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

NEW SHIPPER REVIEW NOTIFICATION

FINAL FINDINGS

New Delhi, the 27th February 2009

Subject: New Shipper Review (under Rule 22) of Anti-Dumping duty imposed on imports of Vitrified/Porcelain Tiles requested by Guangdong Monalisa Ceramic Co. Ltd.(Producer) and Foshan Monalisa Industry Co. Ltd (Exporter) through Avacorp, Hong Kong (Exporter).

No. 15/10/2006-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof,

PROCEDURE:-

The procedure described below has been followed.

- 1 M/s Guangdong Monalisa Ceramic Co. Limited, Foshan, China PR, the producer and Foshan Monalisa Industry Co. Limited the exporter, filed an application and requested the Designated Authority for determination of individual dumping margin under Rule 22 of the Rules and to initiate a 'new Shipper' review of notification no 37/1/2001 dated 4.2.2003.
2. The applicants claimed that they are 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 have not exported the product concerned during the period of investigation of original investigation. The Authority prima facie examined the information submitted by the applicants and considered sufficient to justify the initiation of a new shipper review investigation in accordance with the provisions of Rule 22 of Anti Dumping Rules.

3. The Designated Authority initiated the New Shipper Review on the basis of request made by Guangdong Monalisa Ceramic Co. Limited, and Foshan Monalisa Industry Co. Limited, under Rule 22 vide notification no. No.15/10/2006-DGAD dated 31st January,2007. A corrigendum to the initiation notification was issued on 22nd March,2007 incorporating the name of the Hong Kong based Exporter, Avacorp, .

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 and UAE where the Designated Authority vide its final finding no. 37/1/2001-DGAD dated 04.02.2003 had come to conclusion that

- (i) Vitrified/ Porcelain Tiles have been exported to India from UAE and China PR below its normal value resulting in dumping;
- (ii) The Indian industry has suffered material injury;
- (iii) The injury has been caused cumulatively by the imports from the subject counties.

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 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;

6. The Authority recommended provisional assessment of all exports of Vitrified / porcelain tiles by M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR through Foshan Monalisa Industry Company Limited and through Avacorp, Hong Kong till the completion of the review initiated in accordance to the Rule 22 of Indian Anti Dumping Rules and having regard to the Notification no.73/2003-Cus dated 1.5.2003;

7. The Ministry of Finance issued notification on 9th March, 2007 implementing the decision of the Designated Authority vide notification No-38/2007-Customs, which was subsequently amended vide notification No-60/2007-Customs dated 30th April, 2007 which inter-alia provided that pending the outcome of the review by the Designated Authority, all imports of vitrified/ porcelain tiles other than vitrified industrial tiles falling under Chapter 69 of the Customs Tariff Act by M/s. Guangdong Monalisa Ceramic Co Limited, Foshan , China PR through Foshan Monalisa Industry Company Limited and through Avacorp, Hong Kong would be subjected to provisional assessment till the review was completed.

8. The Authority sent a copy of exporter questionnaire and market economy questionnaire to the applicant to elicit relevant information. The Authority sought and verified all information it deemed necessary for the purpose of determination of dumping margin. The Authority conducted on-the-spot verification of the data furnished by M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR (Producer), Foshan Monalisa Industry Company Limited, China P.R. (Exporter) and M/s Avacorp, Hong Kong (Exporter).

9. The period of investigation in this new shipper review investigation is 1st February,2007 to 31st July,2007 – 6 months for dumping margin determination.

10. The Authority officially intimated the authorities of the exporting countries of 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 Feb 07 – 31st July 07.

11. The Authority provided an opportunity to all the interested parties to present their views orally in the public hearing held on 3rd June, 2008. All parties who attended the hearing and presented the views orally were requested to file written submissions. The parties were also advised to collect copies of the views expressed by the opposing parties in their submissions and offer rejoinders, if any.

12. Subsequent to the public hearing domestic industry filed their comments and the same was exchanged with the applicant.

13. 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.

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

Product under Consideration

15. The product under consideration in the original investigation and sunset review is “Unglazed tiles in polished or unpolished finish and

Glazed Porcelain / Ceramic tiles both with less than 3% water absorption (commonly known as Vitrified Tiles / Porcelain Tiles)” (also referred to as 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 subject goods are classified within chapter heading 69. The classification is, however, indicative and in no way binding on the scope of the present investigations.

16. The product under consideration in this investigation is a Vitrified/Porcelain tile as determined in the original case, i.e, “vitrified/porcelain tiles”. There is no argument made by any of the interested parties 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. Guangdong Monalisa Ceramic Co. Limited, Foshan, China PR (Producer) , Foshan Monalsia Industry Company Limited, China P.R. (Exporter) and M/s Avacorp, Hong Kong (Exporter).within the meaning of the Rules. In view of the foregoing, the Authority holds that product under consideration in the present investigations is the same as considered in the original 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

17. **View of the Applicants: -**

(a) The applicant had earlier presented a paper book at the time of oral hearing. The paper book may kindly be considered as an integral part of the present submissions. The information in the paper book is referred to and relied upon for the purpose of the present submissions.

(b) Role of Indian producers in a new shipper review is extremely limited, given that the purpose of review investigation is quite limited. Applicants refer to the practice of the EC, where first opportunity to the EC domestic industry was provided at the stage of disclosure statement.

(c) The Applicants are entitled to determination of separate anti dumping margin under the provisions relating to new shipper review. The applicants or any of their related companies have not exported the subject goods during the period of original investigation. Unambiguous declaration was made by the applicants in this regard. The company was not limited to applicant companies, but extended to all their group companies.

(d) The petitioner earlier submitted that they had not exported the product to India during the period of investigation of the original investigation nor any of the applicant companies were related to any of the exporter or producers in the exporting country who had exported in that period.

(e) The applicant received a letter dated 10th March 2008 stating that a complaint has been made claiming that M/s Nanhai City Qiaodong Ceramics Co. Ltd. (Monalisa) has exported the subject goods during the original period of investigation through a trader in Hong Kong. The matter was re-examined by the applicant companies and it was found that there were indeed no exports made by the company either directly or through a trader in Hong Kong.

(f) The applicant considers that the Authority holds a bogus complaint has been made by some party with vested/ ulterior interests. It is evident that several parties have vested interests. The Authority may kindly ignore such bogus complaints. In any case, the applicants reiterate their willingness to provide any specific documents, which the designated authority required in this connection.

(g) Even though no arguments have been made by any party, the applicant submits that the Hon'ble High court has vide their decision dated 14th May 2008 upheld the views of the Designated Authority with regard to prospective period of investigation, disagreeing with the views of Hon'ble CESTAT in this regard. Further, Designated Authority has filed an SLP against the order of the Hon'ble CESTAT. In any case, the argument of HRJ in this regard has remained unsubstantiated inspite of so many new shipper review cases and the fact that significant volumes have been imported into India after previous exemptions granted by the Designated Authority.

18. **Views of H. R. Johnson, a domestic industry**

- a. The domestic industry has submitted that the excessive confidentiality has been claimed on certain documents and no reasons provided as to why the information on which confidentiality has been claimed and apparently allowed was not susceptible to summarization. The applicants have claimed the following as confidential, which prevented the DI from filing proper submission:
 - i. Application with all annexures seeking New Shipper Review initiation;
 - ii. Various letters possibly filed in 2006;

- iii. Any other letters issued by the Designated Authority and response if any received from the new shipper.
- b. The Authority does not inform the DI in time that the authorization letter for the APJ-SLG was not on record. If we were informed in time, a situation will be avoided where we could not make any submission during the hearing.
- c. The amendment to initiation notification was bad as full documentation of contractual arrangement and fresh declaration of relationship was not made.
- d. No details provided regarding the exports by the new shipper prior and after the amendment initiation notification.
- e. Has the designated authority called upon the importers to file his questionnaire response to cross check information filed by the new shippers and has the import statistics have been called from Customs to cross check prices actually declared to Customs.
- f. The period of investigation chosen for sunset review was larger than the present new shipper review. In such circumstances, no purpose could have been achieved by grant of individual dumping margin, as the new shipper would have been under an obligation to participate in sunset review proceeding to claim his fresh individual dumping margin. The period of investigation chosen for this investigation could have been covered along with the period of investigation of sunset review. We are not in position to appreciate the reasons for grant of such special status to the present new shippers.
- g. The initial declarations about pre-conditions for initiation of new shipper investigation were wrong and misleading and material information having a direct bearing on the maintainability of the present proceedings has been suppressed from the authority.
- h. New shippers have got the initiation done by mis-declarations and falsification of records and withholding of material information, which would have had a direct bearing on the determination of the Designated Authority for initiation of the present case.
- i. By granting the prospective period of investigation, the present initiation is contrary to Rule 22 and against the principles of judicial discipline and doctrine of precedents.
- j. The new shippers from China are operating as a group under other names and have more than one factory disclosed in the present questionnaire response. The authority has been misled about their manufacturing operations of subject and non-subject goods.
- k. Our intelligence and other information from China indicate that the producer does not operate under the name for which it is seeking new shipper review.
- l. As per the website, the producer has claimed itself to be manufacturer and exporter set up in 1992 while in response they have claimed that they have no exports. No disclosure of set-up date provided to the interested

- parties. The relevant details may be obtained for examination of pre-condition of Rule 22 and Para 7 of Annexure – 1 of the Rules.
- m. The exporter from Hong Kong while filing questionnaire response mis-declared their address. We have specific information that another company in operating from the same premises and this entity has the same telephone numbers. The relationship with this company has not been disclosed. They even not mentioned as to what business they are engaged in as even after filing of the questionnaire response it is not clear what role they play and who compensate them.
- n. Since the applicants have not come before the authority with clean hands and with some ulterior intentions, the present case deserves to be terminated at this stage itself. They also failed to satisfy the preconditions required to be satisfied before initiation of the case as no declaration has been filed as required under Rule 22.
- o. Conditions of Rule 22 not satisfied: There was no material before the Hon'ble Designated Authority to even prima facie satisfy itself that the pre-condition for new shipper review were duly satisfied.
- p. The common questionnaire response filed by the new shippers review is grossly inadequate and unsubstantiated due to the following:
- Mandatory certification of information contained in the questionnaire response not filed.
 - Excess confidentiality claimed.
 - List of shareholders kept confidential without stating reasons.
 - Claim that the goods produced or sold in the domestic market remains unsubstantiated.
 - The producer has not placed any evidence in support of their claim that there is no difference between the goods exported to India and to other countries.
 - They ought to have provided grade-wise information without which no proper comparison can be undertaken by the authority.
 - No details about the trading arrangements are disclosed.
 - NCV of details of exports to India not provided.
 - Catalogues & brochures issued by the company not provided.
 - No details about channel of distribution by two exporters are provided in the home market.
 - Each of the new shipper has not provided negotiation process in home market and export to India. It is not clear whether Hong Kong is only a commission agent or there is a sale between the Hong Kong entity and the Indian customer. The financial flow is also not clear.
 - NCV of complete set of documents generated/ received in case of sales in home market and export to India not provided.
 - The question on availability of price list not answered.
 - Appendices 1 & 2, 2A, 2B, 3, 3A, 3B & 3C not available with the questionnaire.
 - No response filed to the question that whether exporter from Hong Kong is selling subject goods in Hong Kong.

- Answers to questions under Section C are misleading.
- Table relating to Investments has been claimed confidential and no NCV has been filed.
- Reasons for claiming confidentiality on balance sheet are not disclosed. NCV of the balance sheet is also not filed.
- Information on statutory regulations also not disclosed.
- By mentioning that Hong Kong Company follows Chinese GAAP, exporters have made mockery of the system of filling of questionnaire response.
- The same response to question 7 Section E has been given for trading and producing company leading to absurd conclusions.
- A copy of annexure showing the manufacturing process & production flow chart not provided despite the fact that the same is not claimed confidential.
- Annexure 5, 7, 8, 8A, 8B & 8C not attached to the response though no confidentiality has been claimed on them.
- The full information regarding the inputs and production of the company not disclosed.
- No confidentiality has been claimed on the trading and Profit & Loss Account and balance sheet/ annual reports/ directors report but the same are not attached.
- No response has been filed to Section K.
- q. The producer could have provided certificate of incorporation and certificate of commencement of business in support of its claim at the time of making the application to substantiate what was stated in the application.
- r. Producer has not stated that whether it is the new plant or has been an old plant taken over from a producer who was subject to the original dues. It is very important in view of the fact that the new shipper review is initiated only for the new exporter but not the exporter who were party to the original investigation or exported the subject goods in the period of investigation of the original investigation or were subject to original duties. The mere change in name and legal status does not entitle a person to be eligible for a new shipper review.
- s. Our web research shows that the new shipper were in existence even prior to initiation of the original investigation.
- t. The name of the importer in India or his details was not disclosed for the authority to cross check such claims made in the Application seeking new shipper review.
- u. No indication about the quantities proposed to be exported was provided for the authority to examine whether such applicants were serious players in this business or were merely looking the ways and means for circumvention of duties already imposed.
- v. In terms of Rule 22, only the exporter from exporting country in question can request for the separate determination of dumping margin. The

combination determination for more than one entity is not envisaged under the rules.

- w. Rule 22 has been abused.
- x. As per Rule 22, a case for new shipper review cannot be initiated each time an application is received from a new shipper. It may be noted that the authority may decide to initiate cases for new shippers annually or semi-annually or based on a periodical basis fixed by the authority. The term 'periodical' has been used by the Legislature in contrast to 'promptly'.
- y. We are not commenting on the NME response and other information, as they cannot be granted individual treatment.
- z. The new shippers have claimed excessive confidentiality in their common response. The new shippers have not disclosed the reasons for such claims of confidentiality on almost all documents. There are also no reasons provided as to why the information on which confidentiality has been claimed and apparently allowed in not susceptible to summarization.
- aa. The proceedings are hence without jurisdiction and must be terminated at the earliest.
- bb. In their rejoinder submissions, the domestic industry has mentioned that written submissions of the applicants are undated.
- cc. In their rejoinder submissions the domestic industry has again reiterated the views as stated by them in written submission, as summarized below:
 - i. Present initiation is contrary to requirements of rule 22 and bad in law.
 - ii. Since no submissions are made by the applicants in support of its case to be granted the benefit of Rule 22 or for grant of MET, we are not in a position to file any meaningful submissions.
 - iii. The new shippers have not given a declaration that they are not related to any exporters or producers in China who are subject to the anti-dumping duty. The designated authority was mis-led while seeking present initiation by filing false and mis-leading declarations. The designated authority must in addition to pre-condition of Rule 22 examine whether there is any circumvention being attempted under the guise of Rule 22.
 - iv. The present exporter and the producer in China are being controlled by other entities who are subject to duties and such relationship has been suppressed from the Authority. Our research shows that there is enough material to indicate that the present entities have been created only to circumvent the anti-dumping duties.
 - v. Any proceeding under Rule 22 has to establish itself as an exporter before he can seek an individual dumping margin. Any proceeding under Rule 22 which is based on a prospective period of investigation is contrary to Rule 22 as per the ruling of the Hon'ble Tribunal.

- vi. We had sought information/ documents/ data in our letter dated 4.6.08 and written submission dated 9.6.08. The same have not yet been provided to us.
- vii. Following additional documents referred to in the written submissions of the new shipper may also be provided:
 - Paper book presented at the time of oral hearing.
 - Letter dated 10.3.08 and copy of complaint received by DA.
 - Letter dated 25.3.08 together with annexures.
 - Letter dated 5.4.08 giving factual position.
- viii. The para-wise preliminary rejoinder to written submissions of the new shippers are as under:
 - i. In para 2, there is some reference to petition filed earlier, a copy of which have not been provided.
 - ii. The request and communication which necessitated issue of amendment notification are also not provided to us.
 - iii. The present authorized representative was telephonically called upon to attend the hearing when the hearing was already going on. Under such circumstances, we could not make any submissions during the hearing.
- a. The new shipper have prayed for treating paper book presented during hearing as integral part of the present submissions. Without prejudice, to submissions made in this para we submit that since the paper book has not been provided or attached with the present submissions, the same cannot be treated as integral part of present submissions.
- b. The oral submissions made on the paper book handed over to the designated authority cannot be taken into consideration and ought to be rejected.
- c. No notice of hearing or notice of initiation was send to any of the domestic producer.
- d. The group has many entities operating under different names according to web prints. They have not approached the Designated authority with clean hands as apparently the sole object is to circumvent duties by withholding material information.
- e. The documents relating to the complaint received by the Authority claiming that M/s Nanhai City Qiaodong Ceramics Co. Ltd. (Monalisa) has exported the subject goods during the original POI. This entity has also not been called upon to file its export data duly certified for the authority to examine whether there was any export by them to India during the original period of investigation.
- f. The applicant new shipper has to establish before the authority that it has made previous exports and such exports had been made at prices which were above the normal value. If the period chosen for investigation is a prospective period it is open to the new shipper applicant to manipulate

- his prices which will be the basis of the investigation and which would lead to erroneous conclusion of non-dumping.
- g. It is wrong and denied that the Hon'ble High Court has vide decision dated 14.5.08 upheld the views of the Designated Authority with regard to prospective period of investigation by disagreeing with the views of Hon'ble CESTAT. The observation made in interim order of Hon'ble Delhi High Court clearly goes to show that the observations made in the interim order were on a prima facie basis.
 - h. The DA is bound by CESTAT decision in H&R Johnson (India) Vs. DA. The Hon'ble High Court has not set aside the same and hence the same holds the field till such time the same is either stayed or set aside by the Hon'ble Supreme Court.
 - i. The applications filed by the applicant bringing out the grounds under which the applicants have sought new shipper review are not available in the public file and have not been provided to us.
 - j. The basis on which market economy treatment has been claimed by the new shipper has not been stated in the submissions made by the new shipper. The exchange rate in China is controlled by the Chinese Govt. and is admittedly kept at an artificial controlled level. The evidences indicates that manipulation of the currency by the Chinese authorities distorts the complete market dynamics of carrying out transactions at fair values based on commercial principles. The authority could not have examined state ownership for group companies for whom no information has been filed.
 - k. The DA may at the earliest issue final finding terminating the investigation in view of our submissions and withdraw the exemptions granted to the new shippers.
 - l. We once again request the Designated Authority to seek import data from customs for the original period of investigation with names of all exporters and also import data for the present new shippers for the period of investigation fixed for the present proceedings.
 - m. No data duly certified has been submitted by admittedly related companies about when they were set up and their total exports countrywise. In absence of which the authority cannot examine and reach a conclusion that none of the affiliates have directly or indirectly exported the subject goods during the original investigation. The accuracy of the information has not been examined in terms of requirements of Rule 8. Evolution of entity from Hong Kong entity is also suspect.
 - n. The DA cannot grant any individual normal value in view of the interpretation resorted to by the DA subsequent to the case of Reliance Industries Vs. Designated Authority.
 - o. We also pray that a copy of rejoinder submissions filed by the new shippers may be provided to us to be in a position to file effective comments to disclosure statement which is likely to be issued. Without prejudice to the above, we also request the authority to kindly provide us

verification report and seek our comments before proceeding further with the investigation.

- p. In the present case, Monalisa Industry Co. Ltd. is listed as a producer of subject goods on a Ministry of Commerce web site a fact that has been suppressed from the DA. We are confident that the Hon'ble DA would not let such conduct be rewarded.
- q. We noticed that the DA takes on record new responses and entirely new information during the verification or after oral hearing. This deprives the interested parties an effective opportunity as contemplated under the law.
- r. In the aforementioned circumstances, it is requested that the exemption granted to Applicants may be withdrawn immediately and they may be compelled to pay the anti-dumping duties otherwise applicable to all other non-cooperative exporters from China. Strict action may also be taken against the importers in India for being party to such serious fraud on the revenue and a cause of serious injury to the domestic industry.

19. **Views of Builders' Association of India**

The Builders' Association of India made the following written submissions:

- a. Uniform reference price can't be arrived at for all vitrified tiles which can be quite dissimilar to each other on various counts – sizes, design, method of decoration, etc.
- b. It would be uncalled for to club together different grades and types of vitrified tiles and then establish a benchmark reference price common to all of them.
- c. The first and foremost requirement is the identification of different varieties/ types of vitrified tiles being manufactured within and imported into the country and then to do an analysis of dumping, injury and causal link for similar varieties. By ignoring this basic factor, the entire process itself has been distorted at the very outset and the findings, therefore, lead to incorrect and illogical conclusions.
- d. Domestic manufacturers have themselves admitted, during 2002-03 that their sales' volume as well as realizations have gone up. If it is so, how can they claim to have suffered injury on account of imports?
- e. The availability of imported products has been a boon to the Indian consumers and has played a role in substantially expanding the market for vitrified tiles.
- f. Rather spending considerable time and efforts seeking undue and undeserved protection from natural market forces, local manufacturers would do better to utilize their energies in becoming more efficient producers and marketers.
- g. The imposition of anti-dumping or any other protectionist duties would be a retrograde step and we would continue to

express our opposition to such a move, unless and until some of the basic issues raised above have been duly considered and suitably addressed.

Examination by the Authority

20. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

“Rule 22: (1) 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”.

21. Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating 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.

22. 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 Designated Authority could not have determined dumping margin in respect of their exports at the time of original investigations. The purpose of the new shipper review provision is therefore to provide an opportunity to such an exporter to claim their own dumping margin considering that these exporters have been granted residual dumping margin during the original investigations.

23. In the instant case, the following applicants made the application for new shipper review:

- i) Guangdong Monalisa Ceramic Co., Ltd. (Producer)
- ii) Foshan Monalisa Industry Co., Ltd. (Exporter)
- iii) Avacorp, Hong Kong (Exporter)

(a) In their application, the applicants made, inter-alia, the following claims: -

- (a) That the applicants had not exported the material during the period of original investigation;
- (b) That the applicants were not related to any exporter or producer who had exported during the period of original investigations.

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

25. During the course of investigation, it has been observed that M/s. Guangdong Monalisa Ceramics Company Limited is related to M/s Nanhai City Qiaodang Ceramics Co. Ltd. it was stated that M/s. Nanhai City Qiaodang Ceramics Co. Limited was a State owned Company, producing Vitrified Tiles and other tiles. The company was purchased by the management of M/s. Guangdong Monalisa Ceramics Company Limited, a company established in Oct., 1998. However, the production and sale was brought under the books of Guangdong Monalisa Ceramics w.e.f. January, 2002. Between Oct., 1998 and January, 2002, the production and sales of subject goods were being accounted for in Nanhai City Qiaodang Ceramics Co. Ltd. In support of statement of the company, the copies of relevant documents are submitted by the applicant:

26. Claims with regard to eligibility of the applicant as a new shipper were examined whether the company has directly or indirectly exported the product to India in the original 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. It was stated that for exporting any product from China, a customs registration is required. This customs registration was not available with the applicants or any of its related entities in the entire group. The applicants were asked to show all sales invoices for the original POI and VAT return for each of the month of POI. The material did not show that either the applicant company or Nanhai City Qiaodong Ceramics Co. Ltd had any exports to India during this period. The applicant provided VAT return for each of the months of the POI, which also did not show any sale without VAT payment or any sale where the company obtained VAT rebate. In particular, it was shown that the VAT Return provides for reporting (a) export goods free of tax sales amount, (b) VAT on exports. It was shown that the amounts in these columns for all the months of the POI were nil, thus indicating that Nanhai City Qiaodong Ceramics Co. Ltd had no exports during the period of original POI.

Other Issues

27. With regard to various procedural issues raised by HR Johnson, the Authority notes as follows:

- i. The Authority has informed the M/s H&R Johnson, domestic producer on record regarding the initiation and public hearing. The Authority is however under no obligation to inform any consultancy firm about the case proceedings. The Authority further notes that authorization was filed by APJ-SLG subsequently.
- ii. The Authority collected all the relevant information considered necessary for the investigation.
- iii. With regard to the Indian importer, it is noted that details of imports made by the importer during the POI were provided on confidential basis. The Authority has allowed confidentiality of the same, considering that this constitutes business sensitive information.
- iv. The domestic industry has submitted that in the circumstances of the period of investigation chosen for sunset review was larger than the

present new shipper review, no purpose could have been achieved by grant of individual dumping margin, as the new shipper would have been under an obligation to participate in sunset review proceeding to claim his fresh individual dumping margin. They further stated that the period of investigation chosen for this investigation could have been covered along with the period of investigation of sunset review and therefore we are not in position to appreciate the reasons for grant of such special status to the present new shippers. Authority notes that NSR was initiated prior to initiation of sunset review. It has also been noted that POI for NSR was different and for subsequent period than that of SSR.

- v. The domestic industry has not provided any material evidence in support of their statement that initial declarations about pre-conditions for initiation of new shipper investigation were wrong and misleading and material information having a direct bearing on the maintainability of the present proceedings has been suppressed from the authority.
- vi. There is no basis on the allegation that the fixation of prospective period of investigation provides an opportunity to an exporter to plan their normal value or export price. No evidence has been provided establishing that either the normal value or the export price was doctored in any manner. In this regard, Hon'ble High Court in its decision dated 14th May 2008, while disposing off writ petition opined that the language and intention of rule 22 of the Anti-dumping rules does no prima facie, support the conclusion arrived at by the Tribunal. However, the Designated Authority has filed an SLP against the orders of Hon'ble CESTAT on the issue of prospective period of investigation.
- vii. The applicants provided business license of the applicants, i.e., M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR (Producer) , Foshan Monalsia Industry Company Limited, China P.R. (Exporter) and M/s Avacorp, Hong Kong (Exporter) before initiation of investigation (as amended) and the information has in no way established that the initiation or investigation is vitiated.
- viii. The Authority notes that the Authority has prima facie satisfied itself with the fact that the applicants satisfied the contentions laid down under Rule 22 before initiating the new shipper review investigations. The detailed investigations have been carried out after initiation in order to establish whether the applicants fully satisfied the requirement laid down under rule 22 and to determine the individual dumping margins.

- ix. The investigation has shown that old company had been acquired. the Authority has not found any evidence that there have been any exports by the old entities during the original period of investigation.
- x. With regards the submissions made in respect of Hong Kong exporter, the Authority has noted that there are other companies also operating at the same premises.
- xi With regards to the issue that no indication about the quantity proposed to be exported was provided to the Authority, it is noted that there is no requirement to pre-decide the volume of exports proposed to be made by the applicants.
- xii As regards the argument that the Authority is required to conduct periodic reviews, the Authority notes that the CESTAT has already decided this issue.
- xiii With regards to any possible departure of new shipper review under rule 22 from WTO Agreement, the Authority does not consider that there is any conscious and serious departure from the WTO Agreement with regard to new shipper review investigations in the Indian law.
- xiv With regard to the argument made by the domestic industry that producer has not place any evidence in support of their claim that there were no difference between the goods exported to India and to other countries, it is noted that the new shippers have filed the information in the form of Appendix 1 & 2 respectively containing details of sizes/grades on a transaction to transaction basis. They have filed information regarding transaction-to-transaction details of exports to countries other than India also indicating the names of the country.

Examination of the issue of Confidentiality

28. The Designated Authority notes that M/s H R Johnson has raised issue of confidentiality of information by the applicants at various places in their written submissions filed subsequent to the oral hearing and also in its rejoinder submissions. The Designated Authority notes that the Hon'ble CESTAT in their order dated 19.5.2005 in the matter concerning H R Johnson v/s. Designated Authority dated 19.5.2005 has observed that:

- i) In terms of Rule 7(1) information submitted on a confidential basis shall be treated as confidential only when the Designated Authority is satisfied as to its confidentiality.

ii) The Designated Authority is not required to mechanically treat the information provided by a party as confidential merely because that party has desired it to be kept confidential.

iii) The Designated Authority has to be satisfied about the confidentiality of the information on the basis of various factors such as nature of the information and whether such type of information is by law custom, usage or practice treated as confidential.

iv) The Designated Authority has not passed any formal order in the matter of confidentiality in this particular case.

29. The Authority notes that Rule 7(1) provides that the Designated Authority shall treat any information submitted on a confidential basis as confidential upon the Designated Authority being satisfied as to its confidentiality. Rule 7(1) also enjoins a duty on the Designated Authority that if the Authority is satisfied about its confidentiality, such information shall not be disclosed to any other party without specific authorization of the party providing such information.

30. Further, Rule 7(2) states that the Authority “may” require the parties providing confidential information to furnish non-confidential summary thereof. It also provides that if such confidential information is not susceptible of summary, the interested party may submit a statement of reasons as to why summarization is not possible.

31. Further, Rule 7(3) provides that if the Authority is satisfied that the request for confidentiality is not warranted or where the supplier of the information is unwilling to make the information public or authorize its disclosure in a generalized or summary form, the Authority may disregard the information.

32. In the light of the above, the Authority has examined the confidentiality claim of the applicant by taking into account submissions made by interested parties. After examination the Authority has considered the information mainly relating to customers, cost and financial is confidential.

Submissions by M/s H&R Johnson (India) Limited after Disclosure Statement & Examination by the Authority

Following issues have been raised:-

33. It has been alleged “in the disclosure statement that domestic industry was notified about initiation. None of the producers in India received any such intimation about initiation though names of most of them were

available on record of the Designated Authority through the Sunset Review Investigations. In past cases, intimation about the proceedings was sent to the registered authorized representatives of the Domestic Industry. In a complete turnaround the Designated Authority has in the present case recorded that they are under no obligation to inform any consultancy firm about the case. It is but natural, that the authorized representatives would file an authorization after the intimation is received". The Authority has noted that all interested parties were intimated about the initiation. However, it is not desirable to intimate the consultant to intimate the initiation unless the interested parties authorize the consultant to make submissions on their behalf. It is not clear under which provision of law the right vested in APJ-SLG to demand that they should have been intimated about the initiation. The Authority do not recognize any independent right of this law firm.

34. Paper book filed by the exporter was not available in the public file. It has also been stated that copy of the rejoinder statement and written statement by builder association was not given to the domestic industry. In this regard, the Authority has noted that paper book by the new shipper was submitted to the Designated Authority, as confidential, at the time of public hearing. Subsequently, while submitting the written statement it was stated that the paper book may be made part of the written submission. The paper book, thereafter, was placed in the public file. Regarding copy of the rejoinder and written statement by builder association, it has been noted that these are available in the public file. It has further been noted that the domestic industry has not inspected the public file after 10.6.08. However failure to inspect Public File maintained as per rule 6(7) does not bestow right on interested parties or their consultant that information is to be sent to them individually.
35. It has been stated that verification report was not kept in the public file. In this regard, it has been noted that the verification report of the export contain a lot of confidential information and discussions. The same cannot be placed in the public file. However, information about the verification conducted was placed in the public file.
36. It has been stated that deficiency letters or correspondence exchanged with the new shipper were not available in the public file. In this regard, the Authority notes that all correspondence before initiation of investigation is kept confidential however after initiation of investigation application and other major submissions are made available in the public file. However, it is practically not possible to place all the letters in the public file which may not have major bearing on the investigation.
37. It has been alleged that conclusions have been drawn on the basis of

claim made by the new shipper without referring to the material placed on record. In this regard, the Authority has noted that conclusions have been drawn on the basis of verified data and material. Mere statements and allegations which have not been substantiated with any documentary evidence have been ignored. It has been further stated that information provided by the domestic industry in written statement/rejoinder have not been taken into consideration. In this regard, it has been noted by the Authority that web based information submitted earlier contained lot of irrelevant and information not related to the applicant. However, available information was kept into view while conducting the investigation. In this regard, further it has been noted that a complaint was received purported to be submitted by an association. Subsequently, on enquiry made by the Authority, it was noted that the same was not filed by that association. As the complaint contains some factual information, the same was verified from the record of the exporter to ascertain the veracity of the information. It has been stated by the domestic industry that VAT return is not sufficient to prove that no sales were made to India during the original POI. In this regard, the Authority has noted that to examine the VAT return was one of the methods to ascertain whether any sale was made by the exporter to India during POI. Further, invoices were also checked on random basis to ascertain whether any export was made. After examination, no material came to the notice of the Authority indicating that any export was made by the applicant during the original POI

38. It has been stated that no examination appears to have been undertaken to examine the statement 'Monalisa Ceramics Company Limited of Guangdong is one of the several key hi-tech enterprises of the National Torch Programme'. In this regard, it has been noted that the investigation was conducted in accordance with rules to ascertain whether the company was working in accordance with market economy. In this regard it is further noted that as per information available on web, the programme *promotes commercialization, industrialization and internationalization of new and high technology research results in conformity with the laws of market economy.*
39. It has been stated that DI had raised objections about filing a common questionnaire by all three new shippers and requirement of certification. The same have been ignored and no findings have been recorded. The Authority note that it is a procedural requirement to seek the adequate information from the applicant. The Authority if the need arise could have called this information separately.
40. It has been stated that non-disclosure of information about the related party M/s Nanhai City Quiaodang Ceramics Co.. alone ought to have formed the basis of termination of the present proceedings. In this regard,

the Authority has noted that investigation of the New Shipper Review was initiated on the basis of declarations and back-up material. If at any stage the declaration are found to be false or it was established that the applicant or related party had made any export during the original POI that would have led to termination of the investigation. Consequently the applicant would have been asked to pay the custom duty on the imports made after the initiation of the investigation. As has been noted above, no material has come to the notice of the Authority indicating that any export was made by the applicant or related party during the original POI.

41. It has been stated that the information about the participation of the importer has not been provided. The Authority in this regard has noted that the application was filed by the producer/exporter in China PR and trader/exporter in the Hong Kong. However, at the time of application, a distribution arrangement submitted indicating name of four parties involved in the exports and imports. Therefore, the sale invoices of parties in the distribution arrangement were verified to rule out any compensatory arrangement and to ascertain correct export price. Nothing has been noticed indicating that any loss was made during the sales transactions. Apparently full-fledged response on the prescribed format was not called from the importer.
42. It has been stated that number of companies are operating from the same address as that of M/s AVACORP in the Hong Kong. In this regard, the Authority noted that the AVACORP (an intermediate trader/exporter in the arrangement) work from the address provided by the applicant, though other companies also operate from the same address. The Authority did not find any legal infirmity about the AVACORP working from the address whether other companies also operate.
43. The initiation of investigation is bad in law and contrary to Rule 22. In this regard, the Authority has noted that the initiation of a New Shipper Review is done on the basis of declarations by the applicant that no exports were made by the applicant or related parties during the original POI. and supporting evidence submitted in this regard. The Authority has followed the established procedure in this regard. Therefore, the statement made by the domestic industry is a devoid of any merit.
44. In respect of the issue relating to prospective POI and normal value, the issue was discussed while issuing the Disclosure Statement and the same has also been recorded in the findings. It has also been stated that issue of minimum quantities and circumvention has not been addressed. In this regard, the Authority notes that without legal backing, it is not possible to insist on minimum requirement of the quantity. About the circumvention, the law would take its own course in case the circumvention comes to notice of the enforcement agencies.

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

Views of Domestic Industry

45. The China is a 'non-market economy country' and has been treated as such in the original investigation. The Designated Authority cannot grant any individual normal value in view of the interpretation resorted to by the Designated Authority in Reliance Industries case.

46. In view of the decision of Hon'ble Supreme Court in the case of RIL Vs. Designated Authority, there can be only one normal value for each country. An exporter-specific normal value cannot be determined and, therefore, there is no question of invoking Rule 8(3). The authority may take only the normal value, which has been established for China in the original investigation as the same was operative during the period of investigation in the present case.

Views of exporter/producer(New shipper),

47. Views of appellant and opposing parties with regard to dumping have been noted in Annexure 1 to this disclosure.

Examination by the Authority

48. The Authority considers that normal value under the rules 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 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.

While it is evident that the Authority has to apply ordinary course of trade test, for which information on cost of production is vital, it is noted that the applicant during the process of investigation submitted details of the subject goods that are exported to India and that which are produced but not sold to India. During the investigation process, it was noted that M/s Guangdong Monalisa has significant domestic sales.

49. With regard to applicability of Hon'ble Supreme Court judgement in Reliance case in new shipper review cases for determination of normal value, the Authority notes that CESTAT in its judgement dated 27.08.2007 held that the observation of the Hon'ble Supreme Court in the Reliance case does not apply in the new shipper reviews under Rule 22.

50. The Designated 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 Designated 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 and USA have treated China PR as a non-market economy country in anti- dumping investigations. In the instance case, China PR has been proposed to be investigated as non-market economy Country.

51. The Authority sent market economy treatment (MET) questionnaires and exporters questionnaires to M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR (Producer) and Foshan Monalsia Industry Company Limited, China P.R. (Exporter). They filed the response in support of their claim of market economy treatment and requested for

determination of normal value as per para 1 to 6 of annexure-I of AD Rules on the basis of export of subject goods to countries other than India since there was no domestic sales of subject goods in their home market. 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 are operating under market economy condition irrespective of prevailing economy situation in the country without any direct or indirect State interference or influence in their business activity.

52. In anti-dumping investigations normal value concerning imports originating in 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.”

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 sub-paragraph(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).”

53. It is noted that the applicants furnished /evidences and information as mentioned in para 8 (3) of Annexure I of Anti Dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a) The decision of 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 this paragraph.

54. 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 new shipper were analyzed to determine whether the applicant exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The applicant provided information in respect of M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR (Producer) and Foshan Monalsia Industry Company Limited, China P.R. (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

55. Verification at the premises of the applicants companies and its related companies was conducted from 29th September 2008 to 3rd October, 2008. The exporter was asked to provide complete details of all the companies in the group, including their present and past ownership, establishment date, product involved, the manner in which these companies were set up, source of funds, etc.

56. It was seen that the group has organized itself in such a manner that one company is undertaking responsibility for production, while others company undertaking exports. M/s. Guangdong Monalisa Ceramic Co. Ltd produces the materials and M/S Foshan Monalisa Industry Co. Ltd undertakes the exporting activities.

57. In order to examine whether there was any degree of State influence or interference over the allocation of resources and decisions of the applicant, whether directly or indirectly, the ownership pattern of the applicant was examined. The claims/ counter claims of the interested parties were taken into account and details in this respect were verified. The Authority examined the composition of Board of Directors of these companies, 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.

58. It is found that the M/s. Guangdong Monalisa Ceramic Co Limited, Foshan, China PR (Producer) and Foshan Monalsia Industry Company Limited, China P.R. (Exporter) are having common shareholding i.e, the shareholding are controlled by common set of persons. It was also found that employees of both the companies to a very great extent are interchangeably working for various companies to such an extent that

practically there appeared little difference. Both companies are to a great extent sharing common facilities. Though, there was no legal adjustment, the present set-up was undertaken because of the nature of shareholding, where common persons are controlling both related companies.

59. 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 Indian Anti Dumping 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:

60. The Authority has verified legal structure of the applicant and it has been noted as under:

a) M/s. Nanhai City Qiaodang Ceramics Co. Limited was a state owned company, producing Vitrified Tiles and other tiles. The company was purchased by the management of M/s. Guangdong Monalisa Ceramics Company Limited in Oct., 1998. Simultaneously, M/s. Guangdong Monalisa Ceramics Company Limited was established in October 1998. However, the production and sale was brought under the books of Guangdong Monalisa Ceramics w.e.f. January, 2002. Between Oct., 1998 and January, 2002, the production and sales of subject goods were being accounted for in Nanhai City Qiaodang Ceramics Co. Ltd. Both Guangdong Monalisa Ceramics and Nanhai City Qiaodang Ceramics are related companies.

b) While purchasing the company in 1998, a valuation was conducted by a private party. A copy of the Valuation Report along with its English translation was provided. As per transfer agreement, out of the total transaction value of *** million RMB, *** million was paid immediately and remaining *** million has been paid in installment of *** million each. For the remaining amount, the liabilities and debts have been acquired.

c) In June 2000, the company decided to start exportation and for this purpose, a new company, M/s Foshan Monalisa was formed as export

arm of the Guangdong Monalisa (producer). It was explained that during that time, export licenses were given by the Government only to separate companies and not to producers. The new company, M/s Foshan Monalisa applied for export licenses, which was granted by the Government in December 2001 and after that company started export business. The basic aim of M/s Foshan Monalisa is to only perform the export function for the producer company and internal transfer of pricing of the product is in accordance with internal understanding and exigency of the two companies. M/s Foshan Monalisa, Export Arm of Producer Company does not make any domestic sales.

d) In September 2003, another new company was incorporated in the group named as Qingyuan City Huangma Ceramics Company Limited, the name of which has since been changed to Guangdong Qingyuan Monalisa Ceramics Co Limited in Jan 2006. This company is in production of ceramics tiles only.

e) Board of Directors is the highest body in company. The Board decides all important matters of the company. The important matters would be effective only after being approved by the Board of Directors in accordance to the rules are set out in Articles of Association of the company. There is neither any interference of the government nor any quantity restrictions on sales and production.

61. Financial Accounts: The company was found to be maintaining its accounts as per Generally Accepted Accounting Principles of China. The company maintains monthly profit & loss statement, which is required to file profit & loss statement along with VAT filing. The profit & loss statement for each of the months of the investigation period was examined and cross-verified with the profit & loss statement filed by the company along with its VAT return and a separate profitability of the subject goods and other goods was determined. On examination of records it was found that the company was able to post profits on the subject goods. 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.

62. Selling Price: The issue of selling price determination has been examined. It was found that Guangdong Monalisa Ceramic Company Ltd has been selling the subject goods in the domestic market and freely decides regarding the output and sales depending upon market demand and nothing adverse had been found in this regard from their records. The Authority notes that the entire export sales to India were effected by M/s Foshan Monalisa Industry Co. Ltd. (exporter). No evidence of possible role

of State in determination of domestic or export price could be found. It is found that 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 domestic or export sales as it varies from customer to customer which entirely depends on demand and supply position in the market.

63. The Authority noted that the company maintains proper records for various cost elements, which are necessary to determine the cost of production for different type and size of product. The cost of production is determined having regard to principles of cost accounting which appeared reasonable and sufficient considering the nature of product and the production process. The company maintains actual cost. Further cost of production varies from month to month due to movement in prices of raw material, utilities and other factors.

64. Raw Materials: 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 and is making efforts to get better prices.

65. Electricity: It is noted that the company procured electricity from State owned company M/s. Guangdong Power Network Company Foshan Nanhai Power Supply Bureau. Since electricity procurement was from State owned enterprises, 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. It was also seen that the price charged by the supplier is different in different time legs like for peak hours, price per unit is higher than non-peak hours.

66. 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 existing rate, which was more or less stable. As regards the

submission made by the domestic industry on under valuation of Chinese Currency, no positive evidence has been provided.

67. As regards engaging labours, the company claimed that they took all employment decisions. There is full freedom to the company with regard to its mode of hiring employees and they can be fired also on a very short notice. 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. However, 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 includes basic pay, and incentive for good work, however, deductions were found to be claimed in respect of insurance and income tax.

68. 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 and property law of China were found during the course of the verification.

69. Finance expenses: At the time of takeover of production facilities, Guangdong Monalisa Ceramic Company Ltd has 6 production lines, which had capacity to produce about 5 million SQM of vitrified tiles. Subsequently 3 more lines were added by the company, for which loans have been taken over from the banks as per standard market conditions, The loans are at prevailing market rate of interest and no preferential treatment to the company by the bankers were observed.

70. Output – Production: It was verified whether there is any control or interference by the government relating to production. It was found that the company produces the subject goods as per market demand and supply requirement. 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.

71. Sales Volume: 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 marker at its own price and there is no control of

State of provincial government in this regard. Nothing contrary to this claim was observed during verification. Analysis of Appendix 1 for the product under consideration shows that the company is selling product concern 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 each size, which shows that the company is selling various sizes and series of product concern as per demand.

72. 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

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

(i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

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

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

74. The Authority sent exporter questionnaire to M/s. Guangdong Monalisa Ceramic Company Limited. (Producer), Foshan Monalisa Industry Co. Ltd. (Exporter) and M/s Avacorp, Hong Kong (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. During the investigation period, material exported to India was produced by Guangdong Monalisa Ceramic Company Limited. The material has been exported through Foshan Monalisa Industry Co. Ltd., China PR and Avacorp, Hong Kong. They have exported two sizes of a particular type of the subject goods to India during the period of investigation. The detailed information regarding the entire domestic sales of all sizes/ types of the subject goods in their home market has been provided. The applicants have also provided break up of costs of production of all the sizes/modesl/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 Authority found the domestic sales have been made to unrelated parties and the same has been adopted for determination of 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 and calendar year. The Normal Value based on domestic sales has been determined after considering the volume of sales above per unit cost (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 weighted average ex factory domestic sales realization for profitable transactions is proposed to be considered for arriving at the normal value as loss making transactions were found to be more than 20% of the sales in the domestic market.

75. As indicated above the company has exported different models/types of two sizes 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 :

| Size | Series | Normal Value USD/ Sq. Mtr. |
|----------|--------------|-------------------------------|
| 600X1200 | Soluble salt | *** |
| 800X800 | Soluble salt | *** |

EXPORT PRICE:

76. In response to the questionnaire, the exporter has furnished invoice-wise/ size-wise details of exports made to India during the period of investigation in Appendix-2. The exporter has also furnished copies of invoices in support of the same. Adjustment as claimed by the exporter in Appendix-3 have been considered based on verified data and are proposed to be allowed to arrive at the ex-factory export price to India. The sales of the goods from M/s. Guangdong Monalisa Ceramic Company Limited. (Producer), to Foshan Monalisa Industry Co. Ltd were verified from their original records. The exports to India are made by Foshan Monalisa Industry Co. Ltd through Avacorp, Hong Kong, to Indian customers were verified and reconciled along with the adjustments claimed by them. Details regarding their claim of adjustments were verified during the course of verification from the records maintained by the company. It was found that the aggregate amount of the export sales has been realized vide Bank advice. Export price has been determined separately for each type of tile exported to India. The export price accordingly has been worked out as under:

| | | Ex-factory Export Price |
|----------|--------------|-------------------------|
| | | USD/Sq. Mtr. |
| 600X1200 | Soluble salt | *** |
| 800X800 | Soluble salt | *** |

77. Considering the normal value and export price as determined above, dumping margin has been determined as under. It has been found that the exporter has exported the subject goods above its Normal Value and hence the dumping margin has been determined as negative.

Exports and Dumping Margin

| | | USD/Sq. Mtr. | | | |
|---------------------|--------------|------------------|-----------------|-------------------|----------------------|
| <u>Exports</u> | | Ex-factory EP | Normal Value | Dumping Margin | Dumping Margin(%) |
| 600X1200 | Soluble salt | *** | *** | *** | *** |
| 800X800 | Soluble salt | *** | *** | *** | *** |
| Weighted average DM | | | | | -4.87% |

Final Findings and Recommendations of the Authority

78. After considering the foregoing the Authority concludes that

i) Export price of Vitrified/porcelain Tiles exported to India produced by M/s. Guangdong Monalisa Ceramic Company Limited, Foshan, China and exported by M/s Foshan Monalisa Industry Co. Ltd., Foshan, China and M/s Avacorp, Hong Kong is above its normal value during the period of investigation.

ii) The Authority, therefore, recommends that no anti dumping duty be imposed on imports of Vitrified/porcelain Tiles falling under Chapter 69 of the Custom Tariff Act, 1975 produced by M/s. Guangdong Monalisa Ceramic Company Limited, Foshan, China and exported by M/s Foshan Monalisa Industry Co. Ltd., Foshan, China and M/s Avacorp, Hong Kong.

iii) An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Act.

(R. Gopalan)
Designated Authority