & building does not tally with the submissions of the company, as per Balance Sheet as on 30th June, 2012. In this regard, the company was requested to furnish the detailed break-up of plant & machinery along with the asset schedule. The company admitted that the figures of gross investments, as per Balance Sheet do not include the value of land, as claimed in the questionnaire response. The Authority also enquired about the basis of valuation of land, the arrangement for land ownership/land usage etc. The company was requested to furnish supporting documents including the valuation report in respect of valuation of land. During the

verification, while the company admitted that the value of land as stated in the exporter's questionnaire was based on a report by M/s Qingyuan Yunlong Property Development Company Ltd., no copies of the valuation report were furnished to the Authority for verification. With regard to the capital contribution by the owners, the company only furnished a CHA certificate of capital introduction by the owners along with the capital inspection report. However, no documents/advises of the bank regarding the sources of generation of funds, the date of transfer along with the credit of the amount in the book of accounts of the company as capital contribution were furnished for verification.

29. The Authority noted that the company M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China, however, submitted the relevant data/information along with the modified appendices, after the verification visit but since this information was submitted post verification visit, the correctness of the information could not be checked and verified by the Authority.

30. On the basis of data submitted by the company, the Authority noted that during the period of investigation, the producer company reported a total sale of 706,194.36 sq meters of tiles of different sizes in the domestic market.

31. The Authority notes that the questionnaire response was filed by the applicants, namely, M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR and M/s Sheenway Corporation Ltd., Hong Kong, (Exporter). During the investigation period, the subject goods exported to India were produced by M/s Foshan Qiangbiao Ceramic Co. Ltd., which have been exported by M/s Sheenway Corporation Ltd., Hong Kong to India. The Authority noted during the verification visit that while M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR is producing the subject goods, the company does not have any license for export outside China PR. However, the company has substantial quantities of exports to third countries. The company has also exported small quantities of subject goods to India both in the POI as well as before the POI. The company was requested to clarify the mechanism for export of the goods outside China PR, particularly when the company has no export license in its own name. In response to the query, the company submitted a letter dated 29th January, 2013, and clarified as under:

"M/S Foshan Qiangbiao Ceramic Co. Limited, Foshan, China PR, (hereafter referred to as the " producer") does not have an export license of it's own in China as the qualifying amount of equity share capital required to hold export license in China is RMB 10 million, where as the equity share capital of the producer is much lower than the qualifying amount. Therefore, to execute the export orders from China it needs an agent/trader holding export license who undertakes the documents handling and does the complete custom documentation and uses his export license in CHINA PR. Hence, to effect the exports from China PR, the producer is needed to appoint an agent with license to export from China and thus, it made an arrangement with M/S Foshan Hongligao Trade Co Limited, China PR who holds export license as

facilitation and handling agent for facilitating the exports to India made by Sheenway Corporation on behalf of M/S Foshan QiangBiao Ceramic Co Limited, Foshan, China PR . M/S Foshan Hongligao Trade Co Limited, China PR has been appointed to undertake the clearing and forwarding tasks for completing the exports to India.

M/S Sheenway Corporation Limited, Hong Kong which is in a different custom territory and also can not hold the export license in China PR. However, as the producer's prices are Ex-Factory, the entire handling, freight and port handling charges are to be borne by Exporter or the importer in India which are added up by M/S Sheenway Corporation Limited, Hong Kong and is considered in Export prices along with it's margin.

Needless to say that the handling charges paid by M/S Sheenway Corporation Ltd., Hong Kong are port handling charges whereas the handling charges paid to M/S Foshan Hongligao Trade Co Limited, China PR are for their customs document handling etc”.

32. According to the Authority, in view of the submissions made by the company as above, M/s Foshan Hongligao Trade Co Ltd., being the holder of export license is the actual exporter in the present case whereas no exporter response has been filed by the said company. This is particularly so when there are export documents including the payment receipts from Sheenway Corporation, Hong Kong in the name of the said license holder. Therefore, the complete channel for export in the present case would be M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR (Producer) to M/s Foshan Hongligao Trade Co Ltd., China PR (exporter) to M/s Sheenway Corporation Ltd., Hong Kong (Trader/Exporter). Further, the Authority notes that at the time of filing the petition before the Authority for initiation of the New Shipper Review investigation, both the producer M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR and M/s Sheenway Corporation Ltd., Hong Kong (Trader/Exporter) knew that M/s Foshan Hongligao Trade Co Ltd is the holder of export license in China for the exports out of China PR made on behalf of M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan and that the complete channel for export in the present case is M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR (Producer) to M/s Foshan Hongligao Trade Co Ltd., China PR (exporter) to M/s Sheenway Corporation Ltd., Hong Kong (Trader/Exporter).

33. On the request of the Authority during the verification visit, the company submitted a copy of the export license issued in favour of M/s Foshan Hongligao Trade Co Ltd. The Authority pointed out during the verification that the VAT paid on inputs is recovered on export sales and the refunds are received by the exporter. Therefore, the Authority requested the company to furnish the details of actual refund received in respect of exports. In response thereto, it was clarified by the legal representatives of the company that in their submissions in the exporter questionnaire, the invoice value has been reflected net of VAT and, therefore, the entire amount of VAT paid on the inputs has been deducted from the export price. However, the

Authority notes that in the absence of the exporter questionnaire filed by M/s Foshan Hongligao Trade Co Ltd., neither the ownership of this exporting company nor the details of actual amount of VAT refund received and adjustable in respect of actual expenses incurred by the exporting company from the export price as also its relationship with the applicants M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR and M/s Sheenway Corporation Ltd., Hong Kong, could be verified.

POST DISCLOSURE STATEMENT SUBMISSIONS

34. The following in brief are the post Disclosure Statement submissions made by the applicants:

i. The market economy questionnaire, claimed to have been sent by the Authority was never attached/sent with the letter dated 20.4.2011, perhaps since the required information in the matter was already submitted to the Authority on 13th October 2011. The verification officers had assured at the time of verification that they have verified all the information required for market economy treatment and collected desired evidences and that in the present case China has been considered a Market Economy. The relevant documents were again submitted to the Authorities in the comments to verification report on April 26, 2013.

ii. The observation that biscuit factory was established in 2007 and polishing in 2010 is also factually incorrect as the polishing factory was established in 2007 and biscuit factory in 2010.

iii. The revised Annexures including the revised P & L Account and Balance Sheet and the Annexure V, VI, VII,& VIII for the IP period and all annexures I to IX were checked by the verification officers with evidences and left by them to the company for signatures and sending them through courier to the Authority. These papers were duly mailed within 2 days of the officers resuming the office after verification and the hand copy was received by the office on 7th February, 2013.

iv. M/s Foshan Hongligao Trade Co. Ltd, China PR, is merely an agent of producer M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR and not an exporter as inferred erroneously contrary to facts by the Authority. M/s Foshan Hongligao Trade Co Ltd, China PR (HLG) was only facilitating the documentation handling and custom documentation for M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR. The Authority had verified the commission received by HLG from the books of M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR and the amount of VAT paid by the producer M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR. The export price to India is driven from the invoices raised by Sheenway and the adjustment for expenses and VAT refunded to the agent has already been made in the responses filed by M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR.

v. It is customary for the authorities to request the delivery of all additional documents after authentication within reasonable time after the verification. At the request of the verification

officers, our clients had sent the documents mentioned in the disclosure document on February 6, 2013 and these were duly received by the authorities on February 7, 2013.

vi. The Authority has not adhered to the timelines of completion of the new shipper review as laid down under the WTO Anti Dumping Agreement.

Examination by the Authority

35. The Authority notes that most of the post Disclosure Statement submissions made by the applicants are repetitive in nature and have already been dealt with in the Disclosure Statement and are again addressed to in this Final Findings Notification to the extent found relevant to the investigation under the appropriate headings. The Authority has examined the submissions as under:

i. With regard to the claim that the questionnaire for claiming the market economy status (MET) was never sent to the legal representatives of the applicants is totally wrong as borne out of the letter No.15/20/2010-DGAD dated 20.04.2011 addressed to the company calling for various information, in the prescribed proforma, including the questionnaire for claiming the market economy treatment (MET). Further, the claim of the applicants that all requisite information pertaining to grant of the MET status were submitted to the Authority on 13.10.2011 is based on a copy of the acknowledgement receipt of the visit. This receipt only shows that they met the then concerned official. The applicants have not given any documentary evidence whatsoever that the MET Questionnaire was also submitted. The applicants have admitted that no MET Questionnaire was submitted in response to Authority's letter dated 20.04.2011.

ii. With regard to the claim that during the verification visit to Foshan, the verification officers categorically assured the company that they have verified all the information required for MET and collected desired evidence and China has been treated as a Market Economy Country in this investigation, the Authority reiterates that their claim with regards to MET are completely false and misleading as the purpose of verification process is not to give any kind of assurance but to verify the information/data already filed with the Authority from the records of the applicants. The factual position in this regard is reflected in the verification report issued by the Authority subsequent to the verification visit.

iii. The fact that the polishing unit was set up in 2007 and the biscuit making unit was set up in 2010 is taken note of and accepted.

iv. With regard to the claim of the company that during the verification visit, the Annexures pertaining to P & L Account and Balance Sheet and other Annexures in which significant discrepancies were pointed out by the verification team of the Authority, were revised and checked by the verification team is completely false. The company, during the verification, had not only admitted about the discrepancies but also the fact that the same would require

appropriate alteration/modifications in the exporter's questionnaire response. The discrepancies noted during the verification visit were admitted to be significant. The relevant documents in this regard could not be furnished by the producer company till the conclusion of the verification. While some of these documents were submitted by the company post verification, other documents/records were received from the company in their response to the verification report on 29.4.2013. Further, with regard to the request of the applicant that the revised documents submitted after the verification visit be accepted by the Authority, the Authority notes that it cannot accept such documents since the correctness of the information/data could not be checked and verified by the Authority.

v. With regard to the claim of the company that M/s Foshan Hongligao Trade Co Ltd., China PR was only a facilitating the documentation handling and customs documentation for M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR, and not the actual exporter from China PR as determined by the Authority, the Authority notes that this is an admitted fact that M/s Foshan Qiangbiao Ceramic Co. Ltd Foshan, China PR, the holder of export license in this review and the Authority reiterates that M/s Foshan Hongligao Trade Co Ltd., China PR, being the holder of export license, is the actual exporter in the present case and this is particularly so when there are export documents including the payment receipts from Sheenway Corporation, Hong Kong in the name of the said license holder. Thus, the complete channel for export in the present case is M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR (producer) to M/s Foshan Hongligao Trade Co Ltd., China PR (exporter) to M/s Sheenway Corporation Ltd., Hong Kong (trader/exporter).

vi. With regard to the claim of the company that the Authority has not adhered to the timeliness of completion of the New Shipper Review, the Authority notes that the subject investigation has been concluded by the Authority in terms of provisions of Anti Dumping Rules.

Conclusion and Recommendations

36. After examining the submissions made by the applicants and issues raised therein; and considering the facts available on record, the Authority recommends as under:

i. No individual dumping margin is recommended by the Authority in respect of exports of Vitrified / Porcelain tiles falling under Chapter 69 of the Customs Tariff Act, 1975 originated in or exported from China PR made to India by M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong.

ii. The Authority had earlier recommended provisional assessment on all exports of the subject goods made by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter) till this Review was completed, in

accordance with the Rule 22 of the AD Rules and having regard to Notifications No. 73/2003-Customs dated 01-05-2003 and No. 82/2008-Customs dated 27th June, 2008. The provisions of Rule 22 of the AD Rules, 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".

iii. The Ministry of Finance issued Notification No 35/2012–Customs (ADD) dated 10th July, 2012 implementing the recommendations of the Authority, which, *inter- alia*, provided that pending the outcome of the review by the Authority, all imports of vitrified porcelain tiles falling under Chapter 69 of the Customs Tariff Act by M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong (Exporter) would be subjected to provisional assessment till the review was completed.

iv. In view of the conclusion by the Authority that no individual dumping margin is justified in respect of exports of Vitrified Tiles made to India by M/s Foshan Qiangbiao Ceramic Co. Ltd, Foshan, China PR (Producer) through M/s Sheenway Corporation Ltd., Hong Kong, the Authority further recommends that M/s Foshan Qiangbiao Co. Ltd, China PR (Producer) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter) shall be liable for payment of the residual rate of duty in Indian rupees at the rate of Rs 155 per square meter as applicable vide

Notifications No 82/2008-Customs dated 27th June, 2008 in respect of exports of Vitrified / Porcelain tiles falling under Chapter 69 of the Customs Tariff Act, 1975 originated in or exported from China PR.

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

(J S Deepak)
Designated Authority