

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

**F.NO. 15/23/2006-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Anti-Dumping & Allied Duties**  
**Department of Commerce**

**NOTIFICATION**

Dated 14<sup>th</sup> February 2008

**FINAL FINDINGS**

**Sub: Final Findings in the New Shipper Review Antidumping duty investigation concerning import of Vitrified Porcelain Tiles from China PR as applied by M/s Foshan Nanhai Jing Yu Ceramics Ltd. (Producer) and M/s Shye International Ltd., Hong Kong (Shipper).**

**NO. 15/23/2006-DGAD:** Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules).

**A. Background and initiation**

2. Whereas, having regard to the above Rules, vide notification dated 3<sup>rd</sup> December 2001, the Designated Authority recommended imposition of provisional antidumping duty on import of vitrified porcelain tiles (herein after referred to as subject goods) from China PR and Central Government, vide notification No. 50/2002-Customs dated 2.5.2002, imposed provisional antidumping duty on the subject goods, originating in or exported from China PR (hereinafter referred to as subject country). Vide notification dated 4<sup>th</sup> February 2003, the Authority recommended imposition of definitive antidumping duty and vide notification No.73/2003-Customs dated 01.05.2003, the Central Government imposed definitive antidumping duty on the subject goods originating in or exported from China PR.

3. And Whereas the Designated Authority received an application, on 24.07.2006, from M/s Foshan Nanhai Jing Yu Ceramics Ltd., (also known as Biaoma Ceramics) producer of the subject goods in China and M/s Shye International Ltd., Hong Kong, as the shipper of the subject goods from China PR (herein after jointly referred to as applicants), for initiation of a new shipper review investigation in terms of Rule 22 of the Rules. The above producer and exporter/shipper from China, in their application for initiation of the review under the above Rules, *inter alia* submitted that M/s Foshan Nanhai Jing Yu Ceramics

Ltd is a new producer of the subject goods in China and established the production facility for production of vitrified tiles in 2005 and therefore, did not export the product to India during the period of investigation. They also submitted that they are not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties on the product and intended to export the subject goods to India. The other party to the application M/s Shye International Ltd claimed to be company registered in Hong Kong, not related to any exporter or producer of the subject goods in the subject country and had entered into an exclusive arrangement with the above producer in China PR for export of the subject goods manufactured by them as a new shipper.

4. The Authority sought additional information and clarification from the applicants in respect of their status as new shipper and their relationship with other exporters in China. The applicants filed necessary clarification and additional information and a revised application was filed by the applicants vide their letter dated 20<sup>th</sup> November'2006. On the basis of prima facie examination of the information submitted by the applicants in respect of their status as new producer/exporter of the subject goods the Authority initiated the above new shipper review under the above Rules, vide notification dated 25.01.2007, with a period of investigation as 1<sup>st</sup> February 2007 to 31st July 2007 (6 months) for detailed examination and determination of individual dumping margin for the applicants. Pending completion of the said review investigation and recommendation of the Authority, the exports made by the above applicants were subjected to provisional assessment in term of the said Rules.

## **B. Procedure**

5. Following procedure has been followed in respect of this investigation

i. After initiation of the review the Authority notified the domestic industry and other interested parties with a request to make their views known within 40 days from the date thereof. The Authority notes that none of the other interested parties, including the domestic industry, filed any comments on the initiation of the review within the stipulated time.

ii. As per the initiation notification the applicants were required to file their questionnaire response within 40 days of the completion of period of investigation. Accordingly, the applicants filed their questionnaire response, and market economy questionnaire response for determination of their dumping margin in terms of the Rules. The information submitted by the applicants was examined and additional information were called for vide letters dated 18<sup>th</sup> September 2007 and 4<sup>th</sup> October 2007. The applicants submitted certain additional information vide their letters dated 26<sup>th</sup> September and 8<sup>th</sup> October 2007.

iii. The data submitted by the above applicants in their application for New Shipper Review and Questionnaire Responses were verified in terms of the relevant provisions of the Rules at their plants and offices at Foshan, China PR.

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

v. The Authority has examined the confidentiality claims of the interested parties in respect of the data submitted by them. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, alongwith non-confidential summary thereof, has been treated confidential. \*\*\* In this finding represents information furnished by all the interested parties on confidential basis and so considered by the Authority under the Rules.

vi. The Authority held a public hearing on 13<sup>th</sup> December 2007 to provide an opportunity to all interested parties to present their views. The oral submissions made by the parties during the public hearing, and reproduced in writing, have been taken on record for the purpose of this investigation.

vii. The Authority issued a disclosure statement on 7<sup>th</sup> January 2008 disclosing the essential facts under consideration which would form the basis of final determination and methodologies for such determination. Comments of the interested parties on the disclosure statement have been taken on record and the Authority has examined the issues raised therein to the extent they are relevant and substantiated, in this finding.

## **C. View of the interested parties**

### **C.1 Views of H&R Johnson (India) Ltd.**

6. The Authority notes that the domestic industry in the original investigation has neither filed any submissions in respect of this investigation, nor attended the public hearing to express its views. Only one of the domestic producers i.e. M/s HR Johnson attended the public hearing and thereafter made a written submission. In its post public hearing submissions M/s HR Johnson has argued that vide final order No. 8/07-AD dated 27<sup>th</sup> August 2007 the Hon'ble CESTAT, in the case of HR Johnson (India) Ltd Vs Ministry of Finance & Ors, has held that initiation of new shipper review proceedings based on prospective period of investigation is bad in law and contrary to Rule 22. Quoting the above orders of the Hon'ble Tribunal this party has argued that since this new shipper review investigation has been initiated on the basis of a prospective POI the Authority has no jurisdiction to proceed further in this investigation.

7. H&R Johnson has also filed its comments on the disclosure statement as an interested party though the domestic industry has not participated in the investigation. The issues raised by H&R Johnson, in its post disclosure comments, have been summarized as follows. This interested party has inter alia argued that

- The Designated Authority, being a respondent in the case of H & R Johnson (India) Limited Versus Designated Authority, reported at 2007 (218) ELT. 273 (Tri. - Del.), could not have ignored the same while proceeding with the present case unless the same was stayed by a court of competent jurisdiction;
- The new shippers were not exporters to India on the date of making of the application to be eligible for a new shipper review in terms of Rule 22 as per the order of the Appellate Tribunal in the case of H & R Johnson (India) Limited Versus Designated Authority as above;
- The non-confidential version of the application has been filed by the exporter under a letter head where the location of the exporter is shown as China. However, the initiation Notification has been issued for an entity with the same name from Hong Kong. It very clear that the Chinese exporter had sought the status of new shipper while the initiation has been provided for an entity in Hong Kong. From a legal point of view which entity was claiming itself to be an exporter is important as the examination is required to be done accordingly;
- The producer claimed that they started commercial production in December 2005 while in the disclosure statement it has been stated that they were incorporated in January 2006. Therefore, there are inherent contradictions in statements made;
- It is interesting to note that Shye International Ltd. had not done any business from 1998 till 2004. If the application claimed that the exporter is a Chinese entity, it appears that this statement has been made in the context of Hong Kong entity. Interestingly, as per their letter head the Hong Kong office is only a post box number which is claimed to be their corporate office. Shye International is a company which has been established in 1970 contrary to the year of establishment submitted in the non-confidential version;
- It has been stated that exporter is an affiliate of the producer in the application dated 18.7.2006 filed by the producer. In the non-confidential version of the application filed through letter dated 22.1.2007, it has been claimed that the exporter company has only 3 shareholders and all of them are Indians. No examination on such claims of affiliation has been undertaken. Contrary to the above the exporter has filed a certificate dated 18.7.2006 wherein they have clearly stated that the Shareholders are not related to any producers in the country of export subject to anti-dumping duties. Further, producer has also filed similar certificate. In view thereof, the certificates are contradictory to application of the producer dated 18.7.2006;

- Excessive confidentiality has been claimed on numerous documents that were filed with the confidential version without providing reasons or non-confidential version of such documents. Such an approach is contrary to the law declared by the Hon'ble Supreme Court in Sterlite Industries case and H&R Johnsons case mentioned above;
- It has been stated by the exporter that none of the affiliated company is involved in product concerned. The same is contrary to the application dated 18.7.2006 wherein the producer has itself claimed that they are an affiliate of M/s. Shye International Limited. Further, another related company called Shye Impex who is importer in the present case was also related to them. There are other Indian entities related to the very same exporter who are engaged in various activities. It appears from the response of the exporter that they have no other business operations except sale of subject goods to India through new shipper review whereas they have trading operations for a number of items for which information has been suppressed;
- The producer suppressed information about two plants that they have while providing answer to question No.3 under Section A relating to General Information; Different names have been used for the same producer. They are referred to as Foshan Nanhai Jingyu Ceramics Co. Ltd., Bioma Ceramics, B&M and also with certain Chinese names not disclosed. It is quite likely that they operated under some different name during the original period of investigation and the present setup is only to circumvent duties;
- The producer has made negligible sales to ensure that they are able to show negative dumping margin for a prospective period by shrewd planning. Such an approach clearly goes to show *mens-rea* of the producer to circumvent duties by managing their export price and normal value for 6 months;
- The adjustments claimed on account of brightness or grades are without any basis, material evidence or substantiation. Such claims have not been made in any of the other responses received, either in the original investigation or new shipper review investigations or for that matter in the sunset review investigations. In view thereof, such adjustments are required to be rejected;
- The producer was not following Chinese GAAP as is admitted in the disclosure statement wherein it has been found that lease rent, interest etc. were not reflected in the books of accounts. Despite the above, the Designated Authority has granted them MET;
- The explanation for VAT given is not found for any of the entities so far subject to investigation. It appears that there is some special incentives given to this entity indicating some kind of government interest in the entity;
- The imports into India were made by a related company of Shye International who did not file any importer questionnaire response. The Designated Authority had in other cases made such related importers file

questionnaire responses. The practice followed in the present case to that extent is discriminatory and not consistent with earlier cases. In any case, without the importers questionnaire response by a related entity no proper determinations could have been made;

- For the first time existence of M/s Foshan Hongyun Trade Limited Company which is a state-owned trading Company has been made in the disclosure statement. They have not filed any response to the Designated Authority and hence no determinations for the new shippers as contemplated could have been reached without their participation;
- The producer had an exclusive trade contract with Hongyun Trade Limited Company which expired in December 2006. No document in support has been placed on record. The date of such contract is important to reach correct determinations. As per the disclosure statement another exporter M/s Xin Zhong Wei has also exported the subject goods to various countries, during the POI. No response has been filed by this company. Therefore, the authority cannot reach correct determinations;
- It has been stated 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. The first letter that was received by H&R Johnson was dated 4<sup>th</sup> October 2007, wherein notice of hearing was given. In the absence of such intimation, domestic industry could not participate in the investigations;
- The statements recorded in the disclosure statement about 3 shareholders of producer, advance approval, information about purchase of new plant etc. are not available either in the application, or their questionnaire response. At what stage and through which document such information was obtained is not clarified in the disclosure statement. Such information is also not available in the public file. Further, the same is contrary to information provided in non-confidential version of the application and questionnaire response where only two shareholders are specified. The fact that there were three shareholders goes to show that it was a going concern even prior to 2006 a fact that has been totally ignored by the Designated Authority and has a direct bearing on the outcome of the case. No information has been sought on the third shareholder who could have been excluded as his inclusion could have been fatal to the Review under Rule 22. Further, no information or data has been provided for M/s. Foshan Nanhai Lijing Ceramic Co. for the Designated Authority to conclude if they exported the subject goods during the original period of investigation;
- The approval of the company was issued on 30.8.2005 as per disclosure statement while the company was formally incorporated only in January 2006. No questions or issues were raised by the Designated Authority on how in such a situation, the contract for purchase of plant and machineries was made much prior to such dates on 26.7.2005;

- It has been recorded in the disclosure statement that the land belonged to a village community. From the disclosure statement it appears that M/s. Foshan Nanhai Lijing Ceramic Co. Ltd. was operating from the same premises where the present producer has set up operations. If the land belonged to the Government or village community, then under law, Lijing had no locus to enter into lease deed for 20 years with the producer;
- No examination is reflected in the disclosure statement on distortions carried over from the former non-market economy system particularly when the old plant and machinery has been taken over. No examination has been carried out to see if the producer or exporter were subject to bankruptcy and property laws to reach determinations in terms of Para 8(3)(c) of Annexure-I;
- The Designated Authority has not disclosed the level of profit taken which it appears to be a figure emanating from any confidential data; The profit should have been determined using the options under para 4(i) of Annexure-I which provides for addition of profit earned by the manufacturer/exporter for the same general category of products;
- The Designated Authority has recorded that inland transport and all FOB expenses have been borne by Hung Yun from its margins. The Designated Authority has accepted such statements without even asking Hung Yun to file questionnaire response;
- The disclosure statement gives an impression that part of the goods were exported through Hong Yun and rest has been exported through M/s. Xin Zhong Wei and total exports to India were through these two entities during period of investigation and no exports were made through Shye International;
- Copy of the verification report along with comments filed by the producer/exporter to such verification report have not been provided or made available as has been done in other cases;
- The primary condition under Rule 22 is that the applicant for new shipper review should not be related to any entity which is subject to anti-dumping duties. It is clear that those entities who have related parties, who are subject to duties, are not eligible for a new shipper review and the only recourse they have is to file joint application for all its related entities or seek a mid-term review in terms of Rule 23. It is an uncontroverted fact that the related entities were subject to anti-dumping duties applicable to the residuary category making the exporter ineligible for a new shipper review. That being the case and in view of the fact that the two necessary conditions of Rule 22 having not been fulfilled, the application of the new shipper needs to be rejected;
- No evidence was placed in support of the claim that new shippers were exporters prior to making of the application. No questionnaire response has been filed by such related entities for the authority to accept their claim that no exports were made by them in the original investigation. Entities that exported during the period of investigation for new shipper have also not filed any questionnaire response;

- There is no mention as to how the authority reached a conclusion that electricity was bought at prevailing electricity charges. No details about examination of water rates in China have been recorded. Moreover, assuming but not accepting that electricity and water were procured at prevailing market rates, no examination whatsoever has been done to ascertain whether such prices are reflective of the market forces, particularly when admittedly these inputs are being supplied by State enterprises;
- The exchange rate in China is controlled by the Chinese Government and is admittedly kept at an artificially controlled level. There is ample research on the subject which clearly reveals that the Chinese Yuan is undervalued by at least 30%. It may be appreciated that this factor alone makes imports 30% cheaper into India. Under the circumstances, there is no question of giving market economy status to the Chinese firms as long as their transactions are not carried out at market determined rates, as envisaged in para 8(3)(d) of Annexure I to the Anti-dumping Rules;
- Having admitted that the said exporter has been incurring losses on its domestic sales for the types exported to India, the authority cannot determine normal value under Section 9A(1)(c)(i). The authority has also not recorded on what bases it came to a conclusion that the normal value in this case cannot be determined under Section 9A(1)(c)(ii)(a) i.e., on the basis of export price from the exporting country or territory to an appropriate third country. Resort to Section 9A(1)(c)(ii)(b) has been taken without giving reasons for its appropriateness;
- The profit for the purpose of this Section is to be determined in terms of paragraph 4 of Annexure-I to the Anti-dumping Rules. The said provision provides guidelines for determination of profit for constructed normal value. Designated Authority has not considered the options under para 4(i) of Annexure-I which provides for addition of profit earned by the manufacturer/exporter for the same general category of products. It is also appears that the Designated Authority has not considered the option under para 4(ii) of Annexure-I even though the Designated Authority may be in possession of requisite information with regard to the profits earned by other producers in China;
- The new shipper mis-declared vital information prior to the initiation and also during the entire investigations with a view to mislead the Authority. Designated Authority may kindly appreciate that the producer/exporter had misled the authority by consciously filing incorrect declarations both at the time of making of the application seeking New Shipper Review and also along with the questionnaire response;
- It is pertinent to note that the exporter has sold insignificant quantities of two models to India simply to establish a higher export price and the resultant negative dumping margin. Since, these sales are insignificant the export prices of such small quantities cannot be considered to be as normal sales in the ordinary course of trade for the purpose of

computation of dumping margin. Designated Authority has not examined the possibility of circumvention in this situation.

## **C.2 Views of the applicants for the review**

8. The applicants for the new shipper review, in their post public hearing submissions, have inter alia argued that since nobody has filed any information or argument on the initiation of the review investigation by the Authority within the stipulated time as mentioned in the initiation notification or within such extended time, they have exhausted their right to file any information or argument and should not be allowed any opportunity to file any information at this stage.

9. In addition to the above the applicants have also argued that as per the Rule 22 of the Rules and Article 9.5 of the Agreement they are entitled for separate dumping margin as a new producer and exporter of the subject goods from China as they satisfy the conditions laid down in those Rules.

## **C.3 Examination of the issues**

10. The issues raised by the interested parties in their respective submissions have been examined with reference to the material facts of the case. The Authority notes that H & R Johnson did not file any comments on the initiation of the review or on the questionnaire response filed by the applicants within the stipulated time though the notice of initiation was sent to all the constituents of the domestic industry in the original investigation as per the records of the Authority, vide letter dated 8<sup>th</sup> February 2007 and such communication was sent under Speed Post. Therefore, the contention of the party that the domestic industry in general, and H & R Johnson in particular, was not notified by the Authority at the time of initiation and that the first intimation received by them was through the public hearing notice is not tenable. In any case all initiation notifications are published in the gazette of India extraordinary and also posted in the website of the designated authority. Therefore, the interested parties are deemed to have been notified through these public notifications. Therefore, arguments of H&R Johnson in this respect are not valid.

11. The Authority notes this party has raised certain legal, procedural and substantive issues at this late stage of this investigation without exercising its rights and discharging its obligations as a responsible interested party in this case at the appropriate stage in this investigation. Therefore, this party does not have the *locus standi* to file these objections at this stage. However, notwithstanding the lack of participation of this interested party at the initial stages of this review investigation, in the interest of transparency and just determination, the Authority has taken the issues raised by them on record and examined them to the extent they are substantiated and relevant.

12. As far as the issue of the issues of prospective POI is concerned, the Authority notes that the Hon'ble CESTAT in its orders quoted above has held that

*“A new shipper review under rule 22 should normally cover production, exports or sales during the period preceding the initiation of review. Fixing review period, for such investigation, that falls subsequent to the date of the application for such review is not at all warranted,.....”*

13. The expressions 'normally' and 'warranted' used in the above observations of the Hon'ble CESTAT indicates that while it is desirable to fix a retrospective POI for a new shipper review the Rules do not prohibit an investigation with prospective POI. The Hon'ble CESTAT had upheld other new shipper review investigations in the past initiated under Rule 22, with prospective POI, which re-enforces the above interpretation. The Authority also notes that neither the Rule 22, nor Article 9.5 of the Agreement prohibits a prospective POI for determination of dumping margin for a new shipper. Therefore, having initiated and conducted the review so far, the Authority is of the view that the above observation of the CESTAT does not in any way come in the way of finalizing this findings.

14. As far as the issue of eligibility of the applicants to file the review application under Rule 22 since the applicant exporter had not exported prior to filing application is concerned, the Authority notes that the Hon'ble CESTAT has observed that *“Person who has never exported or produced the product in the exporting country cannot qualify for applying for initiation of new shipper review under rule 22....”*. However, the Authority notes that the ratio of the orders quoted does not apply in this case. In the instant case, the applicant producer had already established itself as the producer of the subject goods in the exporting country before the application of the review was made and the producer and exporter had already entered into a contract for exporting the goods to India before that date.

15. As far as the issues of satisfaction of two basic conditions for new shipper review applications are concerned, the Authority notes that the new shipper review investigation was initially filed by the applicants in June 2006 which was not accepted by the Authority due to significant deficiencies in the said application which is evident from the fact that the review was initiated only in January 2007. The applicants filed revised application on 20<sup>th</sup> November 2006 rectifying the deficiencies and errors in the original application. The review as initiated by the Authority on the basis of the revised application on prima facie satisfaction of the conditions laid down in Rule 22 of the Rules. The applicants prima facie established that they were not related to any of the exporters who exported the subject goods to India during the original investigation and therefore, not subjected to antidumping duty through individual duty rates or residual rates. The applicants also prima facie established that they were new producer and exporter of the subject goods to India and came into existence

during the currency of the duty and therefore, they themselves did not export the subject goods during the original POI.

16. The Authority notes that pre-initiation examinations of the conditions for the review are not conclusive investigations in themselves. Prima facie satisfaction of the twin conditions for initiation of the review are required to be established based on the documentary evidences placed by the applicants before the Authority and further examination of the same is the subject matter of detailed investigation which cannot be concluded before initiation. Therefore, after initiation of the review the Authority has proceeded with further examination of the claims of the applicants, including the correctness of the facts of their status as new shipper and relationship with other producers and exporters of the subject country attracting duty and the same has been dealt in appropriate places in this findings.

17. As far as the status of exporter M/s Shye International is concerned, as noted in the relevant section of this findings this Company is registered in Hong Kong and has established its office in Guangzhou, China PR for carrying out export activities from China. As per the Memorandum and Articles of Association and Certificate of Incorporation issued by the Registrar of Companies, Hong Kong, this Company was established on 7<sup>th</sup> August 1998 in Hong Kong by two Indian nationals to carry out trading activities to various countries. However, as per the Certificate dated 17<sup>th</sup> January 2007 by M/s C.K. Liu & Company, Certified Public Accountants in Hong Kong, M/s Shye International has not commenced any business for the years 1998 to 2004. Further, the balance sheet of the company from 2004 to 2006 does not show any significant business activity. The Company established its China office in 15<sup>th</sup> July 2003 to carry out trading activities from China. The Company has also provided a copy of Registration Certificate of Foreign Enterprise Permanent Office in China alongwith the Business Registration Certificates for the period 7.8.03 to 6.8.04, 7.8.04 to 6.8.05, 7.8.05 to 6.8.06 and 7.8.06 to 6.8.07. Therefore, there is apparently no contradiction in the status of this exporter as alleged by H&R Johnson (HRJ).

18. The ownership status of the producer M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan China and its relationships with the exporter M/s Shye International has been examined and it was noted that the producing Company is owned by two Chinese Individuals and the exporting Company registered in Hong Kong is owned by two Indians. Therefore, no relationship in terms of ownership or management control could be found. The only relationship that exists is the sole agency and exclusive marketing agreement entered into by these two parties on 17<sup>th</sup> July 2006 for export of subject goods, manufactured by the producer, to India.

19. M/s H&R Johnson has also raised the issue of confidentiality claims of the applicants. In this connection the Authority notes that the applicants have claimed confidentiality on the business sensitive information about their

ownership, domestic and export sales and cost of production. However, with due regard to the confidential nature of such information the Authority has included such information in summarized manner in the disclosure statement to the extent such disclosure was warranted and summarization was possible without disclosing the commercially sensitive information of the party supplying the same. As far as placing the report of verification of the exporter in the public folder is concerned, the Authority notes that it is neither a requirement under the law nor under the agreement. Since verification of the exporter includes examination of very sensitive confidential information of the party being verified and due to difficulties faced in maintaining confidentiality of the commercially sensitive information while making a non-confidential disclosure of the verification report, such practice has been discontinued by the Authority. Therefore, the verification report of the applicant has not been made available to other parties.

20. M/s H&R Johnson (HRJ) has further argued that the applicants have exported insignificant volume of the subject goods to India during the POI with an intention of circumventing the duty and therefore, the Authority should have examined the aspects of circumvention while deciding the review. In this connection the Authority notes that Rules 22 under which such reviews are conducted does not specify any minimum quantity or volume of export for determination of dumping margin for the new shipper. Therefore, quantity exported by the exporter during the POI cannot be tested for its insignificance as has been argued, without exposing such examination to subjectivity. In any case the domestic industry is free to bring the recurrence of dumping by circumventing the new shipper provisions as a result of such review, if such a situation arises, at a later stage and the measure can be subjected to a periodic review under Rule 23. Therefore, the arguments of HRJ in this respect are not tenable.

21. As far as the issues of suppression of facts about existence of two factories of the producer and intermediary exporters are concerned, the Authority notes that the subject good under consideration is vitrified porcelain tiles and the same is being manufactured in the polishing unit of the applicant producer. However, the tile bodies, which are the inputs of this plant are manufactured in a plant originally owned by M/s. Foshan Nanhai Lijing Ceramic Co. Ltd. The plant and machineries of the unit has been sold to the applicant producer and land has been transferred to the applicant producer on long term lease basis. This being only a tile body unit could not have exported vitrified tiles to India as has been alleged by HRJ. The purchase agreement for the plant and machineries and lease of the land has been submitted by the party alongwith the valuation of the assets. The land in China belongs to the Government and remains so even if the lease right of the land use is transferred.

22. The disclosure clearly stated that the producer has been exporting the subject goods to other countries through two trading companies namely, M/s Hung Yun and M/s Xin Zhong Wei as they did not have their own export licence. However, the export to India was only through M/s Hung Yun, whose export

licence has been used to carry out the export to India, while M/s Shye International is the actual shipper from China. Though Hung Yun has not filed separate questionnaire response transactions between all the parties involved in the export transactions to India have been made available by the applicants and the same have been examined and necessary adjustments towards all direct selling expenses of the parties involved have been carried out as per their records. The selling expenses and margins of Hung Yun has also been adjusted to arrive at the ex-factory export price. Therefore, the contentions of HRJ are not valid.

23. As regards the issues of market economy status of the producer and its relationship with other Companies in China PR, allegedly not disclosed by them, methodology of determination of normal value and export price are concerned, they have been addressed and clarified in the respective sections to the extent they are relevant and necessary corrections have been incorporated.

24. As regards, the arguments of HRJ that the final selling price of the affiliated importer of the exporter M/s Shye International should have been taken into account for determination of the export price, the Authority notes that the final selling price of the affiliated importer M/s Shye Impex has been examined and after adjusting for the customs duty and all other levies at the time of customs clearance and other expenses, and a reasonable margin for the importer, net sales value of the goods imported by Shye Impex was found to be significantly higher than the CIF export value of Shye International. Therefore, the export price has been correctly determined on the basis of export price of the exporter.

#### **D. Examination of the claims of new shipper**

25. The application for this new shipper was filed by M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan China (also known as Bioma Ceramics) as the producer of vitrified porcelain tiles and M/s Shye International Ltd, Hong Kong, as the shipper of the subject goods from that country.

26. On the basis of the information filed by the applicants verification of the information was carried out to the extent possible. Examination indicates that in July 2005 three individual shareholders entered into an agreement to form a private limited Company in the name and style of M/s Foshan Nanhai Jing Yu Ceramics Ltd (with a shareholding of \*\*%, \*\*%, \*\*%) to produce vitrified porcelain tiles in Foshan. On the basis of this agreement the local government gave an advance notice of approval of the Company name on 30<sup>th</sup> August 2005. In terms of the said advance approval the proposed company was allowed to open bank account in the said name and operate the same till formal approval of the registration. However, one of the investors did not fulfill its obligation of investment and the company was ultimately formed with two shareholders and the Company was formally incorporated in January 2006 only with two

shareholders forming the Company with \*\*\*% and \*\*\*% shareholding with a total equity contribution of \*\*\*\*\* RMB.

27. After applying for the registration of the new Company under establishment took over an old tile body plant from another company i.e. M/s Foshan Nanhai Lijing Ceramic Co. Ltd., owned by one Mr Pan Lee Ing on a long terms lease purchase agreement and set up a new tile polishing unit to start trial production of vitrified tiles in October 2005. However, commercial production was started in January 2006 after formal incorporation of the Company. In addition to the business licence the Company produced a certificate from the local government certifying the date of establishment of the company and ownership status. The Company also produced a certificate from Guangdong Zhongxin Zhincheng Lawyer Office which confirms that the shareholders of this company are not involved in any other company. As per the records of the Company this Company did not have any relationship with the trading companies involved in its export activities. M/s Hung Yun has also submitted a certificate certifying that they did not have any export of the subject goods to India except one transaction in the year 2006.

28. M/s Shye International is a company incorporated in Hong Kong as a private limited company. The company has established an office in Guangzhou, China for carrying out export operation from China. Examination of the balance sheets of the Company indicates that this party did not have any significant activity for a long time and no export activity of the subject goods. As per the balance sheet the Company does not have any investment in any Company or other business in China. Vide an agreement dated 17<sup>th</sup> July 2006 Shye International has entered into a sole agency and exclusive distributorship contract with the producer as above for export of the subject goods to India. This party had no export activity of the subject goods to India prior to the application. After initiation of the review this party has shipped only one consignment of the subject goods manufactured by M/s Foshan Nanhai Jing Yu Ceramics Ltd to India.

29. Therefore, the applicant producer and exporter, being new entities which started operation only in 2006, were not involved in any export activity of the subject goods to India during the original investigation period. These two Companies and their shareholders are also not related to any other producer or exporter of the subject goods in China who had any export activity during the POI of the original investigation. Therefore, they have satisfied the conditions in Rule 22 of the Rules and are eligible for individual dumping margin as new shipper of the subject goods.

#### **E. Examination of Market Economy claims and individual dumping margin**

30. The market economy status of the producing company, their domestic sales, cost of production and export sales details were verified for the purpose of determination of the normal value of the applicant producer.

**i) Examination of Market Economy Claims of the Applicant Producers:  
M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan, China PR**

31. As noted earlier, M/s Foshan Nanhai Jing Yu Ceramics Ltd was formed as a proposed Company in July/August 2005 on the basis of an agreement between three individual shareholders agreeing to form the company with a shareholding of \*\*%, \*\*%, \*\*%). The Company approached the local government for registration of the proposed company an advance notice of approval of Company name was issued on 30<sup>th</sup> August 2005 allowing the proposed company to open and operate bank accounts and set up the production facilities. The Company was formally incorporated in January 2006 only with two shareholders forming the Company with \*\*% and \*\*% shareholding with a total equity contribution of 500000 RMB. The third investor who initially signed the investment agreement did not fulfill its commitment of investment and did not join the Company.

32. This proposed Company under establishment entered into a purchase agreement with Mr Pan Lee Ing owner of an old tile body plant in the name of M/s Foshan Nanhai Lijing Ceramic Co. Ltd. for manufacture of tile body. The Company also set up a new tile polishing unit to start trial production in October 2005. Commercial production was started in January 2006 after formal incorporation of the Company.

33. The tile body making unit was set up in 1998 and originally belonged to M/s Foshan Nanhai Lijing Ceramic Co. Ltd., owned by one Mr Pan Lee Ing. The applicant producer has acquired the plant and machineries from this unit on out right purchase basis as per the contract dated 26<sup>th</sup> July 2005 with the previous owner for a total value of RMB \*\*\*\* Million. The process of acquisition was through negotiations between the parties and payment has been made by cash for which a valuation report, list of plant and equipments and payment details were produced by the Company. The Company also produced a copy of the certificate of verification of assets done by Guangzhou Zhong Shen Certified Public Accountants showing the purchase price of assets and tax paid on the same.

34. The land and building (\*\*\*\*\* sqr meters) belonging to this unit has been acquired by the applicant producing Company on a long term (20 years) lease basis from 5<sup>th</sup> July 2005 till 4<sup>th</sup> July 2025 at an annual lease rental of RMB300,000/-, subject to revision every three years by about \*\*%. It was clarified that the land actually belongs to the village community as per the Chinese law. The lease rent paid is for the land use right for the lease period only and the amount is paid to the Government through the original owner. Copy of the lease contract was produced for verification.

35. As far as the Polishing Plant is concerned, it is a new plant set up at a different location after establishment of this Company with a capacity of \*\*\*\* Sqr Meter per annum. The plant and machineries for the new plant has been purchased from the open market out of the capital raised by the Company as short term loan from the shareholders. It was noticed that for the purpose of acquiring the assets of the tile body making plant and to set up the new polishing unit the Company has taken short term loan of \*\*\*\* million in the form of cash contribution from the shareholders of the Company. However, no evidence was shown for the payment of any interest to the shareholders towards the short-term borrowings. Since as per the records, the Company has not paid any interest on the capital raised from the shareholders in the form of loan a notional interest amount has to be charged on the short term borrowings, based on the prevalent market interest rate of approx. \*\*\*% per annum in Foshan, China during POI (based on the average interest rate in China during this period) for determination of the cost of production and sales.

36. The Authority notes the arguments of the interested party that since the producing Company does not pay interest on the short term borrowings they are not following GAAP in the country of exports and therefore, market economy status should not be granted. In this connection it is noted that the borrowings are in the form of personal loans from the promoters of the Company on which the contributors have not charged any interest. However, the benefit accruing to the company on account of this capital contribution on which no interest has been charged has been neutralized by adding the interest cost on this borrowed capital to the cost.

37. Purchase of raw materials and other inputs has also been examined. The tile body unit purchases basic raw materials i.e. stone/sand/clay, other chemicals, and fuel from the open market. Electricity is being purchased from the state-owned power supply company. Raw materials have been purchased from several suppliers not affiliated to the Company and not having government holdings. It was claimed that the raw materials were purchased from the open market at market prices and State is 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.

38. The producing Company has been selling the subject goods primarily 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. On examination of the claim of the new shipper it was found that there were sales of the subject goods in the domestic market in substantial volume and the evidence of state involvement was not found regarding determination of sale price/quantities. It was also observed that sales of subject goods in the domestic market have been made to different customers

at different prices but wide variation was not found. Domestic or export sales varies from customer to customer which depends on demand and supply position in the market.

39. HRJ has raised the issue of power cost and exchange rate control by the Chinese Government. In this connection the Authority notes that the power is supplied by the state-owned power companies but electricity and water have been charged according to the consumption pattern and the prevailing prices charged by the concerned electricity/water supply company. However, no evidence of any possible preferential treatment, directly or indirectly, was found. The price charged by the supplier is different in different time lags like for peak, mid-peak and non-peak hours. Price per unit for peak and mid-peak hours are higher than non-peak hours.

40. As regards engaging labours, the company claimed that all employment decisions were taken by the company itself. 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. They claimed that the Chinese Government does not provide any benefit like housing, medical care etc.

41. 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 to Tax authority. Accounts of the company were audited by the Auditors and no adverse comments were found in their Auditor Report with regard to the accounting practices followed by the company.

42. As far as application of bankruptcy and property laws are concerned, the Authority notes that such laws are in place in China and are applicable to all enterprises operating under the Company Laws of China. The company is free to acquire property and dispose them off under the said laws. 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.

43. As far as the issue of exchange rate as raised by HRJ is concerned, it is a macro-economic issue and the market economy status of the company cannot be decided on the basis of this issue alone. The export earnings of the Company were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction.

44. The above examination indicates that there is no significant carry over of distortions from the erstwhile market economy system and the applicant producer has been operating under market economy principles without significant state intervention in its commercial activities. In view of the above it is appropriate to

determine normal value as per para 1 to 6 of Annexure 1 to the Anti Dumping Rules.

**ii) Cost of production and Domestic Sales**

45. The Company produces tiles body and vitrified tiles in different sizes i.e. 500X500; 600X600; 800X800 and types i.e., double loading (DL), soluble salt (SS), crystal double loading (CL), pure colour (PC), and crystal yellow (CY) tiles. However, they have exported only two varieties of tiles i.e., SS and CL, to India during the POI.

46. Distortions if any in the cost of production and sales has also been examined and the Authority notes that the Company has provided the details of acquisition of capital assets and other operating expenses except the interest on the borrowings made by them from the shareholders for which a notional adjustment towards interest cost has been done. Subject to this the cost of production of the subject goods have been examined from the records of the Company keeping in view the above observations on the nature of operation and status of the company. Cost advantages accrued to the Company on account of finance cost have been neutralized as indicated above. The costs of production of the individual types, so determined, have been compared with the domestic selling price for ordinary course of trade test.

47. Bioma has made two types of domestic sales of the subject goods manufactured by it. It has sold significant quantities to the export trading companies for exports and also sold in the domestic market for domestic consumption. Sales in the domestic market and sales for export purpose have been reported in two separate annexure to their response. The company has sold four types of the subject goods in three sizes. However, only SS and CL varieties have been sold in Indian Market during the POI. Sales of these two grades in domestic market are in sufficient quantities and sales are to unrelated parties.

48. Domestic sales are at ex-factory level and payment has been realized in advance against the domestic sales. Therefore, no other selling expenses and no adjustment have been claimed by the producer to arrive at ex-factory price. However, the Authority notes that the average selling price of the above two varieties in the domestic market during the POI was below the average computed cost of production of these two varieties during the POI after adjusting cost for interest expenses. Therefore, the domestic sales transactions cannot be considered for determination of normal value of this producer in China.

49. The Authority notes that HRJ in its comments on the disclosure has argued that having admitted that the said exporter has been incurring losses on its domestic sales for the types exported to India, the authority should have recorded on what bases it came to a conclusion that the normal value in this

case cannot be determined under Section 9A(1)(c)(ii)(a) i.e., on the basis of export price from the exporting country or territory to an appropriate third country. In this connection the Authority notes that neither the Rules quoted above, nor ADA provide for any kind of hierarchy in the method of determination of normal value in a situation in which the normal value in the country of export cannot be determined on the basis of domestic selling price in the country of export of the exporter. Neither there is any requirement to record a finding why the third country export sales cannot be adopted for determination of normal value. However, the Authority has examined the selling price of the subject goods to other countries and finds that determination of normal value based on cost of production and general administrative and selling expenses plus a reasonable profit margin is appropriate method of determination in this case.

50. The Authority also notes that the interested party (HRJ) in its comments on the disclosure statement has argued that the Authority should have adopted the profit margin earned by the producer in terms of paragraph 4 of Annexure-I to the Anti-dumping Rules. In this connection the Authority notes that as per the records of the Company the Company has registered a profit of \*\*\*% on the sales value of the product under consideration. Therefore, the normal value has been revised taking into account the above profit margin as argued by the interested party. Accordingly, the normal value has been determined as follows:

RMB/ Sqr Meter	Product Types	
	SS	CL
	RMB/Sqr Meter	RMB/Sqr Meter
Cost of Production	****	****
SGA Expenses	****	****
Cost of Sales	****	****
Profit ***%	****	****
Normal Value	****	****

### iii) Export Sales to India

51. The producing company established in 2006 did not have export licence to export the subject goods. They were exporting the goods to different countries through M/s Foshan Hong Yun Trade Limited Company, which is a state-owned trading Company. Hung Yun was the sole export agent for Bioma till December 2006 after which the exclusive trading contract has expired and another exporter has also exported the subject goods to various countries during the POI. During this period the Company exported total \*\*\*\* Sqr Mtrs of tiles to various countries out of which \*\*\*\* Sqr Mtrs were exported through Hong Yun and rest has been exported through the other unrelated trading company M/s Xin Zhong Wei. The Company has produced a separate annexure listing all exports made through these trading companies during the POI. In July 2006 Bioma has entered into a

sole agency and exclusive distributorship contract with M/s Shye International Limited, Hong Kong for starting export business to India.

52. As far as exports to India are concerned, there are only two transactions during the POI (February to July 2007). The exports have taken place from Bioma through Hung Yun in China and Shye international, Hong Kong. Hong Yun has not participated in the investigation. It was also clarified that Hong Yun is a state trading company and has no relationship with Bioma. However, the producer was asked to provide information on past export of Hong Yun to India, if any, in terms the Rules. It was found that Hong Yun exported one consignment in 2006 and another in 2007. Hence there was no export from Hong Yun to India during the POI of the original investigation. The other trading company has not exported the subject goods to India during the POI.

53. Transaction details between Bioma, Hung Yun and Shye International were also examined. It was noticed that sales from Bioma to Hung Yun are domestic sales and the producer raises VAT invoices against Hung Yun. The invoice is at ex-works level in RMB Yuan inclusive of VAT @ 17%. Hong Yun in turn raises invoice on Shye International, Hong Kong in US\$ on FOB basis whereas the goods have been shipped directly to India. Hung Yun claims VAT refund of 13% on export consignments. Copies of invoices of Hung Yun were produced though Hung Yun has not filed any questionnaire response.

54. The sales from Bioma to Hung Yun are at ex-works and payment is realized through TT. The sales from Hung Yun to Shye are at FOB term and payment from Shye to Hung Yun is through Letter of Credit. Shye international is the shipper and raises invoice on its related importer Shye Impex in India. Payment from Shye Impex to Shye International is on LC terms. Shye Impex as the importer has not filed any questionnaire response. However, price at which Shye International has exported the goods to its affiliated importer and the final selling price of the affiliated import has also been examined as noted earlier and it was found that the final sales realization of the importer from unaffiliated purchaser in India is at significant profit after deductions towards, add duties and levies and associated selling expenses. Therefore, the transaction between the affiliated exporter and importer does not appear to have been affected by relationship. Therefore, the determination of export price based on the final price of Shye International to India has been found to be appropriate and reasonable.

55. Inland transport and all FOB expenses have been borne by Hung Yun from its margins and actual expenses have been provided by the applicants. Sales from Shye International to Shye India are in CIF term. Ocean Freight and insurance has been paid by Shye international to Hung Yun. Therefore, the selling expenses of Hung Yun and Shye have been adjusted to arrive at net ex-works export price at the factory level of the producer. The Authority also notes that while purchase price of Hung Yun includes VAT @17% the refund of VAT is @13% of the basic price, on exportation and therefore, VAT differential of 4% is

a selling expense for the exporter which has been adjusted from the export price of Hung Yun along with a profit margin of \*\*\*% to arrive at ex-works price. Accordingly, the export price at ex-works level of the producer has been determined as follows:

			Less Direct selling Expenses of Shye	Less Direct Selling expenses of Hung Yun						
	Qty Sqr Mtr	Invoice Value US\$	Ocean Freight and Insurance US\$	In land freight US\$	VAT Differential 4% US\$	Profit Margin of Hung Yun 3% US\$	Producer's selling expenses US\$	Total adjustments US\$	Net Value at Ex-works level US\$	Ex-works Export price US\$/Sqr Mtr
SS	****	****	****	****	****	****	****	****	****	****
CL	****	****	****	****	****	****	****	****	****	****
Total	****	****	****	****	****	****	****	****	****	****

**iv) Dumping Margin:**

56. Ex-works normal values of the above product types determined as above have been compared with the ex-works export prices of the exporter determined at the ex-works level as above for determination of its dumping margin as follows:

Product Type	Export Qty	NV US\$/Sqr Mtr	EP US\$/Sqr Mtr	DM US\$/Sqr Mtr
SS	****	****	****	****
CL	****	****	****	****
Total	****	****	****	****
				1.5%

57. The dumping margin of the applicants has been found to be de minimis.

**E. Conclusions and Recommendations**

58. Having conducted this review in terms of Rule 22 of the Rules and after considering the foregoing the Authority concludes that

- i. the producer M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan China (also known as Bioma Ceramics) and exporter M/s Shye International, Hong Kong have established themselves as new shipper of the subject goods to India and therefore, are eligible for separate dumping margins.
- ii. Dumping margin of the vitrified porcelain tiles manufactured by M/s Foshan Nanhai Jing Yu Ceramics Ltd. Foshan China (also known as Bioma Ceramics) and exported by M/s Shye International, Hong Kong during the period review was found to be de minimis.

59. Therefore, in terms of Rule 22 of the Rules the Authority 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 Foshan Nanhai Jing Yu Ceramics Ltd. Foshan China (also known as Bioma Ceramics) and exported by M/s Shye International, Hong Kong.

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

**(R. Gopalan)**  
**Designated Authority**