

**TO BE PUBLISHED IN PART 1 SECTION-1 OF
THE GAZETTE OF INDIA- EXTRAORDINARY**

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated the 8th April, 2017

FINAL FINDING

Subject: Anti-Dumping investigation concerning imports of “Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR.

No.14/14/2014-DGAD: -Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as “**the Act**”), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as “**the Rules**”) thereof;

A. Background of the case

2. Whereas, Gujarat Granito Manufacturers Association and Sabarkantha District Ceramic Association, alongwith 24 producers of Vitrified tiles in India (hereinafter also referred to as “the applicants”), had jointly filed an application before the Designated Authority (hereinafter also referred to as “the Authority”), in accordance with the Act and the Rules, alleging dumping of “Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR (hereinafter also referred to as “the subject country”) and consequent injury or threat of material injury to the like product domestic industry and requested for initiation of an investigation for levy of anti-dumping duties on the subject goods.
3. And Whereas, the Authority, on the basis of sufficient prima facie evidence, submitted by the applicants issued a public notice vide Notification No. 14/14/2014-DGAD dated 13th October, 2015, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the

sub Rule 5 of the Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury, or threat of material injury to the domestic industry.

4. On the basis of preliminary investigation carried out, the Authority issued its Preliminary Findings, vide Notification No 14/14/2014-DGAD, dated 11th March, 2016, recommending imposition of provisional Anti-dumping duty on the imports of the subject goods falling under heading 6907, 6908 or 6914 of Chapter 69 of the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from the People's Republic of China.
5. After considering the aforesaid preliminary findings of the Authority, the Central Government, in exercise of the powers conferred by sub-section (2) of section 9A of the Act read with rules 13 and 20 of the Rules, imposed provisional duties on the subject goods vide Notification No. 12/2016-Customs (ADD) dated 29th March, 2016 for a period of 6 months.

B. Further Procedure

6. The Authority has followed the following Procedure after its Preliminary determination with regard to this investigation:
 - i. The Authority notified the Preliminary Determination to all interested parties, as recorded in the preliminary findings, inviting comments on the same and the views of the interested parties on the preliminary determination has been considered and addressed to the extent possible for the purpose of final determination.
 - ii. As noted in the preliminary findings, keeping in view of the number of producers and exporters in the subject country, the Authority resorted to sampling in terms of Rule 17(3) of the Rules and selected the following as the sampled parties, for detailed examination of degree and extent of dumping:
 - a. Guangdong Haosen Ceramics Co., Ltd (Producer) - Foshan Haosen Import and Export Co., Ltd, M/s Foshan Kihut Ceramic Co., Ltd, M/s Kun Lagy Ltd (Exporters).
 - b. M/s Foshan Lihua Ceramics Co. Ltd. (Producer)- M/s Foshan Henry Trading Co. Ltd.(Exporter)
 - c. M/s Foshan Chancheng Jinyi ceramics co. Ltd. (Producer)-M/s Foshan

Worceter Trade Co. Ltd. (Exporter)

- d. Foshan Qiangbio Ceramics Co. Ltd. (Producer) - M/s Foshan Hongliao Trade co. Ltd. and M/s Sheenway Corporation Ltd. (Exporters).
 - e. M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City, M/s Jiangxi Fuligao Ceramics Co. Ltd. and M/s Guangdong Luxury Micro-crystal Stone Technology Co. Ltd. (related Producers) - M/s New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong (Exporter)
 - f. M/s Guangdong Gelaisi Ceramics Co., Ltd. and M/s Foshan Sanshui Huiwanjia Ceramics Co., Ltd (related Producers)- M/s Foshan Newpearl Trade Co., Ltd. (Exporter)
 - g. M/s Foshan Nanhai Xiqiao Jiersi Ceramics Co., Ltd. (Producer) - M/s Foshan City Sanshui Dongsheng Trading Co., Ltd.(Exporter)
- iii. However, out of the above sampled producers/exporters, M/s Foshan Nanhai Xiqiao Jiersi Ceramics Co., Ltd. (Producer) - M/s Foshan City Sanshui Dongsheng Trading Co., Ltd.(Exporter) did not file exporters questionnaire response.
- iv. The Authority also notified the names of the following responding but non-sampled producers and exporters, who were eligible for weighted average rate of duty of the sampled exporters in terms of Rule 17 of the Rules:
- a. M/s Foshan Helai Building Materials Co., Ltd and M/s Foshan City Gaoming district hui Mei AO Building Material Co., Ltd (Producer)- M/s Foshan Xinzhongwei Economic and Trade Co., Ltd, M/s Globlink Overseas (HK) Ltd (Exporter)
 - b. M/s Foshan City TaoQuiang Building Material Co., Ltd (Producer) - M/s Foshan Fortune Imp. And Exp. Trade Co., Ltd. (Producer & Exporter)
 - c. M/s Monalisa Group Co., Ltd (Producer) - M/s Guangdong Monalisa Trading Co., Ltd (Exporter)
 - d. M/s Foshan Gold Full House Building Material Co., Ltd (Producer) - M/s Foshan Nanhai Rongjia IM & EX Co., Ltd, M/s Foshan Clouds Import & Exports Co., Ltd (Exporter)
 - e. M/s Guangdong Yongsheng Ceramics Co., Ltd (Producer) - M/s Foshan Ishine Trading Co., Ltd (Exporter)
 - f. M/s Foshan Sunny Ceramic Co., Ltd (Producer) - M/s Foshan Gold Medal Import and Export Trading Go., Ltd (Exporter)
 - g. M/s Enping City Huachang Ceramic Co., Ltd (Producer & Exporter)
 - h. M/s Foshan Oceanland Ceramics Co., Ltd (Producer & Exporter)

- i. M/s Guangdong Overland Ceramics Co., Ltd (Producer & Exporter)
 - j. M/s Guangdong Kito Ceramics Co., Ltd (Producer & Exporter)
 - k. M/s Foshan Sincere Building Material Co., Ltd (Producer & Exporter)
 - l. M/s Guangdong Guanxing Ceramics Enterprise Co., Ltd (Producer & Exporter)
 - m. M/s Qingyuan Quya Ceramics Co., Ltd (Producer & Exporter)
 - n. M/s Jingdezhen Kito Ceramic Co., Ltd (Producer & Exporter)
 - o. M/s Foshan Louis Valentino Ceramic Co., Ltd (Producer & Exporter)
 - p. M/s Guangdong Xinfengjing Ceramics Co., Ltd (Producer & Exporter)
 - q. M/s Guangdong Tianbi Ceramics Co., Ltd (Producer & Exporter)
 - r. M/s Foshan HCC Building Material Co., Ltd (Producer & Exporter)
 - s. M/s Zhanjiang Zhonghong Ceramics Co., Ltd (Producer) - M/s Foshan Beyond Import and Export Co., Ltd(Exporter)
 - t. M/s Heyuan Romantic Ceramics Co., Ltd (Producer)- M/s Foshan Beyond Import and Export Co., Ltd(Exporter)
 - u. M/s Foshan Nanhai Yonghong Ceramic Co., Ltd (Producer) - M/s Foshan Jun Enterprise Co., Ltd (Exporter)
 - v. M/s Foshan Dunhunang Building Material Co., Ltd (Producer & Exporter)
 - w. M/s Foshan Sanshui Hongyuan Ceramics Enterprise Co., Ltd (Producer & Exporter)
- v. Apart from the sampled and non-sampled parties, as detailed above, the sampling response of 49 producers and exporters were rejected by the Authority inter alia on the ground of non-submission of complete information required for the purpose of sampling and the reasons of rejection were intimated to each party. For the sake of brevity, the same is not repeated here.
- vi. As noted in the Preliminary Findings the following sampled producers/exporters of the subject goods from the subject country also filed MET questionnaire response which has been appropriately examined by the Authority to the extent the claims are supported by adequate verifiable evidence:
- a. M/s Foshan Chancheng Jinyi ceramics co. Ltd.
 - b. Guangdong Haosen Ceramics Co., Ltd
 - c. Guangdong Newpearl Ceramics Group Co Ltd.
 - d. M/s Foshan Lihua Ceramics Co. Ltd.
 - e. M/s Foshan Henry Trading Co. Ltd.
- vii. In addition to the above the Authority has not accepted the exporters questionnaire/MET responses filed by the following non-sampled parties, who had also claimed individual treatments:

- a. Foshan Gani Ceramic Tiles Co., Ltd
- b. Qingyuan Gani Ceramic Tiles Co., Ltd
- c. Foshan Clouds Imp& Exp co., Ltd
- d. Foshan Nan Hai Rongjia Import & Export Trading Co., Ltd.
- e. Gold Full House Building Material Co., Ltd
- f. Qingyuan Qingbiao Ceramics Co., Ltd
- g. Xin Xing Xian Zhisheng Ceramics Co., Ltd

viii. As recorded in the Preliminary Findings the Authority received importers questionnaire responses from the following importers in India:

- a. Asian Granito India Limited
- b. Bright International Import & Export
- c. Dimension
- d. H&R Johnson (India)
- e. Inigo Tiles
- f. Kajaria Ceramics Limited
- g. Katariya Capital Promoters & Builders
- h. Malwa Ceramics Pvt. Ltd.
- i. Penda Marketing Pvt. Ltd.
- j. Somay Ceramics Limited
- k. Spaniso Studio
- l. Thai Impex (P) Limited

ix. Apart from the respondent sampled producers/exporters, importers/users, domestic industry and other domestic producers, the Authority received submissions from a large number of interested parties. The list has been notified in the Preliminary findings and for the sake of brevity the same is not being repeated here.

x. 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.

xi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction-wise import data of imports of the subject goods for the past three years and the period of investigation. Information concerning imports of the subject goods was also obtained from the DG, Systems and DG, Valuation because of certain information received regarding distortion of the import price due to alleged use of minimum

import price at certain ports for clearance of the subject goods. The Authority has relied upon the imports data received from the DGCI&S, DG (Systems) and the Cooperating exporters' data, to the extent they have been verified and accepted, for various analysis and determinations for the purpose of final determination.

- xii. The cost of production and cost to make and sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out in accordance with Annexure III of the Antidumping Rules so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xiii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xiv. Investigation was carried out for the period starting from 1st April, 2014 to 31st March, 2015 (POI). The examination of trends, in the context of injury analysis, covered the periods Apr'11-Mar'12, Apr'12-Mar'13, Apr'13-Mar'14 and the period of investigation.
- xv. On the spot verification of the information provided by the applicant domestic producers and the sampled producers and exporters in China was carried out to the extent considered necessary and the verified data has been used in the final determinations.
- xvi. The Authority held Oral Hearings on 20th June 2016 and on 31st January 2017 to provide opportunity to the interested parties to present their views on various aspects of the case orally followed by written submissions. The views expressed by the interested parties in the said Oral hearings and during the course of this investigation, have been considered and addressed in this finding to the extent they are relevant and backed up by evidence.
- xvii. The Department of Revenue has extended the time period for completion of this investigation up to **12th April 2017 in terms of Rule 17 (1) of the Rules.**
- xviii. In accordance with Rule 16 of the Rules, the Authority issued a disclosure statement on 24th March 2017, containing the essential facts of the case before the Authority that would form the basis of the Final Determination by

the Authority. The interested parties were given time up to 31st March to comment on the same. The comments of the interested parties, to the extent they are relevant, have been considered and addressed in this finding. On request of the Domestic Industry, the Authority held a limited post disclosure oral hearing inviting interested parties whose dumping margin were assessed and also other interested parties if they so desired.

xix. *** in this Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules and numbers in () implies negative numbers.

xx. The exchange rate adopted for the POI is 1 US \$ =Rs 61.69.

C. Product Under Consideration and Like Article

7. The product under consideration as defined in the initiation notification of the present investigation is described as follows:

“Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR. Vitrified/Porcelain tiles can be glazed or unglazed and are used primarily for coverings for floors as well as on walls. These tiles are used in buildings, homes, restaurants, cinema halls, airports, swimming pools, railway stations etc. Vitrified/Porcelain tiles are a kind of ceramic tiles, but are made with slightly different elements. These tiles are made after vitrification process. Product under consideration is mainly produced and sold in two sizes (i) 600 mmX600 mm (ii) 800 mmX800 mm. Imports are also mainly taking place in these two sizes”.

8. In its preliminary findings the Authority provisionally held that all tiles being imported from China are like articles and accordingly provisional duties were imposed on all *Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption*. However, several arguments have been placed by various interested parties on the wide scope of the product under consideration. Therefore, for the purpose of final determination the issue has been examined taking into account all material facts before the Authority as follows:

C.1 Views of the opposing interested parties

9. Various opposing interested parties to the investigation, including China Chamber of Commerce and various exporters and importer, have placed their argument on the scope of the product under consideration as follows:

- That the domestic industry is not manufacturing or producing tiles of dimensions 1000mm x 1000mm and more, and 800mm x 800mm with water absorption more than 0.5 percent. The domestic industry is also not producing Micro crystal tiles. Therefore, these tiles should be excluded this from the scope of Product under consideration.
- That cost of production of tiles of dimensions 1000mm x 1000mm is much higher than tiles of smaller dimensions as a result of the higher weight per meter square, thickness and low yield.
- It not commercially viable and suitable to cut tile of higher dimensions to smaller dimensions. Further, there is a possibility of breakage, as a result of which it becomes unsuitable for commercial use.
- That the imported goods are not “like article” to the goods manufactured by the domestic industry. In this connection reliance has been placed on the findings of the Authority in (i) Cold Rolled Flat Products of Stainless Steel from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA where Authority had restricted the scope of the PUC to width of 1250mm; (ii) Hot Rolled Flat Products of Stainless Steel originating in or exported from European Union, Korea RP, South Africa, Taiwan and USA, has restricted scope of PUC from 1250mm; and (iii) Carbon Black used in rubber applications’ originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand, on the grounds that the Authority has restricted the scope of the product under consideration to the grades/product types manufactured by the domestic industry.
- That the products imported from China are different from the domestically produced goods as the Chinese producers maintain high standards in production of the PUC due to availability of better quality of clay.
- That water absorption of ‘less than 3%’ is a misnomer as vitrified tiles have water absorption upto 0.5%. Therefore, all kinds of tiles with water absorption upto 3% should not be covered under the purview of this investigation.
- That antidumping duty is in force since 2003 till 2013, and the continuation of levy of the duty would not only deprive the consumers to use the better quality goods but would also force consumer to pay higher price in pretext of anti-dumping duty when there is no dumping at all.
- That there is a significant difference between laminatic porcelain panels and regular porcelain tiles on account of various parameters including

physical appearance, size, price, end use, manufacturing process, machines, market place, interchangeability and standards etc. Therefore, these panels should also be excluded from the scope of the product under consideration.

- That there is no *inter se* likeness between regular tiles and these laminatic porcelain panels, which is produced by very few producers in entire China and by not even one producer in India. These panels are not comparable to PUC, with regard to the price, cost, differences in manufacturing process, perception among users and utility of the product etc.

C.2 Views of the Domestic Industry

10. The domestic industry, in its submissions, has contested the arguments of the opposing interested parties and has argued as follows: -

- i. That Vitrified tiles are mainly produced and sold in two sizes (i) 600 mmX600 mm (ii) 800 mmX800 mm. Imports are also of mainly these two categories.
- ii. That there is no known difference in the subject goods produced by the domestic industry and that imported from the subject country. The subject goods produced by the domestic industry and the subject goods imported from subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods.
- iii. The water absorption specification adopted in PUC definition is appropriate for both situations i.e. if vitrified tiles are being produced above 0.5% - 3% water absorption and if there is no production of vitrified tiles between 0.5%-3 percent. The definition of PUC is without prejudice to both scenarios.
- iv. Tiles above 1000mm x 1000mm should not be excluded as Constituents of domestic industry produces (i) 1000X1000 mm tiles; (ii) tiles with one side above 1000 mm. The data provided clearly shows significant production of tiles above 1000mm.
- v. Earlier, tiles above 800 X 800 mm were included by the Authority, even when the domestic industry was not manufacturing the same in the matter of imports of ceramic tiles. This was challenged before the CESTAT and the appellate authority upheld the decision of the Authority.

C.3 Examination by the Authority

11. The Authority notes that Vitrified tiles are manufactured by verification process. Depending upon the process involved and surface finish the vitrified tiles are categorised as (i) Soluble Salt, (ii) Double Charge, (iii) Glazed Vitrified Tiles, Polished and/or Glazed Vitrified Tiles, (iv) Micro-crystal Tiles. Vitrified tiles are produced and sold in various sizes i.e., various combination of widths and lengths. Costs and prices increase with sizes as the raw material requirements increase with sizes.
12. Recent development in vitrified tiles has been to produce (i) full body and re-polishable tiles, which closely behaves like marbles in terms of maintenance, and (ii) Vitrified Thin panels.
13. Vitrified tiles is made by hydraulic pressing a mixture of clay, quartz, feldspar and silica, which make vitreous surface. Thus creating a single mass making them hard with water and frost resistance qualities. Though the basic production steps of all tiles are more or less same, i.e., making of tiles body or biscuit, through hydraulic press, glazing and vitrification in a kiln and polishing, the process widely differs for various types of tiles as mentioned above.
14. Soluble salt Vitrified Tiles is an old and cheaper technology for tiles placed in low traffic areas. In Soluble Salt Tiles process, tile body is given a liquid screen-printing to make up the design on the tile using soluble salt for giving the tile an exactly colour and pattern. Soluble Salt is at the lowest end of the spectrum, generally produced in 600X600 sizes and a regular use product.
15. Double charge vitrified tiles are fed through a press that prints the pattern with a double layer of pigment, 3 to 4 mm thicker than other types of tile. This process does not permit complex patterns but results in a long-wearing tile surface, suitable for heavy traffic commercial projects. Produced in various sizes this is a regular use product.
16. Glazed vitrified tiles (GVT) have a glazed surface. They offer a wide variety of design, art work and surface textures like wood grain, bamboo, slate or stone. This is also an expensive process, but the cost is dropping as digital printing techniques are introduced.
17. Micro-crystal tiles are a composition of crystallized glass surface and porcelain base produced by glassification of the top layer of the tiles using a different set of chemicals and high temperature.

18. Full body vitrified tiles have pigment in entire body (thickness) of the tile. This makes chips and scratches less noticeable and make this an ideal choice for high traffic zones, but the process significantly increases the cost.
19. The Thin Panels are new developments in vitrified tiles where the tiles are as thin as 3 to 5 mm with sizes much larger compared to conventional tiles, as large as 2 meters. The raw material used and production process is also significantly different, requiring very high-pressure machines. These panels are capable of being used in high traffic environment and are significantly expensive compared to other types of tiles.
20. As far as water absorption is concerned, it has been argued that water absorption of vitrified tiles is less than 0.5% whereas the water absorption of Ceramic tiles is always higher because of the material used. Therefore, if the water absorption is retained as a criteria then the Ceramic tiles will also get covered, which is not the product under consideration. BIS standard and other technical literatures have been referred to in support of this argument.
21. The Authority has examined the issue on the basis of these arguments and notes that in the previous investigations also the product was described with water absorption of less than 3%. The BIS standard and other documents submitted by the parties do not conclusively indicate that all Vitrified tiles are with water absorption less than 0.5% only. Neither it gives a clear differentiation of ceramic tiles and vitrified tiles in terms of water absorption. In fact, certain vitrified tiles used as wall tiles appear to have higher water absorption. That being the case the Authority does not find any strength in the arguments of the interested parties to restrict the water absorption criteria to 0.5% only.
22. While the prices of soluble salt tiles, double charge tiles, as well as Glazed and Polished Vitrified tiles move in a narrow band, the price structure of Micro Crystals and Thin panels are significantly different and these tiles are used in different segments.
23. The information of the domestic industry shows that the domestic industry produces predominantly soluble salt and double charge vitrified tiles and small but not insignificant quantity of Glazed and Polished Vitrified Tiles. Domestic industry produces these tiles mostly in 600X600, 800X800 sizes and some of the constituents of the domestic industry also produce 1000X1000 sizes. The domestic industry does not produce Microcrystals and Thin panels and other variants such as full-body and re-polishable tiles.
24. The above clearly establishes that the Micro-crystal tiles, full body tiles and Thin Panels are neither technically nor commercially substitutable for the

other three types of tiles being produced by the domestic industry, in view of their technical superiority, price band and usage segments. Therefore, the Authority holds it appropriate to exclude these tiles from the scope of the product under consideration.

25. The Authority in the disclosure statement had observed that the domestic industry does not produce and sell any significant quantity of GVT and PGVT. Though the transaction-wise import data does not clearly indicate the product types, the data of sampled cooperating exporters also established that major share of imports are of soluble salt and double charge types in sizes of 600X600, 800X800 with some imports of 1000X1000 mm sizes and other combinations. Import of GVT and PGVT and odd sizes are although relatively low in volume, but are still part of the import basket.
26. However the Authority in view of post disclosure comments offered by Domestic Industry and clarifications offered in the post disclosure hearing held on 3rd April, 2017 notes that the quantity of GVT/PGVT tiles is in fact about 5% of the total production in POI which is not insignificant warranting exclusion. Therefore GVT/PGVT have been included in the scope of PUC.
27. The domestic industry has argued that though they produce tiles mostly of sizes 600X600 and 800X800, tiles of wider width can be cut to size and used in place of tiles of small width, therefore, it would not be appropriate exclude tiles of higher widths.
28. The domestic industry has clearly contended that the tiles produced and sold by them are mostly of soluble salt and double charge tiles of 600X600, 800X800 mm sizes.
29. The examination of inter se *prices* of various sizes of Soluble Salt, Double Charge and GVT/PGVT tiles indicate that though the prices vary with the sizes, the price variation is not significantly high to dissuade a customer not to switch over to higher sizes of these tiles if lower sizes are subjected to anti-dumping duty. In view of this the Authority finds it appropriate to include all sizes of the above varieties within the scope of the product under consideration.
30. Accordingly, for the purpose of this investigation the product scope is restricted to Soluble Salt and Double Charge Vitrified Tiles and GVT/PGVT only, with water absorption upto 3%, without any size restrictions (hereinafter referred to as the product under consideration).
31. However, for various determinations and like to like comparisons the Authority has classified the products in terms of types, such as Soluble Salt

Double Charge and GVT/PGVT, and sizes have been categorised as 600X600, 800X800, and others.

32. Glazed and Unglazed Vitrified/Porcelain Tiles are classified under ITC HS 69.07, 69.08 and 69.14 at four-digit level. The customs classification is indicative only and in no way it is binding upon the product scope.

D. Domestic Industry and Standing

33. The Application for initiation of this investigation was filed by Gujarat Granito Manufacturers Association and Sabarkantha District Ceramic Association, on behalf of the following domestic producers of the product under consideration:

1. Ricasil Ceramic Industries Private Limited
2. Comet Granito Pvt. Ltd.
3. Cengres Tiles Ltd
4. Sunshine Ceramics Co., Ltd
5. Sims Ceramic Pvt. Ltd.,
6. Wintel Ceramic Pvt. Ltd.,
7. Simpolo Vitrified Pvt. Ltd.,
8. Zeal Top Granito Pvt. Ltd.,
9. Tocco Ceramic Pvt. Ltd.,
10. City Tiles,
11. Sanford Vitrified Pvt Ltd,
12. Red Stone Granito Ltd.,
13. Lexus Granito Pvt. Ltd.,
14. Silk Touch Vitrified Pvt Ltd,
15. Qutone Granito Pvt Ltd,
16. Simolex Vitrified Pvt Ltd,
17. Olwin Tiles Pvt. Ltd.,
18. Coral Granito Pvt. Ltd,
19. Duracon Vitrified Pvt. Ltd.,
20. Varmora Granito Pvt. Ltd.,
21. Metro City Tiles Pvt Ltd,
22. Affil Vitrified Pvt Ltd,
23. Sentosa Granito Pvt. Ltd.
24. Casa Tiles Pvt. Ltd.

34. The application was also supported by the following 13 other domestic producers of subject goods:

1. Clayris Ceramic Pvt Ltd,
2. Ramoji Granite Limited,
3. Icon Granito Pvt. Ltd.,

4. Lorenzo vetrified pvt. Ltd.,
5. New Pearl Vitrified Pvt. Ltd.,
6. Alliance Vitrified Pvt. Ltd.,
7. Famous Vitrified Pvt. Ltd.,
8. Blueart Granito Pvt. Ltd.,
9. Sun World Vitrified Pvt. Ltd.,
10. Senso,
11. Siyaram Vitrified Pvt. Ltd.,
12. Savio Ceramica Pvt Ltd and
13. Shubh Tiles Pvt. Ltd.

35. The Authority also noted that the following domestic producers had made significant imports of subject goods from the subject country or are related to the exporters/importers of subject goods from the subject country. Therefore, they were found to be ineligible for being considered as a part of the domestic industry for the purpose of determination of the standing of the applicants as well as injury determination.

1. M/s Kajaria Ceramics Ltd,
2. M/s H & R Johnson (India),
3. M/s Somany Ceramics Ltd,
4. M/s Asian Granita India Limited,
5. M/s Silica Ceramica Private Ltd,
6. M/s Commander Vitrified Pvt Ltd,
7. M/s Vintage Tiles Pvt Ltd,
8. M/s Cosa Ceramic Pvt. Ltd,
9. M/s Acer Granito Pvt. Ltd., J
10. M/s axx Vitrified Pvt. Ltd,
11. M/s Antique Marbonite Pvt. Ltd.,
12. M/s Oracle,
13. M/s RAK Ceramics Ltd,
14. M/s New Vardhman Vitrified Pvt Ltd.,

36. Accordingly, the Authority held, in its preliminary determination that the applicants had standing to file the petition and also for being considered as the domestic industry for the purpose of injury determination.

D.1 Views of the opposing interested parties

37. The opposing interested parties have contested the standing of the applicants and the determination of domestic industry by the Authority. In their post-preliminary determination submissions, these parties have mostly re-iterated their respective stands on the issue and have inter alia argued as follows:

- i. That the authority in the initiation notification considered 14 companies ineligible, as they have made significant imports or are in relation to companies, which have made imports. There is no clarity in what criteria did Authority consider with respect to percentage of imports of their production, as a percentage of total demand in India, as percentage of total imports in India, as percentage of total domestic sales to consider these parties ineligible.
- ii. That the Authority, in past, has considered such companies as Domestic Industry, even if they have imported the subject goods or were related to the importers or exporter of the subject goods. However, the Authority has deviated from its own practice. Several cases decided by the Authority have been quoted in this regard.
- iii. That the Authority has initiated the investigation based on the assumption that members of two associations and the participating producers, who had filed the application had 37.41% share in the total Indian Production of the subject goods and with supporters they account for 52.31% share in the total Indian Production of the subject goods. The Authority has itself in the finding stated that the share of the Domestic Industry with supporters is based on only eligible domestic producers and not on total domestic producers.
- iv. That the Authority has ignored the fact that while conducting the test of a major proportion provided under 2(b) the Authority is obliged to take into account the “total domestic production” in India. The Authority is incorrect in considering the production of industries which are eligible domestic producers and not of the all producers in India.
- v. That if the Authority takes the total domestic production that the applicant’s share is only 23%, which is below the minimum threshold of 25%. Therefore, the entire initiation is without any jurisdiction or the authority of law.
- vi. That any objective injury analysis may not be possible and correct based on such limited data of applicants participating in the present case as the majority of the producers are not participating in the investigation before the Authority by providing complete injury data.
- vii. That the data on record do not satisfy the standing in spirit and requires more participation by Indian producers by providing complete data to gauge the actual position of domestic industry in India and the current analysis in the Preliminary Findings are very sketchy and highly skewed due to lack of ample information.

- viii. Some of the interested parties have also argued that some of these excluded domestic producers, being larger producers of the subject goods, should have been included in the domestic industry for a meaningful injury investigation. It has also been argued that the Authority has treated some domestic producers as ineligible as those producers are importers or exporters of the subject goods. This is contrary to past practice of authority where it considered even those domestic producers as eligible that has imported or where related to exporters/importers of the subject goods. In this regard reference has been drawn to previous cases such as VSF, Tiles, Soda Ash and Aluminium Foils antidumping investigations.

38. Apart from other interested parties, Kajaria Ceramics, as an interested party has also argued that they should have been treated as a domestic industry and has also submitted its data for consideration as a part of the domestic industry for the purpose of injury determination. This party has inter alia argued as under:

- i. That in the present case the quantum of imports made by them with reference to the production, demand and total imports is not significant warranting exclusion.
- ii. Since Authority has excluded producers who are importers and producers who are not importers, but related to such importers/producers the ratio of imports to production should be examined considering the import/production of all related entities together. In such case the ratio of imports to production is in the range of 5% to 11% of excluded producers. This is an insignificant percentage and therefore, such producers should not be excluded from the investigation.
- iii. In the present case the excluded domestic producers have been predominantly engaged in manufacturing the subject goods in India and the volume of subject goods imported has not been significant as compared to the volume of production by producers in India.
- iv. Exclusion of some of the major domestic producers has resulted in a distortion of the injury findings as well as the calculation of dumping and injury margins, for the reason that the domestic industry participating in the investigations largely belongs to the unorganized sector and therefore, does not incur significant marketing, brand promotion or indirect selling expenses. Therefore, these producers

should be allowed to participate in the investigation and be treated as a part of domestic industry.

- v. As against criteria specified in Soda Ash case, in the present case the DA has not provided any reasons other than the volume of imports to justify exclusion, which as it is, is not significant. Moreover, it is not a case where the domestic producers have contributed to the fall in prices, or are shielded from the effects to such prices or have in any manner unduly benefitted from the imports.
- vi. The producers are committed to production and not to Imports. The domestic producers such as Kajaria and H & R Johnson (India) have made long term commitment to manufacturing in India vis-à-vis imports. They are major producers operating in Indian market and therefore injury analysis would be incomplete unless their data is taken into consideration for such analysis.
- vii. Imports by the producers are essentially to meet the demand in regional market, where the domestic product is unable to compete due to high freight costs.
- viii. The imports made are insignificant in relation to demand. (less than 1%).
- ix. The inclusion of major producers is necessary for proper determination of NIP and Normal Value. The domestic industry which is included right now in investigations is comprised of comparatively small producers who do not sell their goods on retail basis. Therefore, they do not incur various significant expenses like advertising, promotion and other indirect selling expenses which are being incurred by the organized producers in the subject countries. Since subject goods are consumer goods the indirect selling expenses form a significant part of cost of goods.
- x. Therefore, if the major producers such as Kajaria, Somany, H&R Johnson and M/s Asian Granito India Ltd are not included in the domestic industry, the actual cost of production of the subject goods in India would not be captured which would in turn distort the finding regarding the extent of injury margin findings. It would lead to understatement of the dumping margin as the constructed normal value based on the cost of production of the participating domestic industry, would not represent the actual cost incurred by the producers in the subject country.

D.2 Submissions made by Domestic Industry

39. The domestic industry, in its various submissions, has argued that

- The petition seeking imposition of anti-dumping duty was jointly filed by Gujarat Granito Manufacturers Association, Sabarkantha District Ceramic Association and 24 producers of the product under consideration who are members of these associations and also participating in the present investigation as the domestic industry. These parties have collectively requested the Designated Authority to impose ADD and provided all relevant information with regard to injury to the domestic industry. The petitioning companies have given individual authorization letters apart from authorization letters filed by the Associations in this case.
- The Associations had advised all members to provide relevant information. A number of members of these associations, owing to their small size of operations, were not able to segregate their financial and statistical data into different production and sale of different types and fully participate in the investigation. Due to such reasons, data of some companies could not be taken for the current investigation.
- A statement showing details of petitioner companies and their respective associations were provided which clearly show that all 24 petitioner-companies belong to either of the two associations.
- The domestic producers who have imported the subject goods from the subject country and their share in their own production had been given earlier. Pursuant to which 14 companies including Kajaria and Somany were held as ineligible producers. However, it is no longer *res integra* that if a domestic producer has imported significant volumes of the product under consideration or are related to an importer or exporter of the product under consideration, such domestic producer should be treated ineligible domestic industry and in case of such a situation, the remaining domestic producers should be considered as totality of the domestic industry.
- The domestic industry has no reservation to authority's consideration of ineligible producers as eligible industries. The authority may include if it deems it to be fit.
- While the petitioners do agree that the authority need not exclude these domestic producers from the scope of domestic industry because of imports made by these parties and while these producers themselves strongly pleaded that they should be included within the scope of domestic industry, petitioners submit that there is no justification for the contention that this is

inconsistent with the past practice of the authority. There have been several cases where authority has excluded those domestic producers who are related to exporters or who are themselves importers of the PUC.

- The data of the domestic producers who were found to be ineligible reflect the organized sector and the domestic industry has no reservations to inclusion of their data for the purposes of present investigation.
- Production of the petitioning companies is more than 25% of production of the total Indian production i.e. 37.41% and thus, constitutes domestic industry within the meaning of the Rule 2(b). None of the petitioners have imported the PUC. Petitioners along with supporters constitute 52.31% of the eligible Indian production.
- Major proportion means significant and important share and not 50% or more shares. The Authority has in the past many cases accepted standing claims where the domestic industry constituted less than 50% of total Indian production.
- Detailed jurisprudence has been provided with respect to major proportion, exclusion of a domestic manufacturer, comparative legal provisions of other countries, purpose of amendment etc. has been duly provided in this regard in the submissions of the domestic industry.
- The use of the word 'may' in Rule 2(b) suggests that the related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. It is the consistent practice of the investigating authorities that the exclusion of such producers must be decided on a case-by-case basis.
- The petitioning companies therefore, satisfy the requirement of standing under the Rules. Consequently, the petitioner companies constituted "domestic industry" within the meaning of the Rules.

D.3 Examination by the Authority

40. Rule 2(b) of the AD Rules defines domestic industry as under:

"domestic industry" means the domestic producers as a whole, engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the

term 'domestic industry' may be construed as referring to the rest of the producers”

41. In the Preliminary Findings, the Authority noted that the production of the applicant domestic producers accounted for 37.41% of total Indian production, thereby constituting “a major proportion” of the total eligible domestic production. Further, applicant companies along with supporters constitute 52.31% of total eligible production by domestic industry and therefore, the applicant companies constitute domestic industry within the meaning of the Rule 2(b) and the application, therefore, satisfies the requirement of standing in terms of Rule 5(3) of the Rules.
42. The opposing interested parties have argued that the total Indian Production should have been computed including all domestic producers irrespective of their being eligible or ineligible and then the share of the applicant industries should be examined with regards to the expression major proportion’.
43. The Authority notes that the expression *‘in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers’* provides the basis for narrowing down the universe of the domestic producers and total domestic production for the purpose of determination of standing, by ignoring the production of those producers who are found to be ineligible to be considered as domestic industry. Therefore, the arguments of the interested parties that the standing of the domestic industry has been determined in an erroneous manner is not found to be correct.
44. Some of the interested parties have argued that some of the major producers of the subject goods, who have been treated as ineligible for the purpose of domestic industry, should have been included for a meaningful injury investigation. At the time of the Oral hearing also this issue was also raised by most of the interested parties and the excluded producers have thereafter filed their cost and injury data seeking inclusion in the domestic industry for the purpose of injury investigation.
45. The basic arguments of the domestic industry, excluded producers and some of the interested parties have been that the dumping and injury determinations are getting impacted and distorted because of the exclusion of most of the organised producers and inclusion of mostly unorganised producers in the domain of the domestic industry for the purpose of injury investigation. It has been argued that the imports by these producers is insignificant compared to the total demand in the country and therefore, they should not have been excluded from the domain of domestic industry.

46. The Authority notes that most of these producers have significantly high volume of imports in the past and during the POI, directly from some of the producers in the subject country, who are being investigated. These producers had significant trading activities of the imported tiles, though they have gradually increased their production activities under previous anti-dumping protections. Therefore, any injury analysis based on their data would have been distorting. Moreover, in the past as a consistent practice the Authority has held such domestic producers having significant imports for trading purpose as ineligible domestic industry. Therefore, there is no inconsistency in this regards in this case.

47. As regards the disclosure of information regarding the basis of determination of the share of imports by the domestic producers treated as ineligible the Authority notes that these producers were found to have imported significant volumes of the subject goods from the subject country in relation to their own production as well as total imports into the country. Accordingly, they have been treated as ineligible to be treated as domestic industry in terms of Rule 2 (b). There is no obligation on the Authority to disclose such information to other interested parties.

48. In view of the above, the Authority confirms its findings in the preliminary findings with regard to the domestic industry and standing.

E. *De Minimis* Limits

49. The Authority has relied upon the imports data received from the Directorate General of Commercial Intelligence and Statistics (DGCI&S). The imports of the subject goods from the subject country are found to be substantial and above the de- minimis level.

F. Interested Parties to the investigation

50. The parties who have filed sampling questionnaire response, questionnaire responses and other submissions from time to time, the applicant domestic industry, supporters and other domestic producers and their associations, importers who have filed questionnaire responses and made themselves known as interested parties; Chinese Chambers of Commerce for Imports and Exports, who has made itself known as an interested party and filed certain submissions; and the Governments of PRC, have been treated as the interested parties to this investigation.

G. Miscellaneous Issues

51. The interested parties, including the domestic industry, have raised several issues regarding the provisional determination and various procedural issues. While the issues regarding provisional determination of dumping and injury have been dealt in their respective sections, the general issues raised by the interested parties have been addressed here.

G.1 Issues raised by the opposing interested parties

52. The opposing interested parties have made the following arguments regarding the proceedings:

- That preliminary findings are without jurisdiction, illegal, arbitrary, without application of mind, unreasoned and in clear disregard of the principles of natural justice. The petition filed by the domestic industry did not even claim that gross and irreparable injury would be caused to the domestic industry during the duration of investigation. No material fact is also available on record or reflected in the preliminary findings to justify recommendation of imposition of provisional duty. Therefore, the imposition of provisional duty is contrary to Rule 12 and Section 9B(1)(b)(iii) of the Customs Tariff Act.
- That provisional duty cannot be recommended on basis of threat of injury. The provisional duty can be imposed only if there is injury and causal link during the period of investigation. The Authority has not made determination for causal link and the injury during the course of investigation. Further, Authority failed to record factors, which can be construed as “further” determination “during the course of investigation” as it being mandatory requirement.
- That the sampling process undertaken by the Authority is inconsistent with Rule 17(3) of the Indian AD Rules and the principles of natural justice. The Authority is permitted to undertake a sampling exercise where the number of producers/exporters is so large as to make the determination impracticable.
- The sample taken by the Authority is not a reasonably valid sample or the largest percentage of volume of exports from China PR. The Authority has failed to provide parties with reasons for rejection of their sampling questionnaire response or the Authority has rejected the responses filed by the sampled producers/exporters on erroneous grounds.
- Authority should not have rejected the submissions that were filed by parties prior to the decision on the sampling exercise being undertaken. Authority

should have expanded the sample if the information provided by the sampled producers/exporters was considered as unsuitable.

- A sample of 18 producers/exporters out of 106 producers/exporters cannot be considered as a reasonable number of interested parties that represent a statistically valid sample or the largest percentage of volume of exports from China PR.
- The volume of exports of the sampled producers/exporters constituted less than 30% of the total volume of exports of the subject goods during the POI. Therefore, selection of merely 6 supply chains cannot be considered as a statistically valid sample that is representative of the exports of the subject goods from China PR.
- The non-sampled co-operating producers/exporters were not granted a weighted average rate based on the responses of the sampled producers/exporters, which runs counter to the requirements of Article 9.4 of the WTO ADA.
- The Authority is incorrect in rejecting the response of exporters who have filed response within 40 days of initiation of the investigation. It goes against the principles and intent of the WTO ADA and the Indian AD Rules for the non-sampled co-operating producers/exporters not to be given a weighted average dumping margin that should have been determined based on the responses filed by the sampled producers/exporters but rather be given a rate that was determined based on best facts available.
- In the preliminary findings, the response filed by the responding exporters were arbitrarily rejected on the grounds of supply chain. The Authority has included only certain producers and exporters in a group for sampling purpose. Other producers or exporters data could not have been provided by these parties without expanding the scope of the sampling. Therefore, rejection of the responses on this ground is arbitrary.
- Anti-dumping duties are determined for producer-exporter combinations and not exporter-producer combinations. Separate anti-dumping duty is to be determined for each commercial value chain and the same is determined *qua* the producer.
- For a party that participates in the proceedings by providing information, its data must be used to the extent possible. The fact that an exporter is involved in exporting the subject goods produced by a number of producers is not

relevant for the purpose of providing an individual margin for the supply chains where complete information has been provided.

- The responses should not have been rejected on the ground that certain unrelated parties had not filed questionnaire responses rendering the supply chain incomplete.
- The sample should have been expanded if information provided by sampled entities was unsuitable. Rule 17(4) of the Basic Regulations of the European Commission states that a new sample must be looked into if firstly, Degree of non-cooperation by some or all of the parties selected and secondly, If the non-cooperation is likely to materially affect the outcome of the investigation
- That the submissions filed prior to sampling exercise should not have been rejected as they were within prescribed timelines. There was no indication in the initiation notification about probability of sampling being undertaken. Therefore, 49 companies who filed questionnaire responses should be included in the list of non-sampled cooperating producers/exporters.
- That the initiation is bad in law because: a) Applicant's contention in respect of import data was accepted without preliminary verification. The Authority did not wait for response of DoR for MIP and did not seek clarification from DGFT, which generally issues such notification. b) Since the initiation was beyond six months' gap between POI and date of initiation the Authority could have waited for some time for response from DoR. c) Rejection of official data (DGCI&S) on premise of being false and misleading and reliance on information of importer who is a domestic producer is unprecedented. The Authority has been misled by applicants.
- That the transaction wise import data should be provided to the interested parties due to disparity in landed price considered by the authority, DGCI&S data and exporters response.
- That there is no case for imposition of retrospective duty as it was due to non-availability of the product which had prompted the consumers to purchase the high end imported products.
- The authority may consider for grant of "Special Exemption" to certain importers, subject to imposition of any condition by the authority, because of the special high- end tiles imported by them.

- That the Authority should disclose which of the 24 applicants were verified and what percentage of the total domestic production was verified for the purpose of preliminary findings.

G.2 Miscellaneous submissions by domestic industry

53. The domestic industry, in its various submissions have argued as under:

- i. That sufficient *prima facie* evidence was placed before the Authority for initiation of the investigation. The interested parties have not established how the information contained in the petition is not sufficient. Further, adequacy and accuracy of information improves during the course of the investigation.
- ii. That since there are 24 companies forming part of domestic industry, for administrative convenience, the data of the companies have been consolidated by preparing two files containing 12 companies each. Thereafter, the information has been cumulated for domestic industry as a whole. These are mere administrative conveniences for accumulating data relating to a large number of companies.
- iii. That due to the history of massive dumping of the subject product from subject country there should be retrospective recommendation of duty without which the desired remedial measures will not be accomplished.
- iv. That where the producer and exporter are related entities and the exporter has supplied goods produced by some other entity, the dumping margin cannot be determined unless the producer concerned responds. The exporters' price and not the producers' price are relevant for the purpose of dumping margin determination. Since almost all responding parties have exported to India through traders, the trader's response becomes important.
- v. That because the responding exporters have provided incomplete and/or misleading information, such that there was no other producer/exporter involved in exports or domestic sales, the Authority decided the sample appropriately. Further, there is nothing in law, which prevents the authority to apply other criteria and limit the numbers for sampling.
- vi. That investigating authorities globally select much smaller number of respondents for detailed examination. The Authority is required to proceed expeditiously with the investigations and recommending duties and cannot allow the DI to suffer for the reason that the sampling questionnaire responses are incomplete, that too because the sampled exporters were not careful in responding to the questionnaire. The authority raised specific request for information, the party should have responded to such specific

request, notwithstanding the fact that these parties took cognizance of the initiation notification.

- vii. That as regards minimum valuation, elaborate information was provided. It was also established that prices reported in customs data are assessable values and not the invoice values.
- viii. That Authority has routinely considered secondary data apart from DGCI&S. Therefore, reliance on importer's information is not an anomaly.
- ix. The initiation is rightly based on eligible producers and not total domestic producers. This is in conformity with the law of major proportion.
- x. That levy of provisional duties is natural progression of preliminary investigation and all due timelines and legal procedures in this regard have been adhered to.
- xi. That there is no provision under anti-dumping law for 'special exemption' to any specific importer.
- xii. That the petitioners obtained DGCI&S data prior to filing a petition. It appears that the authority has obtained data separately from DGCI&S post filing of petition.
- xiii. That verification is done for Authority who is to be satisfied regarding appropriateness, accuracy and reasonableness and not for the satisfaction of the interested parties.
- xiv. There arose no requirement for fresh oral hearing as views were duly recorded in written submissions etc.
- xv. Ceramics Tiles are imported from China at 57% concession rate of basic customs duty as it is on "National List of Concession" under Asia Pacific Trade Agreement. Article 17 of Asia Pacific Trade Agreement provides to suspend product from the Concession list if the product cause or threaten to cause, serious injury to domestic industry that produces like or directly competitive products in the importing Participating State.
- xvi. Unfair dumping of tiles is causing injury to the domestic producers and is also contrary to the "Make in India" initiative.

G.3 Examination by the Authority

54. The Authority notes that the interested parties, in their post preliminary finding submissions, have raised the following four basic issues with regard to the procedural and substantive issues in this investigation:

- a. Inappropriateness of sampling process and rejection of request for inclusion in the sample;
- b. Issuance of preliminary finding being not in order and beyond jurisdiction;
- c. Use of multiple data sources for the determination
- d. Rejection of all responses on the grounds of value chain

55. As regards the size of sample and sampling procedure is concerned, the Authority notes that Rule 17 (3) of the Rules provided as under: -

“Provided that in cases where the number of exporters, producers, ;importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation”.

56. In accordance with these Rules, and keeping in view large number of responses received in this matter, the Authority notified the sampling criteria, invited the comments of all interested parties and thereafter, invited sampling questionnaire. The samples were drawn based on certain objective criteria and keeping in view the practical aspects of quantum of work involved, which could be reasonably completed in a time bound manner. A sample covering 30% of the total export and covering about 18 producers and exporters in China cannot be considered as not sufficient enough for a meaningful determination.

57. The very purpose of the sampling is to draw a representative sample for a meaningful determination that can be reasonably handled without straining the resources and affecting the time line of the investigation. Therefore, every producer and exporter who filed a sampling questionnaire could not have been included as sampled parties. In fact, examination of such a large sample size casts huge burden on the Authority and the Authorities in other jurisdictions often select much smaller samples. In view of the above, the objections raised by the above parties are not tenable.

58. As regards the second issue regarding the validity of preliminary determination and imposition of provisional duties in this case, the Authority notes the arguments of the interested parties that in the absence of material injury issuance of a preliminary findings and imposition of provisional duty purely on the basis of a threat of material injury is in contravention of the relevant provisions of the Law.

59. In this connection Article 7.1 of ADA provides as under:

Provisional measures may be applied only if:

- (i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;*
- (ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and*
- (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.*

60. The above provision clearly indicates that the Authorities concerned have to take into account the developments during the course of the investigation and impose provisional measures to prevent injury being caused during the investigation phase. This implies that in the absence of material injury also it is possible to impose a provisional measure in a case of threat of material injury based on threat perception that is evidenced during the course of the investigation. The Authority examined the imminent threat perception based on the trend of various factors emerging during the POI to arrive at a decision to recommend provisional measures to prevent the threat from getting translated into a real material injury in the absence of a measure. Therefore, the contentions of the interested parties in this regard are not valid.

61. As far as use of different data source for injury analysis is concerned, the Authority notes that at the stage of preliminary determination two data sets

were used as certain variation in prices of the goods imported were alleged and established. It was brought to the notice of the Authority that certain ports have system of assessing the imports, for the purpose of duty collection, at a price which was higher than the transaction values and that assessed value was being captured in the DGCI&S data set, thereby inflating the price captured in the DGCI&S data while actual invoice values or transaction values were lower. Therefore, for an appropriate determination it was necessary to get this issue resolved and accordingly, the Authority obtained the transaction value as well as assessed value data from the Customs, which corroborated this contention.

62. This data obtained from customs covered about 70% of the transactions in terms of volume and clearly established that some of the ports did reassess the values for duty collection purpose and on an average basis the price differential was about 17%. Therefore, it was essential to take cognisance of this information to base the price related determination on the actual transaction values and not the assessed values, as the transaction values reflected the actual impact on the domestic market.
63. Since the data obtained from customs contained information with regard to some ports only and did not reflect the complete volume of imports, it was essential to take the volume data from DGCI&S, which captures the volume data from most of the ports. Therefore, the Authority does not find any inconsistency or illegality in the adoption of the above data and accordingly, the objections of the interested parties have been disposed off.
64. However, the data of the cooperating exporters have been verified and used in the final determinations, to the extent necessary and applicable.
65. As regards the rejection of the data of some of the sampled producers and exporters in the provisional determination, the Authority notes that data of the producers and exporters could not be accepted for the provisional determination, pending detailed verification, because complete information could not be gathered at that stage since some of the producers or exporters of those sampled groups had not participated or could not participate due to limitations of sampling. However, this issue has been examined during the verification of the data set of the sampled producers and exporters and have been appropriately handled in this finding.

H. Confidentiality

66. The interested parties, in their various submissions, have raised the issues of confidentiality claims of other parties. The issue was examined at the time of preliminary findings itself and it was noted that information provided by the

interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the Authority made the non-confidential version of the evidences submitted by various interested parties available to all interested parties in the form of public file. The Authority further noted that any information, which was available in the public domain, has not been treated as confidential. There is no change in this position after issue of the preliminary findings.

67. All other issues raised by the interested parties have been addressed in the relevant parts in this finding and for the sake of brevity, have not been repeated here.

I. Methodology for Determination of Degree and Extent of Dumping

68. The Authority notified the initiation and invited questionnaire responses from the producers and exporters from the subject country. As noted earlier, after going through the sampling process the following sampled producers/exporters in the subject country have filed exporters questionnaire response in the present investigation:

- a. Guangdong Haosen Ceramics Co., Ltd (Producer) - Foshan Haosen Import and Export Co., Ltd, M/s Foshan Kihut Ceramic Co., Ltd, M/s Kun Lagy Ltd (Exporters).
- b. M/s Foshan Lihua Ceramics Co. Ltd. (Producer)- M/s Foshan Henry Trading Co. Ltd.(Exporter)
- c. M/s Foshan Chancheng Jinyi ceramics co. Ltd. (Producer)-M/s Foshan Worceter Trade Co. Ltd. (Exporter)
- d. Foshan Qiangbio Ceramics Co. Ltd. (Producer) - M/s Foshan Hongliao Trade Co. Ltd. and M/s Sheenway Corporation Ltd. (Exporters).
- e. M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City, M/s Jiangxi Fuligao Ceramics Co. Ltd. and M/s Guangdong Luxury Micro-crystal Stone Technology Co. Ltd. (related Producers) - M/s New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong (Exporter)

- f. M/s Guangdong Gelaisi Ceramics Co., Ltd. and M/s Foshan Sanshui Huiwanjia Ceramics Co., Ltd (related Producers)- M/s Foshan Newpearl Trade Co., Ltd. (Exporter)

69. Out of these sampled producers and exporters, the following companies claimed Market Economy Treatment for determination of dumping margins and filed MET Questionnaire responses rebutting the non-market economy presumptions:

- a. M/s Foshan Chancheng Jinyi ceramics co. Ltd.
- b. Guangdong Haosen Ceramics Co., Ltd
- c. Guangdong Newpearl Ceramics Group Co Ltd.
- d. M/s Foshan Lihua Ceramics Co. Ltd.
- e. M/s Foshan Henry Trading Co. Ltd.

70. The Authority further notes that the following non-sampled parties have also submitted exporter's questionnaire response seeking individual treatment in terms of Rule 17 of the Rules:

- a. Foshan Gani Ceramic Tiles Co., Ltd
- b. Qingyuan Gani Ceramic Tiles Co., Ltd
- c. Foshan Clouds Imp& Exp co., Ltd
- d. Foshan Nan Hai Rongjia Import & Export Trading Co., Ltd.
- e. Gold Full House Building Material Co., Ltd
- f. Qingyuan Qingbiao Ceramics Co., Ltd
- g. Xin Xing Xian Zhisheng Ceramics Co., Ltd

71. However, considering the constraints of time and other limitations the Authority has not been able to accept these responses for examination and determination of individual margins.

72. In its provisional determination, the Authority did not consider the individual questionnaire responses and data submitted by the sampled producers and exporters because of certain information gap pending further examination and verification. Accordingly, the provisional determination of dumping for all producers and exporters from China was made on the basis of constructed Normal Values in terms of Para 7 of Annexure 1 to the Rules and Export Prices of all exporters were determined on facts available basis in terms of Rule 6(8) of the Rules, using import statistics during that period.

73. After issuance of the Preliminary Findings the interested parties have raised several issues with regard to the provisional determination which are summarised below:

a. Views of the opposing Interested Parties

i. China Chamber of Commerce of Metal, Minerals & Chemical Importers & Exporters

74. China Chamber of Commerce, in its various submissions has contested the provisional determinations of dumping and has inter alia argued as under:

- That in the previous investigations relating to the subject goods a number of the producer/exporters from China PR were given market economy treatment ("MET"). However, the authority has not granted Market Economy status to the exporters in the preliminary finding, which is inconsistent with the past practice.
- That the normal value for the producers and exporters from China PR should be determined in terms of paragraphs 1 to 6 of Annexure-I of the AD Rules. The Authority has proceeded to compute the normal value based on the last option without exhausting the first two options, purely for the reason that the relevant information is not available with the Petitioners. Relying on the Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others, (2005) 3 SCC 39 judgments, it has been argued that the Designated Authority can resort to the last alternative only when the first two methods have been exhausted.
- That the Authority has used DG Valuation data for computation of export price without providing the same to the interested parties. Further, the authority has not specified the reasons for not using the DGCI & S data and instead using DG Valuation data for computation of Export Price.

ii. M/s Foshan Lihua and Foshan Henry Trading Co., China

75. This Group of Companies, in their respective submissions, have argued as under:

- That the Authority did not accept their market economy claims on the basis of non-existing grounds though they had submitted required information or evidence in support to MET claim and the parties had been given MET for the same product in the previous investigation.

- The Authority has proceeded to compute the normal value based on the last option without exhausting the first two options purely for the reason that the relevant information is not available with the Petitioners.
- That the Authority has acted in contravention of Rule 7 by not specifying as to which country was proposed to be taken as surrogate country if the said Authority finally concluded that the firms were not operating in the market economy principles.
- That Foshan Henry has exported 97.08% of the subject goods procured from its related producer, i.e. only a small quantity i.e., 2.92% of the exports to India was purchased from other unrelated producers from China, and Foshan was not aware if they filed their response. Therefore, the rejection of their data without issue of any deficiency questionnaires is not in order.
- That the dumping margin should be calculated on the basis of para 6(i) of the Appendix 1 to the Anti-Dumping Rules and Article 2.4 of the Anti-Dumping Agreement. The Authority should provide the final value of imports of subject goods used for determining export price and the landed value based on the DG Valuation data. Complete calculation of the export price based on data provided by DG Valuation should have been disclosed as this cannot be claimed as confidential by the domestic industry.
- That adoption of average Normal value and export price is erroneous as the prices of the subject goods vary on the basis of product types, thickness, size, finishes etc. The authority should follow the practice as adopted in various other investigation where they have taken product code to product code comparison.
- That the Authority has wrongly used the value of export price and landed value based on the indicative price for purpose of calculating the dumping margin and injury margin. There was clarification from DG (Valuation) that there is no MIP as alleged by applicants, but the authority went ahead and used the value provided by DG (Valuation). The authority erred in not using the value of DGCI & S data.

iii. NEW ZHONG YUAN Group of Companies

76. This Group of Companies, in their respective submissions, have argued as under:

- That the Authority has erroneously rejected their exporters' questionnaire response. The Authority had set limited guidelines for submission of response and included only New Zhong Yuan Ceramics Import & Export Co., Ltd.; M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City, M/s Jiangxi Fuligao Ceramics Co. Ltd. and M/s Guangdong Luxury Micro-crystal Stone Technology Co. Ltd. in the sample. However, the authority rejected the questionnaire responses of these producers and exporter arbitrarily on the grounds that New Zhong Yuan had also exported certain goods produced by certain other producers who have not filed questionnaire response. Since the Authority had decided the sampling and who are eligible to file the questionnaire response, these unrelated producers could not have filed QRs.
- The authority is supposed to determine the antidumping duty on producer – exporter combination and not exporter- producer combination. Therefore, authority should have used the information submitted by the exporter.
- The authority is relying on DGCI&S data for volume analysis whereas relying on data received from DG Valuation for calculation of export price, which is arbitrary.

iv. M/s Guangdong Haosen and Group; M/s Foshan New Pearl and Group; M/s (e)Foshan Qiangbiao Ceramics and Group; M/s (h) Foshan Chan Cheng Jinyi Ceramics and Group and some of the non-sampled producers and exporters

77. These group of Companies, in their respective and combined submissions, have made the following arguments:

- The manner in which individual dumping margin has been denied to the sampled and cooperating producers and exporters is arbitrary. The Designated Authority disregarded the information provided by the sampled exporters for the purpose of the Preliminary determinations and determined margins based on best available information i. e by relying on DGCI&S data and DG Valuation data etc with regard to export price and the details of the same is not even disclosed to the opposing interested parties under the garb of confidentiality.
- Since margin of sampled exporters have been determined on facts available basis, the same ought to have been disregarded for the purpose of determining weighted average margin for the non-sampled parties.

- The Authority did not pay any heed to the rights and legitimate interests of the opposing parties and did not provide any fair opportunity to them to offer any clarification or defend their case properly on certain points as appeared in the Preliminary Findings, which would have changed the outcome of the provisional finding *qua* such parties.
- Present recommendation of provisional AD duties for the non-sampled producers/exporters does not have the backing of AD rules and are recommend in a manner explicitly contravening the AD Rules which needs to be rectified by not confirming these recommendations at the time of any final finding to make the investigation compliant with WTO AD Agreement and also Indian AD rules.
- The Authority used different sources for the information provided in the Preliminary findings. The Authority has collected import data from DGCI&S, DG, System and DG, Valuation but has relied upon the import data received from DGCI&S for volume of imports and DG, Valuation data for prices of imports for the purpose of the preliminary finding. Use of different source of import data for volume and price in such a manner is absolutely unjustified.

b. Other interested parties

78. Apart from the above interested parties, the following non-sampled producers and exporters have also made submissions with regard to their not being included in the sample despite timely filing of sampling questionnaire response as per the instructions given by the Authority. Therefore, it has been argued that the practice of the Authority is inconsistent with Article 6 of the Annex II of the Agreement on Antidumping:

- i. **Foshan Nanhai Jinyatao Ceramics Co. Ltd.**
- ii. **Jiefeng Decorative Material CO. Ltd. (“Jiefeng”)**
- iii. **Foshan Jinbali Ceramics Co. Ltd. (“Jinbali”)**
- iv. **Foshan Sanshui Chengda Building Materials Factory (“Chengda”)**
- v. **Foshan Joyson with 9 affiliated producers**
- vi. **Guangzhou Cowin New Materials Co. Ltd. (“Cowin”)**
- vii. **Parcos**
- viii. **Guangxi Goshen Porcelabobo Ceramics Co. Ltd. (“Goshen”)**
- ix. **Jiangxi Shiwan Huanqiu Ceramics Co. Ltd. (“Shiwan Huanqiu”)**
- x. **Zibo Jiahui Ceramics Co. Ltd.**
- xi. **Guangzhou Metals**
- xii. **Fotile**
- xiii. **Dongpen**
- xiv. **Eiffel**

79. Apart from the above parties, M/s Foshan Gani Ceramic Tiles Co. Ltd. and Qingyuan Gani Ceramics Co. Ltd. has submitted that the Authority has arbitrarily rejected the data submitted by them. The treaty as well as AD Rule specifically puts obligation on the Authority to determine individual Dumping Margin for exporters not initially selected for sampling, provided the producer submits the necessary information in timely manner. It has been argued that only five non-sampled exporters filed their response to exporter/ MET questionnaire. Such individual examinations would not be unduly burdensome to the authorities and prevent the timely completion of the investigation. The Authority, in past, has allowed parties to submit response and granted them individual dumping margin. Reference has been drawn to cases decided by the Authority in the past such as Silk Fabrics from People's Republic of China. The Authority failed to give any reasons for the rejection of response filed by these companies. It has been argued that the Authority being a quasi- judicial body has to comply with the Principles of Natural Justice.

80. This Company has further argued that they have been erroneously categorised as non-cooperative producer/exporter whereas Foshan Gani Ceramic Tiles Co. Ltd. (producer) and Qingyuan Ceramic Tiles Co. Ltd. had filed responses to the sampling questionnaires issued by the Authority. However, the Authority did not sample them. Therefore, they should be treated as cooperative non-sampled exporter/producer and not non-cooperative producer/exporter with residual duty.

c. Views of the Domestic Industry

81. The domestic industry on the other hand has made the following submissions:

- That the Chinese producers' have a complex web in reference to their exports to India. Further, in relation to supply of the subject goods to India, the value chain of the producers and exporters is incomplete.
- That there is no co-relation between the purchase price and the sales price as the exporters are buying in bulk and selling the same in different markets. In certain instances, the tile bodies are made by certain companies and other companies doing certain other activities relating to the production of the subject goods. Therefore, the supply chain must be examined by taking into account the company that produces the tile body and not only the company that is undertaking the polishing activities.

- That the producers' price and export price are not the same term and the producers are not always the exporters in relation to supply of the subject goods in the instant investigation. Therefore, the price at which the producer sold the product to the exporter does not become the export price for the purposes of computing the dumping margin. In light the same, the traders' or exporters' response in the investigation is required. An individual dumping margin should be determined based on a questionnaire response by a producer and exporter.

d. Examination by the Authority

82. The views expressed by various interested parties have been examined by the Authority for the final determinations as recorded in the relevant sections in this finding. Some of the general issues have been addressed here as follows:

83. As noted earlier the Authority notified the sampling criteria, invited the comments of all interested parties and thereafter invited sampling questionnaire. The samples were drawn based on certain objective criteria and keeping in view the practical aspects of quantum of work involved, which could be reasonably completed in a time bound manner. The very purpose of the sampling is to draw a representative sample for a meaningful determination that can be reasonably handled without straining the resources and affecting the time line of the investigation. Therefore, every producer and exporter who filed a sampling questionnaire could not have been included as sampled parties. In view of the above, the objections raised by the above parties are not tenable.

84. As regards the issue raised by M/s Foshan Gani Ceramic Tiles Co. Ltd, regarding non-acceptance of its individual margin claim under second proviso of Rule 17, the Authority notes that the Rule itself make it clear that it is not a binding provision on the Authority. Only in the factual matrix of the case where the number of exporters or producers are not so large that individual examination would be not be unduly burdensome and prevent the timely completion of the investigation the Authority is at liberty to accept the request of individual producers for determination of individual margins. In the instant case the number of producers and exporters is too huge to accept any request for individual margins over and above the sampled parties. Therefore, the arguments of this party are not tenable.

85. As far as the contention of Foshan Gani Ceramic Tiles Co. Ltd. (producer) and Qingyuan Ceramic Tiles Co. Ltd.(exporter) that they have been erroneously categorised as non-cooperative in the preliminary determination, is concerned, it is noted that these companies had filed the sampling

questionnaire response, though they were not selected in the sample. Therefore, they have now been included in the non-sampled category.

86. As regards the arguments of the sampled producers and exporters that their MET claims and other data have been arbitrarily ignored in the preliminary findings and multiple data sets have been used in that determination the Authority notes that in the absence of complete and verifiable information with regard to the transaction methods of these parties and lack of clarity on the market economy status of some of the responding companies the Authority had to ignore those information and rest its provisional determination on the facts available. However, the data and other information of all the sampled exporters have been verified to the extent possible through on-spot investigations and the verified data set, to the extent they were found in order, have been used for the final determinations.
87. As regards the use of multiple data sets of imports for determination in the preliminary findings, the Authority notes that since there was an issue with regard to the reporting of values in the statistical data the Authority had to make an assessment of the prices based on best information available using multiple data sets. As recorded earlier, the difference in the price data reported in the DGCI&S data set and the information obtained from the Customs Authorities have been clearly established necessitating use of two different data sets for two different purposes.
88. However, now that the data of the sampled producers and exporters, who account for a major proportion of the exports to India, has been verified. This data is proposed to be used for the final determination of dumping and injury to the extent the said data has been found to be acceptable.
89. As regards the arguments of the domestic industry that the Chinese Producers have a complex web of transactions and value chain issues the Authority notes that all these issues have been examined during the spot verification of all sampled producers and the verified data of the said parties have been considered for the purpose of this determination to the extent they were found to be in order.

J. Examination of Market Economy Claims

90. As notes earlier, the case was initiated on the presumption that producers and exporters in China operate under non-market economy conditions and the individual producers and exporters were given opportunity to rebut this presumption through filing of MET questionnaire responses. The following sampled producers and exporters filed MET questionnaire responses claiming market economy treatment in this investigation:

- i. M/s Foshan Chancheng Jinyi ceramics co. Ltd.
- ii. Guangdong Haosen Ceramics Co., Ltd
- iii. Guangdong Newpearl Ceramics Group Co Ltd.
- iv. M/s Foshan Lihua Ceramics Co. Ltd.
- v. M/s Foshan Henry Trading Co. Ltd.

91. Out of the above M/s Foshan Chancheng Jinyi ceramics co. Ltd. and M/s Guangdong Haosen Ceramics Co., Ltd. withdrew their claims for market economy treatment during the verification. The market economy claims of M/s Guangdong New Pearl Group; and Foshan Lihua and Foshan Henry (Lihua Group) have been examined as follows:

a. Guangdong New Pearl Ceramics Group Co Ltd.

92. The company has claimed that New Pearl Group had been given MET in 2007 and 2008 in antidumping investigations concerning Ceramic Tiles and Vitrified Tiles which covered the subject goods exported by Foshan New Pearl Trade Co., Ltd and produced by Foshan Sanshui Huiwanjia Ceramics Co., Ltd and Foshan Summit Ceramic Co Ltd (now known as Guangdong Gelaisi Ceramics Co., Ltd. Accordingly, this group has claimed market economy status in this case also.

93. It has been submitted that Guangdong New Pearl Ceramics Group Co., Ltd was established in 1993 and consist several companies out of which seven (7) companies are involved in the product under consideration. Apart from the Group Company and one (1) trading company there are five (5) producing companies, producing both Ceramic and Vitrified tiles, including Soluble Salt, Double Charge, Polished and Glazed Vitrified Tiles and Micro-crystal vitrified tiles. Out of the five (5) producing companies only two (2) have filed questionnaire response and the trading company has also filed questionnaire response. The Company submitted that the goods produced by the other three producing companies have not been exported to India during the POI. Therefore, they have not filed the QR.

94. Apart from this, the Group has other Companies having other businesses not related to the subject goods. The Company has claimed that there is no change in the status of the companies after grant of market economy status in 2007 and 2008 except change in name of one of the producing companies as above.

95. As regards the change in name of Foshan Summit to Gelasi the Company was asked to produce the Articles of Association, Audit Reports and Business licences of the old entity and new entity. It was noticed that while

the date of change of the name has been shown in the business licence as 01.11.2011, the Article of Association of the new company is dated 11.04.2012, which does not corroborate with the Business Licence. The AOA has been amended further on 13.09.2013 where there is a change in paid up capital and shareholding pattern.

96. During the verification the Company was asked to provide certain documents with respect to the Group Co. and the affiliated companies, including the responding companies for examination of the Market economy claims. The company could not provide those documents except few.
97. The Company wanted additional time to provide the documents as these documents were not readily available. However, on the next date of the verification the Company expressed its inability to comply with the requirements. Therefore, the complete status of these companies and their activities could not be verified. In view of the above, the Authority is constrained to deny market economy status to this Group.

b.M/s Foshan Lihua Ceramics Co. Ltd. and M/s Foshan Henry Trading Co. Ltd.

98. M/s. Foshan Lihua Ceramics Company Limited China PR (Producer) and Foshan Henry Trading Company Limited (Exporter), who are related companies, have filed their exporter questionnaire responses along with MET questionnaire response claiming market economy treatment. It was also noted that besides Foshan Henry, there are two other companies namely M/s Foshan Svice Ceramic Co. Ltd., Foshan and M/s Foshan Weiduoli Ceramic Co. Ltd., which are related companies of Foshan Lihua Ceramics by virtue of shareholdings by the family members of the owners of Lihua. Though these two companies have been registered with Chinese authorities, for trading of ceramic and other products of Foshan Lihua, it was submitted that they have not taken up any business establishment even today. M/s Foshan Lihua Ceramic Co. Ltd. provided tax certificates of these two companies to prove the same.
99. Both the responding companies i.e., M/s Foshan Lihua Ceramic Co., Ltd (Producer) and M/s Foshan Henry Trading Co., Ltd. (Exporter) have submitted that this producer & exporter combination was granted market economy status in the previous investigation and there is no change in the company structure since the previous case. The companies were asked to explain the history of the producing Company, which is stated to be formed in 2001 and the exporting company, which was stated to have been formed in 2005, changes at different stages, including shareholding pattern and production units etc.

100. It was noted during the verification that though M/s Foshan Lihua Ceramic Co., Ltd. has been stated to be incorporated in 2001 it has a past history. It was explained that a Company, in the name of M/s Nanhai Lihua Advanced Wall and Floor Tiles Factory, with a manufacturing facility at the same location i.e., Xiqiao Lianxin Industrial Zone Nanhai District Foshan City Guangdong, China and held by the same set of shareholders, existed earlier. This Company was initially incorporated in 1992 with a tiles-manufacturing unit located at the same location where the plant of Lihua stands now.
101. It was submitted that the plant was severely damaged in a flood in 1998. Thereafter, the owners of the said company opened a new company in 2001 in the name of M/s Nanhai Lihua Ceramic Industrial Co. Ltd, which was later changed to M/s Foshan Lihua Ceramic Industrial Co. Ltd in June 2003. In Sept 2003 it was again changed to Foshan Lihua Ceramic Co. Ltd. Thereafter the company exists in this name with changes in capital structure from time to time.
102. The Company submitted that this issue has already been examined in the previous investigation. The Authority notes that a detailed examination was carried during the previous investigation as recorded in the previous new shipper review findings. However, this finding recorded the development in 2001 as a change in name of the Company after damage of the old plant in the flood for which the Company also received certain compensation as recorded in that finding. Whereas it now appears that a completely new company was formed in 2001, which took over the old plant to run as a separate business entity.
103. Since the asset-transactions between the old and new companies are likely to impact the costs the Company was asked to provide the documentary evidence of the winding up of the earlier company, liquidation of assets and liabilities thereof and/or transfer of assets and lease of land to the new company with their valuations. Audit Reports and Asset verification and valuation reports at the time of formation of the new company, which could show the valuation of plant and machineries of the old company taken in the books of the new company and method of acquisition, were also called for. The company could only produce the Audit Report of the new Company of 2001. No valuation or transfer records of the assets of the old plant could be produced.
104. During the verification the company claimed that the all assets of the earlier Company were damaged in the flood and the new company has re-established the plant with new machineries on the same leased land. The company produced the audit report of 2001 and 2002, which shows

acquisition of certain plants and machinery in 2001 for RMB 21.342 Million. The Company was asked to clarify the source of funding for the purchase of these assets and details of loans and advances shown in the balance sheet for that year.

105. The Audit report of 2001 shows that the share capital of the Company at the time of incorporation was only RMB 5.0 Million. The Company availed loans totalling to RMB 9.0 Million from various sources and procured plant and machineries worth RMB 21.34 Million. Details of the loans and procurement of machineries were called for. It was found that major portion of the loan (RMB 3 Million) was taken from Nanhai Agriculture Bank at a very nominal rate of interest of 1.36%. It was also noted that the Company had procured machineries for setting up of only 2 lines of tiles manufacturing during this period. No records could be produced regarding setting up of the remaining lines and no clarification could be offered whether the old plants and machineries of the earlier company was taken over by this company with or without any book value.
106. The Company claimed that the Land is a lease land from the Local Govt. and therefore, does not appear in the asset list of 2001. Land was taken from the Lianxin Village Collective Assets Management Committee on lease basis up to 2021. The lease rent for first 6 years was RMB 5.5 per sqr mtr per year, increased to 11 RMB/sqr mtr/year in the current period. However, the Company could not explain how the land, which was earlier held by the old Company was transferred to the new Company.
107. Procurement of major raw materials and influence of Govt. pricing on them was also checked. Raw materials are procured from private entities. But the supply of utilities, i.e., electricity and water, which constitute a very high proportion of the cost, are controlled by the Govt. The pricing mechanism of the utilities were checked and copies of the electricity tariff for the POI was obtained. The electricity tariff of the province shows significant variation in rates between various industrial categories in the region.
108. The company was asked to provide the trend of interest rate and exchange rate prevailing in China during the last five years to see the extent of control of the Govt. on both. It was noted that the interest rate is controlled by the Govt. and shows significant variation in rates as per the loan documents of the Company. The exchange rate also continues to be controlled by the Govt with significant revaluation of the currency during the last five years.
109. Land, which is a major factor of production continues to be in the control of the Govt./local bodies and land made available to the industries

against nominal lease rent as is evident from the lease rent being paid by Lihua.

110. The trading Company Henry was formed by the owners of Lihua in 2005 for handling the exports of the Group, which operates from the same premises of Lihua.

111. The above examination indicates that the financing of the new plant is not transparent and the carryover from the old company/plant to the new plant has not been captured adequately in the financial records of the company which affects the cost and prices of the subject goods. Further, the cost and prices are also affected by provision of utilities and loans by the Govt. agencies, which are mostly State Controlled and have significant impact on the cost and prices of the subject goods. Therefore, the Authority does not find it appropriate to accept the cost and prices of the above producer in the domestic market in China for the purpose of determination of normal value.

K. Determination of Normal Values

112. Para-7 of the Annexure I to the Rules provides as under:

"7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, 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. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner [keeping in view the level of development of the country concerned and the product in question] and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments."

113. The interested parties have argued that the general rule to arrive at normal value is the price or constructed value in a market economy third country or the price from such a third country to other countries including the country conducting the investigation. Only in those cases, where an authority

is unable to apply or exhaust the general rule, the alternative option of using some other reasonable basis can be resorted to.

114. The Authority notes that while there is an implied hierarchy in determination of normal value in case of non-market economy situation, availability of data and cooperation of third country producers of the subject goods for an exhaustive analysis of cost and prices in the third country is always a challenge. The Authority recorded in the Preliminary findings that at the initiation stage the applicants had proposed determination of normal value on the basis of price prevailing in Pakistan. However, the Authority held that Pakistan cannot be used as an appropriate third country as a surrogate for China due to their differential levels of development. It was also noted that other alternative methodologies could not be used as no such information with regard to prices and costs prevalent in these markets could be made available to the Authority either by the applicants or by any interested party, nor any publicly available information could be accessed for such a determination.

115. That being the situation, the Authority has resorted to the construction methodology as laid down in the Rules quoted above as the best available methodology for determination of normal value for all producers in China.

116. The Normal Values have been determined for all product types and sizes identified as noted in the product under consideration, for fair comparison with the export prices on like to like basis. For the purpose of determination of the normal values the verified cost of production of the individual product types of the most efficient domestic producers during the POI has been used with due adjustments towards SGA expenses and appropriate profit margins as discussed during the presentations.

117. The Authority notes that the scope of the product under consideration has been restricted to Double Charge, Soluble Salt Vitrified tiles and GVT/PGVT only and for fair comparison, the sizes have been categorised as 600X600, 800X800 and other sizes. Accordingly, the Normal Values of the above product types have been determined for all producers/exporters in China as follows:

Grade	Size	CNV(US\$/SQM)
GVT/PGVT	600*600	***
	800*800	***
	Others	***
	Sub-Total	***
DC	600*600	***
	800*800	***

	Others	***
	Sub-Total	***
SS	600*600	***
	800*800	***

Export Prices

118. The Authority notes that the exporters' questionnaire responses of the sampled producers and exporters were verified through an on-spot investigation carried out in the premises and the export prices have been determined for the respective producers/exporters as per the verified data to the extent they were found to be in order.

a. M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City, M/s Jiangxi Fuligao Ceramics Co. Ltd. and M/s Guangdong Luxury Micro-crystal Stone Technology Co. Ltd. (related Producers) - M/s New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong (related Exporter)

119. The above companies belonging to the New Zhong Yang Group of China have filed a questionnaire response without claiming market economy treatment. This is a large group involved in several businesses, including production and sales of the subject goods. Totally 17 companies are involved with the production and/or sale of the product concerned, out of which 9 are producers, 1 is exporter to India (i.e., NZYCIE) and other countries, 4 are exporters to countries other than India, 2 companies are involved in the sales of the product concerned in domestic market and 1 company has stopped business.

120. It was noted that the PUC produced by three companies, namely Guangdong Luxury Micro-Crystal Stone Technology Co Ltd ("GDLMS"), Jiangxi Fuligao Ceramics Co Ltd ("JXFLG") and M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City ("SBMS") only have been exported to India during the POI through the exporting company of the Group, i.e., M/s New Zhong Yuan Ceramics Import & Export Co Ltd of Guangdong (NZYCIE)

121. NZYCI&E has reported export of *** sqr meters of the subject goods to India during the POI produced, ***% of which produced by 3 responding related producers and remaining *** % by 7 unrelated producers. The Company could provide the details of goods sourced by NZYCIE from different producers with the tracing of the relevant VAT invoices of the producers to demonstrate that the NZYCIE has not exported goods produced by other 6 related producers.

122. As regards the sales by the 2 domestic and 4 other trading companies, and possibility of exports by these companies to India or exports of goods produced by other producers of the group to India through any other trading companies was also examined. As per Group's selling arrangements the producing companies do not export directly. 2 domestic trading companies sell in China and 4 exporting companies sell in other export markets, other than India. Export to India is through only one trading company because of the antidumping duty exemption given to this Company in the past and market developed by this Company in India.
123. The sales of the producing companies to other individual trading companies in China was found to be very small proportion of their total domestic sales outside their own trading companies. The domestic sales contract with major trading companies carry clause restricting sales in specific regions to avoid competition.
124. As noted above, during the POI NZYCIIE exported *** sqm meter to independent buyers in India against *** transactions. However, the entire export of this group to India during the POI was of PVT/GVT/PGVT, Micro-crystals and Thin Panels. The Authority has evaluated weighted average net export price of GVT/PGVT only as ***\$/ sqm meter and has adopted the constructed normal value for this product type as ***\$/sqm meter.

Grade	Size	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600		
	800*800	***	***
	Others	***	***
	Sub-Total	***	***
DC	600*600	-	-
	800*800	-	-
	Others		
	Sub-Total	-	-
SS	600*600	-	-
	800*800	-	-
	Others		
	Sub-Total	-	-
	Grand Total PUC	***	***

b. Foshan Lihua Ceramics Co. Ltd. (Producer) and Foshan Henry Trading Co. Ltd.(Exporter)

125. M/s Foshan Lihua Ceramic Co., Ltd., is a producer of the subject goods and produces Soluble Salt, Double Loading, Micro Crystal, Polished and Glazed, Ceramics tiles and Bricks. The Company sells all its goods in the domestic market including to its related trading company M/s Foshan Henry

Trading Co., Ltd. who exports the subject goods to India and other countries. The companies do not have any other related producers or exporters.

126. Lihua sales are to several trading/exporting companies in China as well as other end users. The domestic buyers, including the trading companies, lift the goods from their factory premises on ex-works basis and therefore, the producer does not maintain the data whether any such goods could have been exported to India through other trading companies. However, it was clarified that since they have their own trading house for exports to India they would not supply any material to any other trading company for exports to India and compete in the same market.
127. During the POI Henry purchased *** sq. mtrs of the subject goods from Lihua and exported *** Sq. mtr., to India. The balance quantity has been exported to third countries. Out of total exports of *** Sqr mtr Henry purchased ***(Sqr mtrs) from another unrelated producer, in the domestic market and rest from Lihua. Against unrelated purchase of ***(Sqr mtrs), *** sqr meter were purchased from Jin Yi Ceramics, which is also a responding producer in this case. Apart from Jin Yi, Henry has also exported *** sqr mtrs of tiles manufactured by one M/s Foshan Kunpeng Building Materials Co., Ltd. It was noted that this is only a polishing factory, which produced tiles from body manufactured by other producers not known to Henry. Accordingly, the goods manufactured by the responding producer i.e., M/s Lihua and exported by Henry have been considered for determination of export price of this group.
128. During the POI Henry exported the subject goods to India against *** transactions. The exports to India are to unaffiliated end users on Ex-works, FOB or CNF terms. The payment terms for exports to India were L/C at Sight /TT payments. For all sales made to India on CNF basis, the expenses upto the CNF stage have been borne by the exporter and all expenses post-CNF are borne by the importer. Similarly, in case of FOB sales, all expenses upto the FOB stage are borne by the exporter and remaining expenses by the importer. The export price has been adjusted towards expenses for Inland Freight, Overseas Transportation, handling and other charges, bank charges and credit costs to arrive at net ex-works export price.
129. Since the producer sells the goods to the domestic trading companies against VAT invoices on payment of 17% VAT and the exporters of subject goods claim a VAT refund of 9%, a VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group as follows:

Grade	Size	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600		
	800*800	***	***
	Others	***	***
	Sub-Total	***	***
DC	600*600	***	***
	800*800	***	***
	Others		
	Sub-Total	***	***
SS	600*600	***	***
	800*800		
	Others		
	Sub-Total	***	***
	Grand Total PUC	***	***

c. Guangdong Haosen Ceramics Co. Ltd. (Haosen), Foshan Haosen Import and Export Co. Ltd. (Foshan Haosen), Foshan Kihut Ceramic Co. Ltd. (Kihut) , Kun Lagy Ltd., Hong Kong (Kun Lagy)

130. The following producers and exporters of the subject goods in China had filed their respective questionnaire responses in the above antidumping investigation as a group of companies carrying out production, domestic sales and exports to India during the period of investigation for determination of their dumping margin:

1. M/s Guangdong Haosen Ceramics Co., Ltd. ("Haosen") (Producer);
2. M/S Foshan Haosen Import and Export Co., Ltd (Related Exporting Company of the Producer),
3. M/S Kun Lagy Limited, Hong Kong (Unrelated Trading Co in Hong Kong),
4. M/S Foshan Kihut Ceramic Co., Ltd, China PR (Unrelated Trading Co. in China PR)

131. The Producing company produces all major types of vitrified tiles i.e., Soluble Salt, Double Charge, Polished and Glazed Vitrified Tiles and had claimed market economy treatment, which was subsequently withdrawn. Company is producing and selling vitrified tiles in the domestic market and also tiles bodies to other producers as they have higher kiln capacity than polishing capacity at present. The Company sales all its goods in the domestic market to related and unrelated traders as well as direct customers. However, all its sales contract with trading companies have a non-compete clause which restricts the traders to sell the goods to other destinations other than the market for which it is sold. Therefore, the Company could

demonstrate that no other trader other than their own trading Company could have exported the goods to India.

132. During the POI the subject goods produced by Haosen were purchased by two domestic trading Companies in China i.e., M/s Foshan Haosen Import and Export Co., Ltd., who is a related exporting company if Haosen, and M/s Foshan Kihut Ceramic Co., Ltd and exported to India. Whereas Foshan Kihut Ceramic Co., Ltd has exported the goods directly to India, M/s Foshan Haosen Import and Export Co., Ltd., has exported some quantities to India directly and some quantities through another trading Company in Hong Kong i.e, M/s Kun Lagy Ltd.

Guangdong Haosen - Foshan Kihut Ceramic Co., Ltd.- India

133. Foshan Kihut procured the goods from Haosen and exported *** sqr mtrs to India during the POI. This Company has not exported any goods manufactured by any other producer in China. The exports to India are on Ex-works/FOB/CNF/CIF basis on TT/LC at sight terms. The exporter has incurred all expenses after ex-works and the expenses towards inland freight, ocean freight etc. Therefore, for the purpose of arriving at net ex-works export price all such expenses such as freight and insurance, handling and other port expenses, and insurance (wherever applicable), bank charges, and credit cost have been adjusted. VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group.

M/S Foshan Haosen Import & Export Co., Ltd and M/s Kun Lagy Ltd

134. As noted above Haosen I & E exported *** sqr mtrs directly to India and *** sqr mtrs through Kunlagy Hong Kong. Direct exports are on Ex-works/FOB/CNF/CIF basis on TT/LC at sight terms. Sales to Kunlagy are on CNF basis on different payment terms. Kunlagy acted as an invoicing agent for M/S Foshan Haosen Import and Export Co., Ltd for some period during the POI and exported the goods to India on same terms and condition. Haosen I&E purchased the goods from Haosen on ex-works basis against VAT invoices and has incurred all expenses after ex-works. All expenses towards inland freight, ocean freight, including handling and other port expenses and insurance wherever applicable, bank charges and credit costs have been adjusted to arrive at net ex-works export price for this combination. VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group as follows:

		Producer Guandong Haosen , Exporter : Fosh Haosen		Producer Guandong Haosen , Exporter : Fosh Kihut		Producer Guandong Haosen , Exporter : Kunlgy		Haosen Group	
Grade	Size	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600								
	800*800	***	***	***	***			***	***
	Others								
	Sub- Total	***	***	***	***	-		***	***
DC	600*600	***	***	***	***	***	***	***	***
	800*800	***	***	***	***	***	***	***	***
	Others	***	***	***	***			***	***
	Sub- Total	***	***	***	***	***	***	***	***
SS	600*600	***	***	***	***			***	***
	800*800								
	Others								
	Sub- Total	***	***	***	***			***	***
	Grand Total PUC	***	***	***	***	***	***	***	***

d. Foshan Qiangbio Ceramics Co. Ltd., China PR (Producer) - M/s Foshan Hongliao Trade co. Ltd., China PR (exporter) and M/s Sheenway Corporation Ltd., Hong Kong (Exporter).

135. It was submitted that since the producing companies do not have license to export the goods they sell the goods in domestic market only and exports are made through unrelated exporters. During the POI the producing companies have exported to goods to India through two un-related exporters only as above.

136. Foshan Qiangbio Ceramics Co. Ltd is only a producer and domestic seller of the subject goods, but is not an exporter. It sells the subject goods to two unrelated Chinese trading companies for exports to India namely, M/s Foshan Hongligao Trade Co. Ltd. and M/s Foshan Worceter Trade Co., Limited. Both the companies sell the subject goods to Sheenway Corporation

Limited, Hong Kong. In turn, Sheenway, Hong Kong sells the products to unrelated Indian customers. However, the goods are physically despatched directly from the producer factory to the Indian customers.

137. M/s Qingyuan Qiangbiao Ceramics Co., Ltd. (QQB) has a production capacity of *** Million tiles bodies/biscuits and M/s Foshan Qiangbiao Ceramics Co (FQB) is a Polishing Company which treats tiles body as its raw material and has a capacity of polishing *** Million tiles. FQB produces Soluble Salt, Double charge and PGVT. However, during the POI they have exported only Soluble Salt and Double Charge tiles to India.

138. The tiles body making capacity of QQB is significantly higher than the tiles polishing capacity FQB. Therefore, QQB sells the tiles body to others in the domestic market and QQB is not an exclusive producer for FQB. It was also noted that FQB has not procured the tiles body exclusively from QQB. Tiles body is purchased from several producers though *** % of the tile body were purchased from QQB and a small quantity of *** sqr mtrs were purchased from other producers.

139. FQB is the producer of the finished goods and sells all goods as domestic sales to unrelated consumers as well as trading companies in China against VAT invoices on ex-works basis and on cash or TT terms. During the POI the Company sold *** sqr meters out of which *** sqr mtrs has been reported as sales to two domestic trading Company i.e., Foshan Hongligao Trade co., Ltd. and Foshan Worceter Trading Company, who are reported to have exported these goods to India through a trading Company in Hong Kong i.e., Sheenway Corporation Limited, Hong Kong.

140. FQB has exclusive contracts with the major trading companies for selling the goods in specified markets. They have an agreement with M/s Seenway Hong Kong since 2011 for exclusive selling rights in the Indian market. Seenway is free to pick up a domestic trading company in China having export licence to purchase goods from FQB and export to India. As per this contract, FQB cannot sell the goods to any other trading company, other than Seenway and its identified domestic trading companies, for export to India. Similarly, other trading companies to whom FQB has sold the goods during the POI have exclusive contracts with FQB for selling in specified markets.

FQB to Chinese Exporters

141. FQB has sold *** sqr mtrs to Hanglibao and Worceter, against 144 transactions, out of which *** sqr mtrs were sold to Foshan Hongligao Trade co., Ltd. and *** sqr mtrs were sold to Foshan Worceter Trade Co., Ltd. These goods have been exported to India through Sheenway Hong Kong

on ex-works basis on TT terms. Therefore, the producer has not incurred any expenses on account of these sales.

Chinese Exporters to Sheenway, Hong Kong

142. M/s Hongligao has sold *** sqm mtrs of the subject goods manufactured by FQB to Sheenway for exports to India. All sales are on ex-works basis and TT Terms.
143. The Other Trading Company M/s Worceter, who has also exported *** sqm mtrs of the subject goods manufactured by FQB to Sheenway during this period for exports to India has filed a separate questionnaire response alongwith another producer of the subject goods i.e. M/s Jin Yi. That is because apart from the material produced by FQB, Worceter has also exported *** sqm mtrs of tiles produced by Jin Yi. This quantity has been reported in the QR filed by Worceter alongwith Jin Yi. Accordingly, Worceter has reported total export of *** sqm mtrs through Sheenway. Honglibao's sales to Sheenway are on Ex-works and TT terms. Therefore, no expenses are involved in these transactions.

Sheenway, Hong Kong to India

144. Sheenway, which is a trading Company registered in Hong Kong, has filed a questionnaire response as the exporter of the subject goods produced by the above companies and also other companies as noted above. This Company has exported *** sqm mtrs of the subject goods to India out of which *** sqm mtrs have been sourced from FQB through Hanglibao and ***sqm mtrs from FQB through Worceter. Apart from this, *** sqm mtrs were sourced from Jin Yi who is a sampled producer who have been examined. A small quantity of *** sqm mtrs have been sourced from another producer i.e. M/s F. JUNJING, who has not been sampled or participated in the investigation. However, this quantity is less than *** % of the exports by Sheenway.
145. Sheenway's exports to India are on Ex-works/Ex-works +Freight / FOB + freight basis and on TT payment terms with advance payment clause. Ex-works + freight and FOB + freight means freight charged on the invoice separately and reimbursed by the buyer. It was noted that in some of the invoices Sheenway has charged *** % service charges to the customers in India which is charged in the invoice of the exporter over and above the invoice value. This being an earning, for the exporter, no adjustment is required on account of this. Adjustments have been made towards inland freight, ocean freight and insurance (where applicable), bank charges and credit costs to arrive at net ex-works prices. VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group as follows:

		Producer : Foshan Qangbio , Exporter : Worcetre		Producer Foshan Quangbiaoi , Exporter : Honglio , Shipper : Sheenway		Quanbio Group	
Grade	Size	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600						
	800*800						
	Others						
	Sub-Total	-		-		-	
DC	600*600	***	***	***	***	***	***
	800*800	***	***	***	***	***	***
	Others	***	***	***	***	***	***
	Sub-Total	***	***	***	***	***	***
SS	600*600	***	***	***	***	***	***
	800*800					-	
	Others					-	
	Sub-Total	***	***	***	***	***	***
	Grand Total PUC	***	***	***	***	***	***

e. Foshan Chancheng Jinyi Ceramics Co. Ltd. And Xin Xing Xian Zhisheng Ceramics Co., Ltd (Producers) and Foshan Worceter Trade Co. Ltd. (Exporter)

146. As per the EQ response, Foshan Chancheng Jinyi Ceramics Co. Ltd, China PR is a producer of polished tiles procuring biscuits from Xin Xing Xian Zhisheng Ceramics Co., Ltd, related party. As stated in the EQ response, Jinyi exports the subject goods to India during the POI, through another related party namely Foshan Worceter Trade Co., Ltd. All these companies have filed EQ response and the producers have also filed MET questionnaire responses on the grounds that they had been given market economy treatment in previous investigations. However, during the verification they withdrew their market economy claims.

147. M/s Xin Xing Zhishenng Ceramics Co. has a capacity to produce *** million sqr mtrs of tiles bodies annually which is supplied to companies producing subject goods, including Foshan ChanCheng JINYI Ceramics Co. Ltd. Foshan ChanCheng JINYI Ceramics Co. Ltd is only a polishing factory with capacity of polishing *** million sqr mtrs of tiles. Jin Yi purchases major portion of its tiles from Xin Xing but not exclusively from them. Jin Yi treats biscuits as raw materials for polishing. The company produces mostly soluble salt tiles only with a small quantity of Double charge tiles and exported only Soluble Salt Tiles to India during the POI.
148. During the POI, Jin Yi purchased *** sqr mtrs of tiles body out of which *** sqr mtrs (***%) was purchased from Xin Xing. A small quantity of *** sqr mtrs were also purchased from M/s Foshan Haosen, who is also a responding and sampled producer/exporter in this case taking the total to *** % of total tile body consumed. There are about *** other producers of tiles body from whom they have purchased tiles body and they individually account about *** % of their consumption.
149. It was noted that the finished tiles producing company i.e., Jin Yi has sold all the goods in the domestic market, to a large number of traders and import export companies in China, including the sales made to Worceter, who has in turn exported the goods to India. All sales are on Ex-works basis and on cash term.
150. Out of *** sqr mtrs domestic sales transactions in appendix-1, ***sqr mtrs (***%) were sold to their related exporter M/s Worceter and ***sqr mtrs (***%) have been sold to other trading companies in China, rest being sales to different end users in the domestic market. The volume of sales to domestic trading companies is significant. Each sales contract with the domestic trading/export import companies carries a clause, which prohibits the trading companies to sell the goods in Indian market as they have their own trading company in Indian market. The Company explained that it would not issue the VAT invoice to the trading Company to enable them to claim VAT refund if this condition is violated. Therefore, the Company knows which consignment goes to India though they do not directly ship the goods to India.
151. Foshan Worceter Trade Co., Ltd.is the trading arm of the Group having an export license. Worceter 's purchases the tiles from Jin Yi as domestic sales against VAT invoices and in turn exports the goods to India.
152. During the POI Worceter purchased *** sqr mtrs from Jin Yi and *** sqr mtrs from another responding producer in this case i.e., Foshan Qiangbiao Ceramics Co., Ltd and exported total *** to India and *** sqr meters to third countries. Out of the above quantity of ***, Worceter has exported *** sqr meters to India through another exporter in Hong Kong

namely, M/s Sheenway, who has also filed a separate questionnaire response and the balance quantity has been exported directly.

153. The exports to India by Worceter are mostly of Soluble Salt tiles of different sizes and the sales are at ex-works level with various payment terms such as TT, part advance payment and part LC at sight basis to a single customer in India. Since export transactions are at ex-works level, the exporter does not bear any expenses. The payments are mostly advance or against sight LCs. Bank charges and credit costs have been adjusted to arrive at ex-works prices. VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group as follows:

		Producer : Foshan Jinyi , Exporter : Worcetree		Producer Foshan Jinyi , Exporter : Worcetree , Shipper : Sheenway		Jinyi Group	
Grade	Size	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600						
	800*800						
	Others						
	Sub-Total	-		-		-	
DC	600*600	***	***	***	***	***	***
	800*800	***	***	***	***	***	***
	Others					-	
	Sub-Total	***	***	***	***	***	***
SS	600*600	***	***	***	***	***	***
	800*800	***	***			***	***
	Others					-	
	Sub-Total	***	***	***	***	***	***
	Grand Total PUC	***	***	***	***	***	***

- f. **Guangdong Gelaisi Ceramics Co. Ltd (Gelaisi), Foshan Sanshui Huiwanjia Ceramics Co. Ltd (Huiwanjia), Foshan Newpearl Trade Co. Ltd (Newpearl)**

154. The above group of related producers and exporters have filed a questionnaire response as well as MET questionnaire response in this case and have argued that New Pearl Group had been given MET in 2007 and 2008 in antidumping investigations concerning Ceramic Tiles and Vittrified Tiles. That case covered the subject goods produced by Foshan Sanshui Huiwanjia Ceramics Co., Ltd and Foshan Summit Ceramic Co Ltd (now known as Guangdong Gelaisi Ceramics Co., Ltd.) and exported by Foshan New Pearl Trade Co. Ltd. Accordingly, this group has claimed market economy status in this case also.
155. It is noted that New Pearl Group had been given MET in 2007 and 2008 in antidumping investigations concerning Ceramic Tiles and Vittrified Tiles which covered the subject goods exported by Foshan New Pearl Trade Co., Ltd and produced by Foshan Sanshui Huiwanjia Ceramics Co., Ltd and Foshan Summit Ceramic Co Ltd (now known as Guangdong Gelaisi Ceramics Co., Ltd. Accordingly, this group has claimed market economy status in this case also. However, as noted above this Group could not produce the documents required for verification of this status during the course of verification. Accordingly, this company has not been given the market economy status in this case.
156. Out of the five (5) producing companies, involved in production of the subject goods, only two (2) have filed questionnaire response and the trading company has also filed questionnaire response. The Company submitted that the goods produced by the other three producing companies have not been exported to India during the POI. Therefore, they have not filed the QR.
157. It has been submitted that the responding as well as non-responding companies in the Group did not sell any material in Indian market through any other trading Companies other than New Pearl. The Company demonstrated that each transaction of the group companies is governed by sales contracts with non-compete clause, which binds the buying trading company/agent to sale the goods in specified areas/countries. They are not allowed to sell the goods in any other market.
158. Both the responding producing Companies sell the goods only in the domestic market, against VAT invoices, to domestic consumers as well as traders/exporters on ex-works basis, on cash term. The traders lift the goods on ex-works basis and either sale in the domestic market, or export to different markets, as per the stipulations in the sales contract as explained by the Company. During the POI, Gelasi sold *** sqm mtrs to New Pearl and Sanshui Huaiwanjia sold ***sqm mtrs to New Pearl.
159. New Pearl has purchased the subject goods from the above two participating producing companies and other three non-participating companies and exported the goods to India as well as other countries.

Against total purchase of ***sqr meters during the POI New Pearl exported *** sqr meters and rest was exported to other countries. Exports to India was of the goods produced by the two responding exporters as demonstrated through the VAT invoices, certificates of origin and commercial invoices.

160. The Company has exported the goods to India against *** invoices to unrelated customers in India on various delivery terms (Ex-works/FOB/CNF/CIF) and payment terms (LC at sight/LC 60days/TT). The goods are purchased by the trader on ex-works basis from the related producers on cash term against VAT invoices. All expenses beyond ex-works are met by the trading company. Therefore, to arrive at all expenses towards inland freight, ocean freight, including handling and port expenses and insurance (wherever applicable), bank charges and credit costs have been adjusted. VAT adjustment of 8%, towards un-refunded VAT absorbed by the exporter has also been made to the export price to arrive at the net-ex-works export price of the group as follows:

		Producer : Gelasi , Exporter : New Pearl		Producer : Huewanjia , Exporter : New Pearl		New Pearl Group	
Grade	Size	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)	Qty (SQM)	NEP (US\$ / SQM)
GVT/PGVT	600*600			***	***	***	***
	800*800			***	***	***	***
	Others			***	***	***	***
	Sub-Total			***	***	***	***
DC	600*600	***	***			***	***
	800*800	***	***			***	***
	Others	***	***			***	***
	Sub-Total	***	***			***	***
SS	600*600	***	***			***	***
	800*800						
	Others						
	Sub-Total	***	***			***	***
	Grand Total PUC	***	***	***	***	***	***

L. Dumping Margins

a. Dumping Margins of Sampled Exporters

161. The net ex-works normal values determined for each product type and identified sized as noted earlier have been compared with the respective export prices of the sampled producers and exporters as determined above to arrive at the dumping margins of these sampled producers and exporters as follows:

				New Pearl Group		QUIANGBIO GROUP		JINYI GROUP		HAOSEN GROUP		LIHUA GROUP		NZY GROUP	
Grade	Size	CNV (US \$ / SQM)	NIP (US \$ / SQM)	DM (US \$ / SQM)	DM (%)	DM (US \$ / SQM)	DM (%)	DM (US \$ / SQM)	DM (%)	DM (US \$ / SQM)	DM (%)	DM (US \$ / SQM)	DM (%)	DM (US \$ / SQM)	DM (%)
GVT /PGVT	600*600	***	***	***	60 – 70									***	65 – 75
	800*800	***	***	***	(0 – 10)					***	15 – 25	***	(5 – 15)	***	(0 – 10)
	Others	***	***	***	(0 – 10)					***		***	(35 – 45)	***	(5 – 15)
	Sub-Total	***	***	***	40 – 50					***	15 – 25	***	(10 – 20)	***	10 – 20
DC	600*600	***	***	***	(25 – 35)	***	10 – 20	***	5 – 15	***	30 – 40	***	15 – 25		
	800*800	***	***	***	(20 – 30)	***	20 – 30	***	0 – 10	***	35 – 45	***	0 – 10		
	Others	***	***	***	0 – 10	***	30 – 40	***		***	35 – 45	***			
	Sub-Total	***	***	***	(0 – 10)	***	15 – 25	***	5 – 15	***	30 – 40	***	10 – 20		
SS	600*600	***	***	***	(0 – 10)	***	15 – 25	***	10 – 20	***	30 – 40	***	10 – 20		
	800*800	***	***	***		***		***	0 – 10	***		***			
	Others	***	***	***		***		***		***		***			
	Sub-Total	***	***	***	(0 – 10)	***	15 – 25	***	10 – 20	***	30 – 40	***	10 – 20		
	Grand Total PUC	***	***	***	10 – 20	***	15 – 25	***	10 – 20	***	30 – 40	***	10 – 20	***	10 – 20

b. Dumping Margin for Non-Sampled Producers and Exporters

162. The dumping margin the producers and exporters as listed below, who had made themselves known in response to the sampling questionnaire but not sampled by the Authority, has been determined as the weighted average

of the dumping margins of the sampled producers and exporters as above in terms of Rule 18(2) of the Rules as follows:

Grade	Size	CNV (US \$ / SQM)	DM	%
GVT/PGVT	600*600	***	***	60 - 70
	800*800	***	***	15 - 25
	Others	***		
	Sub-Total	***	***	60 - 70
DC	600*600	***	***	25 - 35
	800*800	***	***	30 - 40
	Others	***	***	5 - 15
	Sub-Total	***	***	25 - 35
SS	600*600	***	***	10 - 20
	800*800	***	***	0 - 10
	Others	***		
	Sub-Total	***	***	10 - 20
	Grand Total PUC	***	***	20 - 30

List of Non Sampled Producers and Exporters

Sl. No	Name of the producer	Name of the Exporter
1	Foshan Helai Building Materials Co., Ltd and Foshan City Gaoming district hui Mei AO Building Material Co., Ltd.	Foshan Xinzhongwei Economic and Trade Co., Ltd, M/s Globlink Overseas (HK) Ltd.
2	Foshan City TaoQuiang Building Material Co., Ltd.	Foshan Fortune Imp. And Exp. Trade Co., Ltd.
3	Monalisa Group Co., Ltd.	Guangdong Monalisa Trading Co., Ltd.
4	Foshan Gold Full House Building Material Co., Ltd.	Foshan Nanhai Rongjia IM & EX Co., Ltd, and Foshan Clouds Import & Exports Co., Ltd.
5	Guangdong Yongsheng	Foshan Ishine Trading Co., Ltd.

	Ceramics Co., Ltd.	
6	Foshan Sunny Ceramic Co., Ltd.	Foshan Gold Medal Import and Export Trading Co., Ltd.
7	Enping City Huachang Ceramic Co., Ltd.	Enping City Huachang Ceramic Co., Ltd.
8	Foshan Oceanland Ceramics Co., Ltd	Foshan Oceanland Ceramics Co., Ltd
9	Guangdong Overland Ceramics Co., Ltd	Guangdong Overland Ceramics Co., Ltd
10	Guangdong Kito Ceramics Co., Ltd	Guangdong Kito Ceramics Co., Ltd
11	Foshan Sincere Building Material Co., Ltd	Foshan Sincere Building Material Co., Ltd
12	Guangdong Guanxing Ceramics Enterprise Co., Ltd	Guangdong Guanxing Ceramics Enterprise Co., Ltd
13	Qingyuan Quya Ceramics Co., Ltd	Qingyuan Quya Ceramics Co., Ltd
14	Jingdezhen Kito Ceramic Co., Ltd	Jingdezhen Kito Ceramic Co., Ltd
15	Foshan Louis Valentino Ceramic Co., Ltd	Foshan Louis Valentino Ceramic Co., Ltd
16	Guangdong Xinfengjing Ceramics Co., Ltd	Guangdong Xinfengjing Ceramics Co., Ltd
17	Guangdong Tianbi Ceramics Co., Ltd	Guangdong Tianbi Ceramics Co., Ltd
18	Foshan HCC Building Material Co., Ltd	Foshan HCC Building Material Co., Ltd
19	Zhanjiang Zhonghong Ceramics Co., Ltd	Foshan Beyond Import and Export Co., Ltd
20	Heyuan Romantic Ceramics Co., Ltd	Foshan Beyond Import and Export Co., Ltd
21	Foshan Nanhai Yonghong Ceramic Co., Ltd	Foshan Jun Enterprise Co., Ltd
22	Foshan Dunhunang Building Material Co., Ltd	Foshan Dunhunang Building Material Co., Ltd
23	Foshan Sanshui Hongyuan Ceramics Enterprise Co., Ltd	Foshan Sanshui Hongyuan Ceramics Enterprise Co., Ltd
24	Foshan Gani Ceramic Tiles Co. Ltd.	Qingyuan Ceramic Tiles Co. Ltd.

c. Dumping Margin of all other Producers/ Exporters from China PR

163. Dumping margin for all other non-cooperating exporters from China PR has been determined by the Authority on the basis of best facts available taking into account the verified data of the cooperating exporters. Accordingly, dumping margin for all other producers/exporters in China has been determined as follow:

All Others							
EP	CNV	DM	%	LV	NIP	IM	%
***	***	***	75-85%	***	***	***	45 - 55%

164. The dumping margins so determined are significant and above de minimis limits.

M. DETERMINATION OF INJURY AND CAUSAL LINK

165. The petitioners have alleged that the dumped imports from the subject country are causing material injury and/or threatening material injury to the like product domestic industry in India. Having determined that the goods are entering from the subject country at dumped prices the Authority proceeds to examine the degree and extent of injury, if any, suffered by the domestic industry and whether there is an imminent threat of injury in the absence of a measure.

166. Rule 11 of the Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

167. The Authority notes that after issuance of the Preliminary Findings the interested parties, including the domestic industry has made substantial submissions commenting *upon* various aspects of injury and causal links claims of the domestic industry. These arguments and submissions of the parties have been summarised below:

M.2 Submissions made by the opposing interested parties

168. The exporters, importers and other interested parties to this investigation, including the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, in their respective submissions, regarding the injury and causal link, have *inter alia* argued:

- i. That the petition filed by the domestic industry does not even claim that gross and irreparable injury would be caused to the domestic industry even during the duration of investigation. No material is also available on record or reflected in the preliminary findings to justify recommendation of imposition of provisional duty. In view thereof, the provisional imposition is contrary to Rule 12 and Section 9B (1)(b)(iii) of the Customs Tariff Act, and therefore required to be withdrawn.
- ii. That the duty on porcelain/ vitrified tiles was in existence from 2002 to 2013 and the same got expired in June, 2013 in view of no dumping and consequently, no injury. There is no scope for imposition of new ADD by initiation of a fresh investigation for the same product.
- iii. That there is no evidence of injury to the domestic industry or no decline in economic parameters relating to the domestic industry.
- iv. The injury analysis has been conducted for an arbitrarily selected period within the injury period. The injury analysis conducted based on a segment within the POI is inconsistent with Article 3 of the WTO ADA as well as Annexure II of the Indian AD Rules. In the absence of a complete injury analysis based on the data over the course of the injury period, it cannot be concluded that the domestic industry is suffering material injury.
- v. That there is steep decline in import volume from subject country both in terms of total Indian production and domestic sales in India over last four years. Domestic producers in India constitute 92% of market share and the rest of the market share is on account of imports, which is decline by more than half in the POI as compared to 2011-12. The decline in imports and market share of imports cannot be a cause of injury.
- vi. That the market-share of petitioner companies decreased while it increased for other Indian producers. The market share of the subject country has significantly declined during the POI.
- vii. That the injury parameters must be examined for domestic producers of the like product and not merely for domestic industry. Even if the analysis is restricted only to domestic industry, none of the economic factor including production, sales, production capacity, and capacity utilisation reflects injury. On the contrary, there is improvement in economic and financial indices of domestic tile manufacturers.

- viii. Demand of PUC increased during the injury period. The share in increased demand was shared by appellant. That imports from the subject country constitute less than 8% of the total demand whereas combined market- share of the Petitioners, the supporters, the ineligible domestic producers and other domestic producers is nearly 92%.
- ix. Production, Capacity utilization and Capacity of the appellant industry is showing increasing trend. The appellants have been able to clear 95% of its production during the period of investigation. Profitability of domestic industry. Similarly, cash profit and return on capital employed increased during the POI.
- x. Production and sales increased by 62% and 41% in the POI as compared to 2011-12, respectively. The domestic industry increased its capacity steadily throughout the course of the injury period. The capacity has in fact increased by 62% in the POI as compared to 2011-12.
- xi. That the domestic producers have suffered injury due to excessive production capacity and the decline in exports.
- xii. That the DI has claimed production for the domestic market after excluding the exports but the inventories, if any, on account of exports have not been excluded from the closing stock.
- xiii. That the petition of the applicants also reflects that there is no price suppression or depression as the import price from China PR and cost of sales of domestic industry follows same trend analysis. There has been substantial increase in import price of subject goods during injury analysis period. DI prices are not influenced by the landed prices of imports and DI dictates price in the market.
- xiv. That the price undercutting margin is negative and no explanation is provided as to why the DI sells the product below landed price.
- xv. That few imports have been selected for determining landed value. Such selective transactions reflect incomplete picture resulting into screwed price effect analysis.
- xvi. That the profits, cash flow and return on capital employed of domestic industry has increased manifold in injury analysis period and were operating at the highest level. The performance of large number of domestic producers constituting domestic industry, has also improved exponentially. Wages and employment has also reflected improvement in line with performance of domestic industry. Ability to raise capital is also not impacted.

- xvii. That the price underselling is positive but immaterial due to the profitability of the DI being at the highest level. It cannot be used as a factor in determining injury to domestic industry.
- xviii. That the price underselling calculation based on DG Valuation reference band is incorrect and absurd.
- xix. That there is no threat of material injury as there is no increase in volume of subject country imports, no evidence of freely available capacities in China to indicate increase in future exports to India, no suppression or depression effects and no evidence of increased inventories of subject goods in China.
- xx. That no facts are provided relating to threat of injury. The presumption that Brazil's imposition of AD duties will divert material to India is faulty;
- xxi. That the recommendation of provisional duty does not meet preconditions of Section 9B and Rule 12. Recommendation of preliminary finding on the basis of threat of injury is prohibited.
- xxii. That the initiation was only for material injury and not for threat of injury.
- xxiii. That the objective injury analysis is not possible as applicants hold only 37.41% of share and majority of producers are not participating. Supporters in the present case must also provide costing data.
- xxiv. Use of different sources of import data for volume and prices is unjustified and had only one source of data been considered, no case of injury would have been found.

M.2 Submissions made by Domestic Industry

169. The domestic industry, in its submissions, has *inter alia* argued as under:
- i. That the volume of dumped imports from the subject country declined till 2013-14 and has thereafter increased significantly in the proposed POI. Imports have increased significantly in the period Oct 14-March 15 which is the period after imposition of anti-dumping duty by Brazil on China.
 - ii. That the import prices have been significantly below the selling prices of the domestic industry, thus resulting in significant price undercutting.
 - iii. That the actual landed price of imports is much below the level of cost as well as selling price of the domestic industry. Thus, non-imposition of duty is likely

to lead to significant increase in low priced imports which would cause price suppression and depression in the domestic market.

- iv. That the Domestic Industry enhanced capacity in the proposed injury period, responding to the rising demand of the product in the Country.
- v. That the production of domestic industry increased with addition of capacities. However, production declined within the proposed POI with significant increase in imports.
- vi. That the capacity utilization of the domestic industry increased over the period upto June 2014 and declined thereafter.
- vii. That the inventories with the domestic industry increased very significantly over the injury period.
- viii. That the profitability of the domestic industry has increased over the injury period. However, since imposition of anti-dumping duties on Brazil in July 2014, imports had started increasing significantly at dumped price. As stated earlier actual import price is much below the level of cost of sales and selling price of the domestic industry. Therefore, there is clear imminent threat of decline in profitability of the domestic industry.
- ix. That the quarterly performance of the domestic industry shows decline in sales, production and capacity utilisation.
- x. That the dumping margin is not only more than *de-minimus* but also substantial.
- xi. That it is not necessary that the data should show both price undercutting and suppression/depression. There is significant decline in prices in last two quarters of the POI. This is also the period where imports from China have increased. Thus, domestic industry was forced to reduce prices when imports from China increased.
- xii. That the capacity, production, sales and capacity utilization of the domestic industry declined in the last two quarters of the POI. Thus, whereas performance of the domestic industry was improved in respect of these parameters up to the first semester of POI, the performance to the domestic industry declined/deteriorated in the second semester of the POI.
- xiii. That the domestic industry has set up manufacturing facilities for sale of the PUC in Indian market. The domestic industry has sold the product in export

market only when domestic industry is not able to sell the product in the domestic market.

- xiv. That the petitioner has provided information with regard to its profitability in the domestic and export market which clearly establishes that the profit of the domestic industry is worse in export market.
 - xv. That the petitioner has not claimed injury in respect of employment and wages for the reason that these parameters are governed by other macro- economic parameters in the country and petitioner companies are not in a position to regulate employment and wages in view of prevailing labor laws in the country.
 - xvi. Apart from injury the domestic industry is suffering threat of injury and material retardation on account of heavy duties imposed by Brazil on Chinese imports. There is collapse in demand in the Chinese market and new plants have come up who are producing 800 X 800 and higher sizes. The Chinese producers are faced with significant unutilized capacities.
 - xvii. The significant dumping in the Indian market is also due to imposition of duties on Tiles from China by several other countries like Pakistan, Argentina, Mexico and Europe in the recent past.
170. Apart from their general submission with regard to the injury and causal links, the domestic industry has also argued that the freight cost of the domestic industry, while selling the goods in the domestic market, has been completely ignored while comparing the domestic industry price with landed price of imports. The domestic industry has contended that the issue of freight element on sales is in the context of injury margin determination by comparing the freight paid non-injurious selling price (NIP plus Freight) of the domestic industry with the landed value of the imports as the freight element on this product is substantial. At present the Authority determines injury margin as the difference between NIP and landed price of imports. The domestic industry argues that there is no legal basis to support that the injury margin should only mean difference between NIP and landed price of imports. The domestic industry further argues that
- a. The present practice is a result of adopting a simplistic approach. Recognition of freight as an element of fair price comparison has an element of making calculations complex.

- b. The mere fact that acceptance of a business reality would amount to more elaborate calculations cannot imply that the authority should shy away from acknowledging, accepting, and thereafter implementing a business reality.
- c. The Indian manufacturing sector cannot be made to suffer only because of some complexities involved in doing calculations.
- d. The mere fact that the authority had not undertaken such comparison in the past cannot imply that the authority should deny such genuine concerns of the Indian manufacturing sector and the domestic industries should be made to suffer.
- e. There is no potential violation of the WTO Agreement in recognition of freight as an item of price adjustment.
- f. The authority has been treating the PCN wise injury margin or month by month injury margin only as a natural corollary to the principles of fair comparison applied in dumping margin determination.
- g. It is not correct to interpret that the present practice of injury margin determination does not permit applying the principles of fair comparison and the Designated Authority does not apply the principles of fair comparison.
- h. Inclusion of freight implies excessive protection would be a fallacious statement to make for the reason that the anti-dumping duties quantum in any case cannot exceed the dumping margin. It shall only address a major anomaly in the present methodology being applied by the authority.
- i. The authority is required to retain some flexibility to decide the issue that which freight needs to be considered, on a case by case basis and the options available to the authorities.
- j. If the weighted average freight borne on the imported product is higher than the weighted average freight borne on the domestic product, the authority need not recognize the freight cost incurred on the domestic product. However, if the weighted average freight borne on the domestic product exceeds the weighted average freight borne on the imported product, the authority may recognize and consider that the freight is an important element for price adjustment and make an appropriate adjustment accordingly.
- k. The Authority is required to apply the principles of fair comparison between the landed price and the non-injurious price after taking into account all relevant factors for determination of injury margin. In the present case

authority may kindly consider the difference in freight cost between imported product and domestic product, which affects price comparability.

- l. The Authority is required to make due allowance for differences which are demonstrated to affect price comparability. The obligation to ensure fair comparison is onto the Investigating Authority and not onto the parties to the investigation.
 - m. If the import price includes freight, then the domestic price should also include it and both should be seen at delivered level. Otherwise both prices should be taken at ex-factory level.
 - n. The authority should determine injury margin on the basis of two methodologies - a comparison of ex-factory price with CIF import price and delivered price with Delivered Duty Paid prices or DDP prices.
 - o. In the present case, freight is a significant element of cost; the same should be added to the non-injurious price as exclusion for comparison of non-injurious price of the domestic industry without including associated freight with landed price of imports will not constitute a fair comparison.
 - p. If the Authority chooses to do otherwise, it may kindly consider comparison of the non-injurious price at ex-factory level calculated in accordance with Annexure III with the ex-factory export price of the goods to ensure that the element of freight on subject goods is not included in either case.
 - q. The injury margin determined in the preliminary findings is inappropriate and understated for the reason that the comparison between non-injurious price and landed price is unfair, as the two prices have not been computed at the same level.
 - r. Authority has determined injury margin without making any adjustment on account of the difference between the credit period extended by the exporters to the importers and that allowed by the domestic industry.
 - s. The non-injurious price and import price should be considered after either including or excluding associated freights.
171. Apart from freight adjustment the domestic industry has also argued that an appropriate adjustment towards the difference in credit period should also be allowed to arrive at the injury margins. It has been argued that the Authority should take into account the difference in the credit period extended by the domestic industry and the foreign suppliers or exporters while determining the injury margin. The selling price of a product directly depends on the credit period offered by the seller, as the seller is able to command a higher price

where a higher credit period is offered. Thus, if the sales are made allowing a longer period of credit, the price would be higher to the extent of credit period. It has been submitted that

- a. Since the credit period offered by the domestic industry and foreign producers are different, the non-injurious price is required to be compared with landed price of imports after appropriately adjusting any one of the two for the difference in the credit period, that is, either the landed price of imports should be reduced having regard to for the credit period offered by the exporters, or the non-injurious price should be increased to account for such difference.
 - b. For the purpose of determining injury margin, the cost of credit prevailing in India, that is, cost of short term borrowings in India should be adopted for making such adjustments.
172. The domestic producers, who have been excluded from the scope of the domestic industry, has argued that exclusion of these producers in the organised sector from the injury examination has resulted in a skewed or distorted finding as the data of the unorganised sector does not capture the real scenario of injury suffered by the domestic producers in the country. It has been argued that they have to resort to imports from the subject country for certain localised markets due huge freight disadvantage suffered by the domestic producers to sell in those markets.

M.4 Examination by Authority

173. The Authority notes the arguments of the domestic industry and other interested parties and various issues raised therein and has addressed them in the relevant paragraphs hereunder.
174. The application for imposition of antidumping duty has been filed on behalf on behalf of the domestic producers of the subject goods by Gujarat Granito Manufacturers Association and Sabarkantha District Ceramic Association with 24 domestic producers of the subject goods. These 24 producers were treated as the domestic industry as defined in Rule 2(b) of the Rules, for the purpose of this investigation. There are several arguments by the interested parties, including the domestic industry that exclusion of certain organised producers from the scope of the domestic industry has distorted the injury examination in the preliminary determination and therefore, all these excluded producers, who have filed detailed information about their cost and

prices and other injury information should be consideration for the final determination.

175. This issue has been examined and the Authority notes that these producers were excluded from the scope of the domestic industry as they had significant imports of the subject goods from the subject country. For example the imports Kajaria was 15% of its own production and 8% of the production including its JV partners. Similarly, imports of Somani was found to be about 32% of its own production and 6% of production including its JV partners. These imports could not have been treated as insignificant or immaterial to the injury investigation. Therefore, the exclusion of these producers are as per the consistent practice of the Authority and accordingly, for the purpose of this determination the remaining eligible domestic producers have been considered for determination of domestic industry. Cost and injury information of; the domestic industry, as defined above, has been examined for the injury determination.
176. The Authority further notes that the application of the domestic industry was for initiation of an investigation on the grounds of material injury and threat of material injury and the Authority has recorded the same in para-12 & 13 of the initiation notification. Therefore, the contention of the opposing interested parties is not correct.
177. The opposing interested parties have argued that the domestic industry has not suffered material injury and the threat of material injury is not based on adequate evidence on record. The Authority has examined various parameters of injury afresh after due verification of data of the domestic industry as well as assessment of volume and prices of the imports based on data of cooperating exporters from China as recorded in the subsequent paragraphs and the concerns of the parties have been addressed therein.
178. As regards the submissions of the domestic industry that they also face material retardation due to the alleged dumped imports the Authority notes that the case was initiated only on the basis of evidence of material injury and threat of material injury. Therefore, the investigation cannot be expanded at this stage to cover the allegations of material retardation.
179. The arguments of the domestic industry that comparison of the import price and the fair selling price of the domestic industry should be made at the point of sale instead of ex-works and ex-customs level, because of significant freight differential, have been noted. The arguments of the domestic industry

has been that while the production of the goods take place mostly in the western coast of Gujarat, and needs to be transported to the major consumption centres in the South and North of India, most of the imports take place in the Sothern Ports right at the consumption centres, incurring very nominal sea freight and does not involve any internal freight cost. Therefore, any injury margin determination without taking into account of the freight element involved in delivering the goods to the consumption centres will distort the comparison and would not provide adequate protection to the domestic industry in terms of injury margin.

180. Therefore, the domestic industry's argument, essentially, has been that in cases where the freight element is substantial the internal freight from the plant to point of consumption or distribution and port to point of consumption or distribution should be added to the NIP and Landed Values respectively to arrive at the injury margin, following the principles laid down in article 2.4 of the ADA which allows level of trade adjustments or factors that affects price comparability for the purpose of fair comparison of domestic sales with export sales in dumping margin determination.
181. The Authority notes that the subject goods are being imported majorly (84%) at Chennai, Cochin, Nava sheva and Tuticorin Ports. 52% of the imports are at 3 southern ports whereas most of the production of the subject goods takes place in Gujarat coast. The price differential reflected in the import statistics show that the import prices are significantly higher at Mumbai than the southern ports, apparently because of sea freight differentials. Therefore, the landed price of the subject goods imported at the Southern ports are significantly lower and the inland freight element is also low because the imports are closer to the point of consumption. Whereas the domestic industry or the buyers of the subject goods from the domestic industry incur significant cost to transport the goods to the southern cities. Therefore, the domestic industry argues that comparison of the landed value of imports at the point of consumption, particularly at these Southern ports, with the NIP of domestic industry, worked out at the ex-works level results in a skewed result and needs to be addressed by taking the comparison to the level of consumption or distribution by adding the inland freight to both up to the point of consumption or distribution on some reasonable basis.
182. The Authority notes that this issue had been agitated by the domestic industry is several cases in the past where the freight constitutes a cost for the domestic industry or the buyer of the commodities. The Authority, has consistently taken a stand that it would not be possible to take into account post sales expenses for determination of the injury margins. However, to examine the issue further, the domestic industry was asked to provide their sales data to various regions and demonstrate the impact of freight as has

been argued. While, the domestic industry failed to provide complete information in this regard, the Authority holds that departure from the existing methodology would require comprehensive analysis from a policy perspective and not a case specific approach and therefore maintains its consistent stand on this issue.

183. As regards the credit cost adjustment is concerned, the Authority notes that examination of cooperating exporters' data does not show any significant credit period. In fact, the nature of the trade is such that a part of the payment is received in advance. Therefore, this is not an issue in this case and hence not addressed here.

N. Examination of Material Injury

184. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the prices of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

N.1 Examination of actual and potential impact of dumped imports

a. Volume Effects of Dumped Imports

i. Import volumes and share of subject countries

185. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. As noted above the Authority has relied upon the import data procured from DGCI&S for determining volume of dumped imports. Since the subject good imported from the subject country has been found to be dumped with dumping margins significantly above the *de minimis* level all imports, as segregated from the DGCIS data as product under consideration, have been treated as dumped imports.

186. The volume of imports and dumped imports during the injury investigation period, as per this analysis, is as follows:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15 (POI)
Import Volume					
China - Subject Country	000'Sqmtr	27,640	17,234	10,872	20,540
Other Countries	000'Sqmtr	1,728	1,745	1,037	777
Total Imports	000'Sqmtr	29,368	18,980	11,909	21,318
Import Market Share					
China - Subject Country	%	94.12%	90.80%	91.29%	96.35%
Other Countries	%	5.88%	9.20%	8.71%	3.65%
Total Imports	%	100.00%	100.00%	100.00%	100.00%

***POI: April 14- March 15**

187. The data indicates that there has been a significant decline in imports from China since 2011-12 till 2013-14 and thereafter there is a sudden jump in imports in the POI. The imports have actually doubled in PI when compared to the previous year. The Authority notes that antidumping duties were in force on this product till June 2013, which is reflected in steady decline in the imports till 2013-14. After cessation of duty in June 2013 the imports have picked up substantially.
188. Petitioners have submitted that subject imports have increased significantly in the period Oct 14-March 15, which is the period after imposition of anti-dumping duty by Brazil on China. Quarterly movement of imports during the POI as given below indicates significant rate of increase of imports towards the last quarters of the POI, which tends to imply that the imports are likely to increase further if the trend continues.

Particulars	Unit	Apr'14- Jun'14	July'14- Sep'14	Oct'14- Dec'14	Jan'15- Mar'15
Import Volume					
China - Subject Country	000'Sqmtr	3,173	4,633	5,809	6,925
Other Countries	000'Sqmtr	169	202	205	202
Total Imports	000'Sqmtr	3,342	4,835	6,014	7,127
Import Market Share					
China - Subject Country	%	94.95%	95.82%	96.59%	97.17%
Other Countries	%	5.05%	4.18%	3.41%	2.83%
Total Imports	%	100.00%	100.00%	100.00%	100.00%

ii. **Demand and market share**

189. The demand and market share of the domestic industry and the subject countries in the domestic market has been assessed taking into total imports, the domestic consumption/demand of the subject goods, the sales volume of domestic industry and other Indian producers and as follows:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Total Indian Demand					
Sales of Petitioner Companies	000'Sqmtr	39,462	51,113	51,953	55,752
Sales of Supporter Companies	000'Sqmtr	16,579	22,757	23,422	27,113
Sales of Other Indian industry	000'Sqmtr	32,175	73,352	75,830	86,811
Sales of Ineligible Other Indian industry	000'Sqmtr	28,010	47,636	57,578	70,469
Imports - Subject Countries	000'Sqmtr	27,640	17,234	10,872	20,540
Imports - Other Countries	000'Sqmtr	1,728	1,745	1,037	777
Demand	000'Sqmtr	145,594	213,838	220,691	261,463
Market Share in Demand					
Sales of Petitioner Companies	%	27.10%	23.90%	23.54%	21.32%
Sales of Supporter Companies	%	11.39%	10.64%	10.61%	10.37%
Sales of Other Indian industry	%	22.10%	34.30%	34.36%	33.20%
Sales of Ineligible Other Indian industry	%	19.24%	22.28%	26.09%	26.95%
China - Subject Country	%	18.98%	8.06%	4.93%	7.86%
Other Countries	%	1.19%	0.82%	0.47%	0.30%
Total Demand	%	100.00%	100.00%	100.00%	100.00%

190. The above data indicates that the demand of the product in the domestic market, which is linked to construction industry, shows a very healthy increase of about 80% over the injury period and the domestic industry as well as other domestic producers have improved their sales in the domestic market. The imports from the subject country has also increased in POI after decline for the entire injury period. However, share of the domestic industry has declined whereas the share of the other domestic producers has shown significant improvement. Share of the subject country in Indian demand also shows substantial jump in the POI after decline till the previous year apparently due to cessation of the antidumping duty previously in force.
191. The quarterly data of imports have also been examined to see the trend within the POI, in view of the allegation of threat of injury. The data for the period is as under:

Particulars	Unit	Apr'14-Jun'14	July'14-Sep'14	Oct'14-Dec'14	Jan'15-Mar'15
Total Indian Demand					
Sales of Petitioner Companies	000'Sqmtr	14,232	13,738	14,268	13,513
Sales of Supporter Companies	000'Sqmtr	6,921	6,681	6,939	6,572
Sales of Other Indian industry	000'Sqmtr	22,161	21,392	22,216	21,041
Sales of Ineligible Other Indian industry	000'Sqmtr	17,989	17,365	18,034	17,080
Imports - Subject Countries	000'Sqmtr	3,173	4,633	5,809	6,925
Imports - Other Countries	000'Sqmtr	169	202	205	202
Demand	000'Sqmtr	64,645	64,011	67,472	65,333
Market Share in Demand					
Sales of Petitioner Companies	%	22.02%	21.46%	21.15%	20.68%
Sales of Supporter Companies	%	10.71%	10.44%	10.28%	10.06%
Sales of Other Indian industry	%	34.28%	33.42%	32.93%	32.21%
Sales of Ineligible Other Indian industry	%	27.83%	27.13%	26.73%	26.14%
China - Subject Country	%	4.91%	7.24%	8.61%	10.60%
Other Countries	%	0.26%	0.32%	0.30%	0.31%
Total Demand	%	100.00%	100.00%	100.00%	100.00%

192. The above data shows that the market share of the imports is increasing significantly towards the last two quarters of the POI and doubled in the last quarter compared to the first quarter indicating a clear trend of continuing increase.

iii. Imports in relation to total imports, production and consumption

193. Imports in relation to production and consumption also shows a similar trend of decline till 2013-14 and a sudden jump in POI. In terms of quarterly analysis, the imports in relation to production and consumption shows consistently increasing trend.

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Subject Country Imports in relation to					
Total Imports	%	94.12%	90.80%	91.29%	96.35%
Total Indian Production	%	30.36%	11.53%	7.08%	11.29%
Total Indian Consumption	%	18.98%	8.06%	4.93%	7.86%

b. Price effect of dumped imports

194. With regard to the impact of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject countries have been examined with reference to price undercutting, price underselling, price suppression and price depression.
195. The domestic industry has contended that there is an unprecedented decline in the import prices of the subject goods from the subject country. Decline in import price from 33 cents to 21 cents is too significant in a product like tile where costs are more or less static. It is not a case where there are rapid declines in the raw material prices, which could have triggered such a significant decline in the product prices. It is a clear case where costs have remained more or less firm and the product prices have steeply declined because of dumping being resorted to by Chinese producers.
196. The Price effects of the dumped imports have been examined in terms of price undercutting, price underselling, and price suppression and depression effects, if any. For the purpose of this analysis the prices have been considered as per the Customs data in view of the facts recorded earlier.

i. Price undercutting

197. Price undercutting has been determined by comparing the weighted average landed price of imports with that of weighted average net sales realization of the domestic industry.

Particular	Unit	2014-15
Landed Price	Rs./SQM	366.14
Selling price of Domestic Industry	Rs./SQM	***
Price undercutting	Rs./SQM	(***)
Price undercutting	%	(0-10)
Price undercutting	% Range	Negative

198. The above data indicates that the landed prices are above the selling prices of the domestic industry, thus resulting in negative price undercutting.

199. The quarterly data has also been examined to see the trend in prices and price effects in view of the allegation of threat of injury. The data shows as under:

Particular	Unit	Q1	Q2	Q3	Q4
Landed Price	Rs. per sqmtr	***	***	***	***
Selling price of Domestic Industry	Rs. per sqmtr	(***)	(***)	***	***
Price undercutting	Rs. per sqmtr	(0-10)	(0-10)	0-10	0-10
Price undercutting	%	***	***	***	***

200. The above data indicates significant drop in import prices of the subject country during the POI resulting in positive price undercutting during the last two quarters.

ii. Price-underselling

201. For examining the underselling effects of the dumped imports, the weighted average landed price of imports from subject country has been compared with the weighted average non-injurious price of the domestic industry determined in terms of Annex-III of the Rules as follows:

	US\$	INR
	Per SQM	Per SQM
Non injurious price	***	***
Landed price of imports	5.94	366.14
Price Underselling	(***)	(***)
Price Underselling	(***)	(***)
Price Underselling	(0-10)	(0-10)

202. The above data indicates that the imports from the subject country are entering the Indian market at prices below the non-injurious price of the domestic market indicating positive price underselling effect on the domestic prices.

iii. Price suppression and depression

203. To examine whether the domestic prices are suppressed or depressed due to the presence of dumped imports from subject country, the changes in the costs and prices over the injury period have been considered. The trends in

weighted average cost of sales, selling prices of the domestic industry and landed value of the imports from the subject country are as follows:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Cost of sales	Rs/Sqr mtr	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	114	120
Selling price	Rs/Sqr mtr	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	116	124
<i>Landed Price</i>	Rs/Sqr mtr	337	402	414	366
<i>Trend</i>	<i>Indexed</i>	100	119	123	109

204. The above data indicates that both, cost of sales and selling price have increased over the period. However, the import prices, after an increasing trend till 2013-14, shows a sudden jump in 2014-15. Therefore, the suppression effect, which was not visible till 2013-14, is likely to become prominent in the subsequent period.

c. Examination of other Economic parameters

205. Annexure II to the Anti-Dumping Rules, in its relevant parts, provides that the examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.
206. In accordance with the above Rules all economic parameters affecting the Domestic Industry as indicated above have been examined as under:

i. Actual and potential impact on capacity, production, capacity utilization and sales

207. The table below shows the capacity, production, capacity utilization and sales of the domestic industry for the product under consideration during the injury investigation period:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Capacity	000'Sqmtr	56405	84036	87816	92700
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>149</i>	<i>156</i>	<i>164</i>
Production	000'Sqmtr	42276	53383	54403	68014
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>126</i>	<i>129</i>	<i>161</i>
Capacity Utilisation	%	74.95%	63.52%	61.95%	73.37%
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>85</i>	<i>83</i>	<i>98</i>
Production excluding exports	000'Sqmtr	42107	52613	50889	57482
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>125</i>	<i>121</i>	<i>137</i>
Capacity utilisation excluding exports	000'Sqmtr	74.65%	62.61%	57.95%	62.01%
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>84</i>	<i>78</i>	<i>83</i>
Domestic Sales	000'Sqmtr	39462	51113	51953	55753
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>130</i>	<i>132</i>	<i>141</i>

208. The data indicates that the domestic industry has added capacity during the injury investigation period and the production has also increased. It has been submitted that due to antidumping protection till 2013 there was a healthy investment in the industry and the capacities were also augmented keeping in view the rising demand of the product in the country. It is also seen that the domestic industry has increased its exports significantly in last two years, which saw significant improvement in capacity utilisation. But the domestic sales have not kept pace with the production.
209. Quarterly analysis of the production and sales of the domestic industry during the POI indicates that the production and domestic sales show a significant declining trend in the last quarters of the POI, which in turn has affected the capacity utilisation, if the exports are excluded. The domestic industry has contended that this decline is due to intensified dumping since the second quarter after imposition of duty by Brazil and Chinese Tiles.

ii. Actual and potential impact on profit/loss, cash flow, returns on capital employed

210. Finance performance of the domestic industry in terms of profitability parameters are as follows:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Cost of Sales	Rs/Sqmtr	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>114</i>	<i>120</i>
Selling Price	Rs/Sqmtr	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>116</i>	<i>124</i>
Profit/loss	Rs/Sqmtr	***	***	***	***

<i>Trend</i>	<i>Indexed</i>	100	145	270	413
Profit/loss	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	188	356	584
Cash Profit	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	154	181	206
ROCE	%	***%	***%	***%	***%
<i>Trend</i>	<i>Indexed</i>	100	152	156	161

211. The above data indicates that the cost of production and selling price of the domestic industry increased in similar proportion. Consequently, profitability of the domestic industry has improved over the injury period. Cash profit and ROI have followed similar trend, indicating that till the POI there has been no impact of the dumped imports on the profitability of the domestic industry. However, the domestic industry has submitted that after imposition of anti-dumping duty by Brazil on the Chinese imports, the import price of China to India has sharply declined, thereby posing a threat to the otherwise profitable position of the domestic industry.

iii. Actual and potential impact on Employment and Wages

212. The data on employment and wages given below indicates increase in employment and wages:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
No of Employees	Nos.	3221	4032	4073	4400
<i>Trend</i>	<i>Indexed</i>	100	125	126	137
Wages	Rs.Lacs	7234	6583	7760	8852
<i>Trend</i>	<i>Indexed</i>	100	91	107	122

213. The above data indicates that while the employment has increased by about 37% over the base year, the wages have increased by about 22% in the same period due to enhancement of capacities and production.

iii. Actual and potential impact on Inventories

214. Below mentioned table shows the data relating to inventory of the subject goods.

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Closing Stock	000'sqmtr	4898	6371	5276	6893
<i>Trend</i>	<i>Indexed</i>	100	130	108	141

215. The data indicates that the average stocks of the domestic industry have increased significantly during the POI. The inventory holding during the POI is about 45 days production of the domestic industry, which is significantly high, indicating inventory built up and inability of the domestic industry to sell in the domestic market in spite of increased export sells.

iv. Productivity

216. Productivity, as a factor of injury, has been examined as follows:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15
Productivity					
Productivity per day	Sqmtr/Day	117	148	151	189
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>126</i>	<i>129</i>	<i>161</i>
Productivity per employee	Sqmtr/Nos	13	13	13	15
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>101</i>	<i>102</i>	<i>118</i>

217. The above data indicates that the productivity of the domestic industry has improved with increase in capacity and production.

v. Actual and potential impact on ability to raise fresh Investment

218. The Authority notes that the domestic industry has added capacities in the injury investigation period with significant investments keeping in view healthy growth in demand for the product in the domestic market and antidumping duty protection available to the industry till 2013. The industry has submitted that these investments are facing serious threat in view of intensified dumping during the POI and severely dents the possibility of any future investment in this sector by the existing and new investors.

vi. Actual and potential impact on growth

219. Various parameters examined above clearly shows that the industry was on a growth path till the POI and thereafter the parameters have started showing significant decline due to increased imports since the middle of POI. Therefore, the potential impact of the dumped imports on the growth of the domestic industry is significantly.

vii. Magnitude of Dumping and Dumping Margin

220. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margin determined against the subject country is significantly high.

d. Factors affecting prices

221. The Authority notes that the demand of the product in the country is on the rise. There is no significant change in cost structure. There are a large number of producers of the subject goods in the domestic market competing in healthy demand scenario. However, the Indian market is a price sensitive market. Therefore, the trend in prices in the domestic as analysed above shows that the domestic prices are largely driven by the prices and volume of imports. When the imports were low, the domestic industry was enjoying a better price scenario with reasonable profit. Large volume of imports and declining import prices have clearly impacted the prices of the domestic industry.

O. Conclusion on Injury

222. Overall assessment of all injury parameters and volume and price impacts of the dumped imports from China indicates that on a year-on-year basis, the performance of the domestic industry appears to have improved and the industry has not suffered material injury during this period. However, since the imports have intensified from the middle of the POI and the domestic industry has alleged threat of material injury, a further quarterly analysis has been done as recorded above. This analysis indicates that as the imports increased and the prices of the dumped imports declined from the 3rd quarter of the POI, the performance of the domestic industry shows a sharp decline in almost all parameters. That is apparently because of sharp fall in the selling price of the domestic industry, which is apparently trying to align its prices to the dumped prices to retain market share.

P. Causal link and other factors

223. Paragraph (v) of Annexure II of the Antidumping Rules mandates the Authority to examine the causal link between the dumped imports and the injury suffered by domestic industry. The examination in the previous section shows that on a year-on-year analysis the domestic industry's performance was not materially affected during the injury investigation period. However, there is a deterioration of the performance of the industry in the last two quarters of the POI coinciding with intensified dumping during this period.

Therefore, other known factors have also been examined to see if they could have caused injury to the domestic industry. Accordingly, the following mandatory non-attribution factors have been examined as per information available with the authority to see factors other than dumped imports, if any, could have contributed to injury to the domestic industry:

i. Volume and prices of imports from other sources

224. Import data examined shows that the imports are overwhelmingly from the subject country (96%). Imports from the other countries are negligible. China is the dominant player as a producer and exporter of the subject goods in the world market. Therefore, the imports from other sources are not affecting the domestic industry.

ii. Contraction in demand and / or change in pattern of consumption

225. The Authority notes that the demand for the product has increased over the injury period and the trend is likely to continue because of the economic growth of the country. Therefore, decline in demand is not a possible cause of injury to the domestic industry.
226. It is also noted that the pattern of consumption with regard to the product under consideration has not undergone any material change. Therefore, changes in the pattern of consumption cannot be considered to have caused injury to the Domestic Industry.

iii. Trade restrictive practices of and competition between the foreign and domestic producers.

227. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry. However, the Authority notes that the subject goods were subjected to antidumping duty till 2013. Even after revocation of the duties the industry continued to grow and was in good health till the imports started increasing substantially and prices started falling significantly from the 3rd quarter of POI.

iv. Development in technology

228. The investigation carried out shows that both the domestic producers and foreign producers use similar technologies for production of the subject

goods though the scales of production facilities vary. There has not been any significant change in production technologies, which could have affected the performance of the domestic industry.

v. Export performance of the domestic industry

229. The domestic industry has increased its exports in the last two years of the injury investigation period though exports still constitute a small share in their total sales. However, the injury information examined by the Authority with regard to sales volumes, profits, return on investments, cash flow, are for domestic operations and therefore, decline in performance, if any, due to exports have not been attributed to injury suffered by the domestic Industry.

vi. Productivity of the domestic industry

230. It is noted that the productivity of the domestic industry in terms of production per employee as well as production per day has increased over the period. Thus decline in productivity is not a plausible cause of injury.
231. It is thus noted that listed known other factors do not show that the domestic industry could have suffered injury due to any of these other factors.

Q. Injury Margins

232. The domestic industry has argued that while the domestic industry was largely into production and sales of 600X600 size tiles, the share of 800X800 size tiles in Indian production has increased over the last few years as the market for product under consideration is gradually tilting towards larger sizes. Therefore, any adoption of consumption norms based on historical data of the domestic industry, will distort the determination of the NIP for the domestic industry, as it will not address the issue of shifting of product mix, which significantly affects the consumption norms. Therefore, the Authority should accept the production and consumption norms as it existed during the POI for the product mix manufactured during this period for determination of the NIP.
233. The domestic industry has argued that production data of various sizes, produced by the domestic industry would indicate that while over 90% of the domestic industry's production was of 600X600 size in 2011-12 and rest was for higher sizes, the mix has gradually changed in favour of higher sizes. In the POI, the 600X600 sizes accounted for about 71%, rest being of other/higher sizes. It has been argued that the consumption of raw materials and utilities are higher for higher sizes. Therefore, the data of the POI should be considered for determination of NIP.

234. The domestic industry was asked to provide size wise production data of all the constituent domestic producers for all the years and demonstrate how the consumption norm has changed with the product mix. The domestic industry could provide only partial data. Since the aggregate data does not show a very significant shift in production to affect the consumption norms of individual companies significantly, the Authority decided not to deviate from the standard practice of determination of NIP. Accordingly, NIP has been determined taking into account the cost of all domestic constituents and as per the principles laid down in Annex-III of the Rules as follows:

Grade	Size	NIP (US \$ / SQM)
GVT/PGVT	600*600	***
	800*800	***
	Others	***
	Sub-Total	***
DC	600*600	***
	800*800	***
	Others	***
	Sub-Total	***
SS	600*600	***
	800*800	***
	Others	***
	Sub-Total	***
	Grand Total PUC	***

235. The non-injurious prices so determined have been compared with the landed values of imports of corresponding product types from the subject country as per the verified data of the sampled producers and exporters to arrive at the injury margins of the imports from the sampled producers and exporters as follows:

		New Pearl Group		QUIANGBIO GROUP		JINYI GROUP		HAOSEN GROUP		LIHUA GROUP		NZY	
Grade	Size	IM (US \$ / SQM)	IM (%)	IM (US \$ / SQM)	IM (%)	IM (US \$ / SQM)	IM (%)	IM (US \$ / SQM)	IM (%)	IM (US \$ / SQM)	IM (%)	IM (US \$ / SQM)	IM (%)
GVT/PGVT	600*600	***	10 - 20									***	10 - 20
	800*800	***	(25 – 35)					***	(5 – 15)	***	(20 – 30)	***	(25 – 35)
	Others	***	(20 – 30)							***	(45 – 55)	***	(30 – 40)
	Sub-Total	***	0 - 10					***	(5 – 15)	***	(25 – 35)	***	(10 – 20)
DC	600*600	***	(35 – 45)	***	0 - 10	***	(0 – 10)	***	10 - 20	***	5 - 15		
	800*800	***	(30 - 40)	***	10 - 20	***	(0 – 10)	***	20 - 30	***	0 - 10		
	Others	***	(20 – 30)	***	0 - 10			***	(0 – 10)				
	Sub-Total	***	(20 – 30)	***	0 - 10	***	(0 – 10)	***	10 - 20	***	0 - 10		
SS	600*600	***	(20 – 30)	***	0 - 10	***	(0 – 10)	***	0 - 10	***	(0 – 10)		
	800*800					***	(10 – 20)						
	Others												
	Sub-Total	***	(20 – 30)	***	0 - 10	***	(0 – 10)	***	0 - 10	***	(0 – 10)		
	Grand Total PUC	***	(10 – 20)	***	0 - 10	***	(0 – 10)	***	10 - 20	***	(0 – 10)	***	(10 – 20)

236. For the non-sampled but cooperating exporters the injury margin has been determined as the weighted average of the injury margins of the sampled exporters as per the principles laid down in Rule 17 of the Rules. For all other non-cooperating producers and exporters the injury margin has been determined based on the data of the sampled producers and exporters as the best facts available. The injury margins accordingly, work out as follows:

Grade	Size	IM	% Range
GVT/PGVT	600*600	***	10 - 20
	800*800		
	Others		
	Sub-Total	***	10 - 20
DC	600*600	***	25 - 35

	800*800	***	15 - 25
	Others	***	0 - 10
	Sub-Total	***	20 - 30
SS	600*600	***	0 - 10
	800*800		
	Others		
	Sub-Total	***	0 - 10
	Grand Total PUC	***	15 - 25

237. For all other non-cooperating producers and exporters the injury margin is proposed to be determined based on the data of the sampled producers and exporters as the best facts available. The injury margins accordingly, work out as US\$*** (45-55%).

Q.Threat of Material Injury

238. Apart from the claims of material injury, the domestic industry has also alleged that the dumped imports from the subject country is also threatening material injury to the domestic industry. The domestic industry has inter alia argued that

- There is a significant spurt in imports from China PR after July 2014 coinciding with imposition of anti-dumping duty by Brazil's imposition on imports of subject goods from China in July, 2014. Quarter wise imports from China PR show that imports have increased significantly from July, 2014 onwards.
- There is a decline in import price from China to India from 33 cents/ kilo in 2013-14 to 21 cents in 2014-15. Whereas price from China to Brazil has increased from 26 cents/kilo to 43 cents/kilo after this development.
- There are excess production capacities in China. China is number 1 producer and with about 1,452 ceramic enterprises having 3,621 production lines, it has total daily output of 45 million sq mtr which is almost 55 times the Indian demand. Even a 5% increase in capacity utilization by Chinese producers would translate into 3 times Indian demand.

- There is a weak demand scenario in China on account of decline in infrastructural growth in China.
- In 2013 China banned construction of government buildings including 'luxurious decorations' for a period of five years. It was highlighted by the opposing interested parties at the hearing that China imported significant amount of tiles utilized for luxury purposes.
- Housing complexes built by the Government buildings in areas such as Ordos to serve 1.5 million people are largely empty, which is derailing further investments and capacity build ups.
- Large empty cities, also known as "Ghost cities" are prevalent in China. The city – built for a population the size of Pittsburgh – is nearly empty. Chinese replica of Manhattan stands empty. The \$50-billion project is heavily in debt and will likely remain half-completed and abandoned in a sign of China's economic slowdown. This shows that there is already a surplus of established cities and homes without adequate demand. Thus, demand for the product is also not likely to increase in future.
- There are various anti-dumping measures by other countries leading to restriction of export markets and showing heavy export orientation of the Chinese producers. Ceramic tiles from China PR are currently attracting anti-dumping duties in Argentina, Europe, Korea RP, Pakistan and Brazil. Mexico has also imposed final anti-dumping duties on ceramic tiles for walls and floors from China PR in the range of 2.9- 12.42\$ in 2016.
- The duty imposition from Brazil and Mexico alone is likely to result in loss of about 100 million SQM to Chinese producers. This amounts to about 40% of Indian demand (about 260 million). Therefore, the Chinese producers would have to either curtail production or look for alternate markets.
- Indian market has price attractiveness for the Chinese producers. This establishes that imports are entering at prices that will have significant depressing or suppressing effect on domestic prices. This would likely increase aggressive dumping from China in future.
- There are significant inventories with the domestic industry. Significant capacity additions are being undertaken due to thrust of Government of India on providing sanitation facilities to all families in India. Increase in imports is posing threat to growth of these industries.

- There are a large number of suppliers in China, whereas a small number is exporting at present. In the global market there are 4914 Chinese producers whose import value is 4086 Million US\$. However exports have been made to India by about 736 producers whose import value is 97 Million US\$ which is 2.32% of the global market of China.
- There is a steep free fall like decline in import prices from China PR. There is a price drop of 40% which unprecedented, unexpected and is demonstrative of panic amongst the Chinese producers.
- There is decline in inter se prices between 600X600 and 800X800 size and shift in demand to 800X800 size. The majority of new capacity additions in India or in China are dedicated to 800X800 size. Even if overall import price from China does not show decline these import prices separately for each size would show a material decline in import prices.

R.2 Views of the other interested parties

239. No significant arguments have been extended by any opposing party on the claims of threat of material injury. Only a brief argument has been made by some of the opposing interested parties that there is no threat of material injury as there is no increase in volume of subject country imports and no evidence of freely available capacities in China to indicate increase in future exports to India. It has been argued that there is no suppression or depression effects and no evidence of increased inventories of subject goods in China. It has been further argued that the presumption that Brazil's imposition of AD duties will divert material to India is faulty. However, these parties have not provided any evidence in support of their arguments.

R.3 Examination of threat of material injury by the Authority

240. The Authority notes the arguments of the interested parties regarding the threat of material injury. with regard to threat of material injury Annexure II Para (vii) of the Antidumping Rules provide as follows—

“Annexure II Para (vii): A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as:

- a. significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;*

- b. *sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;*
- c. *whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and*
- d. *inventories of the article being investigated.”*

a. Significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation

241. The Petitioners have claimed that imports have increased significantly from China in Oct.14-March'15 period and the import trends indicate likelihood of significant increase in volume of imports because of the developments in other markets. The quarterly data of imports of the POI is as follows:

Particulars	Unit	Apr'14-Jun'14	July'14-Sep'14	Oct'14-Dec'14	Jan'15-Mar'15
Import Volume					
China - Subject Country	000'Sqr mtr	3,173	4,633	5,809	6,925
Other Countries	000'Sqr mtr	169	202	205	202
Total Imports	000'Sqr mtr	3,342	4,835	6,014	7,127
Import Market Share					
China - Subject Country	%	94.95%	95.82%	96.59%	97.17%
Other Countries	%	5.05%	4.18%	3.41%	2.83%
Total Imports	%	100.00%	100.00%	100.00%	100.00%

242. The data indicates that there has been a significant rise in imports since the third quarter of the POI, which coincides with imposition of duties by Brazil in July 2014 giving credence to the arguments of the domestic industry that there is a displacement effect due to blockage of a major market for Chinese Tiles.

243. As per the export data of China to Brazil and India during this period sourced from China Customs by the domestic industry, exports to Brazil shows a steel decline whereas exports to India has doubled in the last quarter of the POI when compared to the last quarter of the previous year. The prices to India shows a

steep decline from the last quarter of the previous year to the last quarter of the POI.

Country	Volume		Price	
	India	Brazil	India	Brazil
	MT	MT	US\$/Kg	US\$/Kg
2013- 14	2,25,872	8,81,536	0.33	0.26
2014- 15	3,87,711	3,05,598	0.24	0.26
Quarterly				
2013- 14 (Q4)	56,468	2,20,384	0.33	0.26
2014- 15 (Q1)	70,332	1,57,779	0.28	0.25
2014- 15 (Q2)	89,588	85,437	0.24	0.25
2014- 15 (Q3)	1,11,625	44,054	0.23	0.28
2014- 15 (Q4)	1,16,166	18,328	0.21	0.32

244. The rate in increase in exports from China to India and decline in prices in various quarters of the POI and also when compared with the previous years, imply that if the trend continues the dumped imports will occupy a significant market share in India displacing the domestic producers.

b. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports.

245. The domestic industry has argued that there are a large manufacturing base in China with a large number of production units and significantly high surplus capacities because of the restraint on construction activities in China.

246. The Authority notes that China is the largest producer of Vitrified and Ceramic Tiles in the world. As per the World Ceramic Review, January 2017, of the estimated world annual production of 12355 Million Square meters of tiles in 2015, China accounted for about 5970 Million square meters (48% of the world production). India with 850 Million sqr mtr production accounted for about 7% of world production of tiles. As per evidence submitted by the petitioners, there are about 1,452 ceramic enterprises with 3,621 production lines with average daily output of 45 million sq. mtr in China, which is almost 55 times of the Indian demand. There are giants like New Pearl Group of China, the largest producer of tiles in the World with huge capacities with global presence.

247. The world production in million square meters as per the above report is as follows:

Million Sqr Mtrs							
SN	Country	CY11	CY12	CY13	CY14	CY15	%
1	CHINA	4800	5200	5700	6000	5970	48%
2	BRAZIL	844	866	871	903	899	7%
3	INDIA	617	691	750	825	850	7%
4	SPAIN	392	404	420	425	440	4%
5	VIETNAM	380	290	300	360	440	4%
6	ITALY	400	367	363	382	395	3%
7	INDONESIA	320	360	390	420	370	3%
8	TURKEY	260	280	340	315	320	3%
9	IRAN	475	500	500	410	300	2%
10	MEXICO	221	231	230	230	242	2%
	Total World Production	10626	11224	11958	12373	12355	100%

The production of top 10 Countries. Source Ceramic World Review

248. China is also the largest consumer of the tiles accounting for about 40% of tiles consumption in the world. However, the consumption of tiles in China has significantly slowed down and likely to decline in the immediate future, because of the restraints on construction activities due to an overheated infrastructure sector in the country. The consumption patterns of the tiles in major consuming countries a reported in World Ceramic review is as follows:

Million Sqr Mtrs							
SN	Country	CY11	CY12	CY13	CY14	CY15	%
1	CHINA	4000	4250	4556	4894	4885	40%
2	BRAZIL	775	803	837	853	816	7%
3	INDIA	625	681	718	756	763	6%
4	VIETNAM	360	254	251	310	400	3%
5	INDONESIA	312	340	360	407	357	3%
6	SAUDI ARABIA	203	230	235	244	263	2%
7	USA	194	204	230	231	254	2%
8	TURKEY	169	184	226	215	234	2%
9	MEXICO	177	187	187	197	216	2%
10	RUSSIA	181	213	231	219	192	2%
	TOTAL WORLD CONSUMPTION	10472	10964	10582	12077	12175	100%

The consumption of top 10 countries: Source: Ceramic World Review

249. Export of Tiles from China to major markets as per the Chinese Customs data for the injury period is as follows:

SN	Period	India	Brazil	Korea, Republic of	Mexico	Pakistan	United States of America	Argentina	World
		Volume in MT							
1	2011-Q2	1,17,069	1,99,697	63,738	57,244	13,500	30,383	25,478	20,44,861
2	2011-Q3	1,70,663	2,51,915	46,567	66,743	17,212	31,713	36,043	22,88,096
3	2011-Q4	2,12,896	1,58,112	46,618	68,436	14,334	29,365	18,852	22,35,001
4	2012-Q1	1,07,476	1,40,389	31,893	56,654	16,678	19,644	4,681	16,71,039
5	Total 2011-12	6,08,104	7,50,113	1,88,817	2,49,076	61,724	1,11,104	85,054	82,38,997
6	2012-Q2	1,10,538	1,81,197	46,471	62,007	25,716	25,013	9,943	22,72,471
7	2012-Q3	1,00,738	1,78,749	49,175	81,260	19,829	27,598	12,700	22,79,323
8	2012-Q4	76,683	1,66,744	36,546	80,624	20,467	26,674	9,283	22,01,664
9	2013-Q1	64,464	1,58,513	28,394	59,861	18,814	24,602	3,712	17,20,509
10	Total 2012-13	3,52,423	6,85,202	1,60,586	2,83,751	84,826	1,03,887	35,637	84,73,967
11	2013-Q2	81,225	1,99,316	43,824	51,353	30,878	30,896	2,055	21,09,158
12	2013-Q3	55,009	2,78,826	50,174	83,698	22,416	31,110	742	22,91,798
13	2013-Q4	33,589	2,50,764	46,241	1,07,655	29,949	32,492	598	24,91,926
14	2014-Q1	56,109	1,52,789	33,912	65,191	32,898	23,607	572	16,99,353
15	Total 2013-14	2,25,932	8,81,694	1,74,151	3,07,897	1,16,141	1,18,105	3,967	85,92,235
16	2014-Q2	70,620	1,57,779	46,012	64,299	32,297	27,566	811	21,28,400
17	2014-Q3	91,327	85,448	48,265	74,658	44,991	35,401	819	23,43,475
18	2014-Q4	1,13,594	44,086	45,847	1,04,994	39,519	36,393	509	22,20,533
19	2015-Q1	1,18,011	18,335	38,392	75,912	28,975	28,939	269	17,56,793
20	Total 2014-15	3,93,551	3,05,647	1,78,516	3,19,864	1,45,782	1,28,299	2,409	84,49,201
21	2015-Q2	1,27,398	11,752	44,353	82,820	54,611	34,009	610	21,47,879
22	2015-Q3	1,58,939	13,705	43,890	92,037	40,328	32,729	514	21,08,452
23	2015-Q4	1,49,276	7,822	47,104	89,588	41,109	21,606	-	20,53,040
24	Total Apr'15 Dec'15	4,35,613	33,279	1,35,347	2,64,445	1,36,047	88,344	1,124	63,09,371

250. It has been argued that significant portion of China's export market has been affected because of trade remedy action by major trading partners such as Argentina, Europe, Korea RP, Pakistan, Brazil and Mexico. The recent imposition of duties by Brazil and Mexico is likely to result in loss of about 100 million SQM market to Chinese producers (as against Indian demand of about 260 million, i.e., about 40% of Indian demand). The producers in China, are therefore, likely to be saddled with significantly high unutilised capacities, which can be used to dump in India in the immediate future. This would demonstrate a threat of injury to the domestic industry in India.

251. The data above shows that exports of tiles from China to most of the countries attracting duties have declined while exports to India has increased in the POI indicating a clear displacement effect. Quarterly data of imports during the POI indicates that the market share of dumped imports from China has significantly

increased from quarter to quarter during the POI corroborating this displacement effect.

252. Domestic industry has provided evidence that Chinese Tiles industry, at present, is faced with the problem of excessive oversupply of subject goods coupled with weak demand in the country. They have further contended that weak demand in China has forced the producers to aggressively look for markets with growing demand. This problem of excessive supply and low demand is causing injury to the Chinese industries in terms of financial losses and plant closures. Petitioners have provided various news items in China supporting their claim. Thus, surplus capacity coupled with the fact of low demand is leading to increase in imports into India from the subject country.

253. Therefore, availability of huge capacities, shrinkage of other export markets due to imposition of trade remedy measures and weak demand in China or lack of domestic market to absorb these volumes clearly indicates imminent likelihood of increased exports at dumped prices from China as India continues to be a price sensitive market.

c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;

254. The domestic industry has argued that producers from subject country find Indian market quite attractive in terms of prices in view of the global market situation. With export market for China getting shrunk and weak demand in the domestic market of China, it is likely that the subject country's imports shall further aggressively target and take over the entire Indian demand in a nearly foreseeable future.

255. The domestic industry has further, has submitted that after imposition of trade remedy measures by various countries, particularly, Brazil, the prices to India has declined sharply. Quoting the China Customs data the domestic industry has argued that the prices from China in the last two quarters have dropped from average price of US\$0.33/Kg in the last quarter of 2014 to US\$0.21/Kg in the last quarter of 2015 indicating a sharp decline.

256. Analysis of quarterly data of the POI shows that sales of the domestic industry market share of the domestic industry in demand shows declining trend, while the imports of the subject country and its market share in Indian demand shows continuously increasing trend. Imports from the subject country, during the injury period, declined up to 2013-14 and then increased during the POI indicating.

257. Therefore, there is a clear indication of likely price impact of dumped imports in the immediate future.

d. Inventories of the article being investigated.

258. There has been a significant inventory built up at the producers' end during the injury period. Thus, the domestic industry is still not able to sell off the production, despite growth in demand. At the same time the demand supply mismatch as highlighted in the World Ceramic Report clearly indicates a significant inventory built-up at the exporters end which is likely to lead to an intensified dumping in the imminent future.

259. Apart from the above mandatory factors, the domestic industry has also brought some other additional factors that would indicate an imminent threat of injury.

i. Large number of suppliers in China vs. small numbers exporting at present

260. The Authority notes that the petitioners have shown evidence which shows there are a very large number of companies who are producing tiles in China and only a proportion of these have sold the product in international market. Out of these exporters, only 2.32% (% of total value in USD) have exported the product to India.

261. It has also been contended that the share of 800X800 size tiles in Indian production has increased over the last few years as the market for product under consideration is gradually tilting towards larger sizes. Also, the majority of the new capacities that are being set up either in India or in China are getting dedicated to 800X800 sizes.

262. The Authority further notes that the new facilities of the Domestic Industry that are in the pipeline in the country and their focus product size, also establishes that the fresh investments are all getting dedicated towards 800X800 sizes. Therefore, if these import prices are considered separately for each size, it would be seen that there is material decline in import price.

Post Disclosure Comments

263. The Authority issued a disclosure to all interested parties on 24/03/2017. The following interested parties filed submissions/comments to the disclosure:

- (i) M/s TPM Consultants representing the domestic industry submitted the following
 - Exclusion of GVT, PGVT and full body tiles is unwarranted and inconsistent with the practice and past several decisions of the Authority. The domestic industry is producing the product and it is being imported. While evidence of production of GVT and PGVT was provided earlier and even the disclosure

statement admits the same, evidence of production of full body tiles by the constituents of the domestic industry is enclosed.

- The disclosure statement also states that it is not possible to identify GVT/PGVT in the import data. The tiles proposed to be excluded have not been excluded anywhere from the injury analysis – be it import volumes or be it sales of the domestic industry or other domestic producers. This is for the reasons that the import data cannot distinguish different types of tiles. Such being the case, no case is made out for exclusion of GVT/PGVT.
- There is no mechanism to distinguish Micro Crystal Tiles, and Thin Panels at the time of clearance of goods. Tiles are imported in large volumes. It is impossible for customs to open and inspect each and every box. Any such exclusion should specify the conditions to prevent abuse of the order.
- Designated Authority has consistent practice of not determining individual dumping and injury margin and treat exporters non cooperative, if the “value chain” is not complete. The sampled companies in general and New Pearl Group, Quiangbio Group, Jinyi Group, Lihua Group, NZY Group in particular should be treated “non cooperative” in view of incomplete questionnaire response and incomplete value chain. Questionnaire responses can be termed deficient for want of complete value chain in cases wherein (a) the producer has sold product through some other non-cooperating exporter, (b) the exporter has bought product from some other non-cooperating producer, (c) group as a whole has not filed questionnaire response.
- A company not producing tile body and merely doing tile polishing cannot be treated as a producer of the product and is not entitled for individual dumping margin
- Documents such as sales contracts or undertakings used to establish completeness of value chain are insufficient documents, as these are not mentioned as statutory documents, are one-way documents, and are therefore not enforceable in the law. Further, such documents are violative of competition act and therefore cannot exist. The disclosure statement shows that the exporters accepted that the goods were dispatched directly from the factories, the producer must be clearly aware of the destination of the container. Thus, instead of using real documents such as shipment records of the factory and entirety of original records relating to customs, accounting and VAT, these parties have attempted to establish that they have accounted for entirety of their production by statements such as marketing system, policies, practices and sales contract.
- Freight has not been considered while determining injury margin. The industry had requested freight inclusion at the start of initiation and gave lot of justification.

- On freight, domestic industry argument is with regard to (a) methodology for determination of injury margin and (b) application of principles of fair comparison for determination of injury margin.
- The Designated Authority should determine quantum of ADD based on the injury margin prevalent in the last quarter of the investigation period.

- (ii) M/s ELP Advocates on behalf of the following producers/exporters has submitted that all these producers/exporters have cooperated and they be assessed for individual dumping margin.

M/s Foshan Han King Import & Export Co., Ltd. ("Han King"), M/s Guangdong Bode Fine Building Material Co., Ltd. and M/s Yangxi Bode Fine Building Material Co., Ltd., Collectively known as "Bode Group", M/s Foshan Shiwan Eagle Brand Ceramic Ltd., M/s Eagle Brand Ceramics Industrial (Heyuan) Co., Ltd, M/s Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd and M/s Foshan Eagle Brand Ceramic Trade Co., Ltd., collectively known as the "Eagle Group", and M/s Guangdong Winto Ceramics Co., Ltd, M/s Guangdong Hongyu Ceramics Co. Ltd., M/s Foshan Junjing Industrial Co. Ltd. ("Junjing"), M/s Foshan Sunrise Trading Company Ltd. ("Sunrise"), and M/s Guangdong Homeway Ceramic Industry Co. Ltd., collectively known as "Winto Group".

- (iii) M/s Lakshmikumaran & Sridharan Attorneys on behalf of China Chamber of Commerce of Metal, Minerals & Chemical Importers & Exporters ("CCCMC"), Southern Building Materials and Sanitary Co., Ltd of Qingyuan City, Jiangxi Fuligao Ceramics Co., Ltd., Guangdong Luxury Micro-crystal Stone Technology Co., Ltd. and New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong. ("NZY Group"), Guangdong Yongsheng Ceramics Co. Ltd and Foshan Ishine Trading Company Limited, China PR submitted the following

- The Authority has rightly proposing to exclude micro-crystal tiles, full body tiles, thin panels, GVT and PGVT from the scope of the product under consideration. NZY Group requests the Authority to maintain the same in the final findings as well.
- As the domestic industry is not producing certain types of tiles (namely micro-crystal tiles, full body tiles and thin panels) and not producing certain types of tiles in significant quantities (GVT and PGVT), the same should be excluded from the scope of the product under consideration. The jurisprudence supports the submission, namely in *Oxo Alcohols Industries Association v. Designated Authority* and *Indian Refractory Makers Association v. Designated Authority*. Further, the Authority has excluded various products that are not produced by the domestic industry from the

scope of anti-dumping measures in the investigation on Aluminium Foil from China PR; Carbon Black from Australia, China PR, Iran, Malaysia, Russia and Thailand; Glass Fibres from China PR; among others.

- If for any reason the Authority decides that any of the excluded types of tiles are to be included within the scope of the product under consideration, then an individual rate of duty must be computed for the NZY Group based on its data submitted. The data submitted by the NZY Group has been accepted by the Authority as noted in the verification report and the disclosure statement and the only reason for no export price being determined is because all its exports have been of products that are proposed to be excluded from the product scope.
- The names of the entities in the NZY Group have been recorded wrongly in the disclosure statement and should be as follows - Southern Building Materials and Sanitary Co., Ltd of Qingyuan City, Jiangxi Fuligao Ceramics Co., Ltd., Guangdong Luxury Micro-crystal Stone Technology Co., Ltd. and New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong.
- CCCMC has requested for the exclusion of tiles of dimensions 1000x1000mm and above from the scope of the product under consideration as tiles of higher dimensions cannot be cut and used in place of tiles of smaller dimensions since there is the possibility of breakage, making them unsuitable for commercial use. Further, tiles of higher dimensions have higher processing costs and therefore it is uneconomical for users to import tiles of higher widths and cut them to use as smaller dimension tiles.
- As the domestic industry is not producing certain types of tiles (namely micro-crystal tiles, full body tiles and thin panels) and not producing certain types of tiles in significant quantities (GVT and PGVT), the same should be excluded from the scope of the product under consideration. The exclusions proposed by the Authority in the disclosure statement should be maintained in the final findings as well. The jurisprudence supports the submission, namely in *Oxo Alcohols Industries Association v. Designated Authority* and *Indian Refractory Makers Association v. Designated Authority*. Further, the Authority has excluded various products that are not produced by the domestic industry from the scope of anti-dumping measures in the investigation on Aluminium Foil from China PR; Carbon Black from Australia, China PR, Iran, Malaysia, Russia and Thailand; Glass Fibres from China PR; among others.
- The Authority should expressly mention the types of tiles (namely micro-crystal tiles, full body tiles, thin panels, GVT and PGVT) that are excluded from the scope of the product under consideration. In addition, the Authority is also urged to expressly mention these exclusions either in or below the duty table as well.

- The list of non-sampled exporters should be expanded to include those parties that had filed the sampling questionnaire response. The Authority had rejected these responses despite the fact that the questionnaire provided no guidance and further these parties were not given an opportunity to remedy the defect. The inclusion of these parties in the list of non-sampled producers and exporters will not be an extra burden on the Authority and in no way impact the timelines in the investigation. The repercussion of the Authority's action is that producers/exporters that have actively shown their willingness to participate in the investigation by co-operating with the Authority are being unnecessarily penalized.
- The dumping margin computed for the non-sampled producers and exporters is between 25-35% and the dumping margin for the non-cooperating producers and exporters is between 75-85%. It is not clear as to why the dumping margin for the non-cooperating producers and exporters is so high as the Authority has failed to provide the manner in which the margin has been computed.
- The Authority has proposed to exclude a number of varieties of tiles from the scope of the product under consideration but has failed revise the import statistics accordingly. The volume of imports as noted in the disclosure statement is the same as the figure noted in the preliminary findings.
- The injury analysis conducted in the disclosure statement has merely noted the trends in the injury parameters in the injury period and POI but based its conclusions and findings on the trends in the four quarters of the POI. Such an analysis is flawed as it nullifies the trends in the injury period.
- The imports from the subject country have declined by 26% in absolute terms in the POI as compared to the base year. Similarly, the import volumes have declined relative to Indian production and consumption as well. Therefore, there is no volume effect.
- The imports are not suppressing, depressing or undercutting the prices of the domestic industry and the same has been expressly stated in the disclosure statement and the preliminary findings. Therefore, there is no price effect. Further, the price underselling in the POI is negative (that is between 0 and -10), which implies that the export prices are above the NIP of the domestic industry.
- The injury analysis conducted by the Authority in the disclosure statement indicate that all injury parameters have improved. Production has increased by 62%, sales by 41% and the capacity by 62% in the POI as compared to the base year. Similarly, the profitability has increased by a staggering 471%, cash profits by 103% and ROCE by 171% in the POI as compared to the base year. Therefore, the performance of the domestic

industry has improved by leaps by bounds and the data in no way indicates that the domestic industry is suffering material injury.

(iv) M/s APJ-SLG Law offices representing M/s Foshan Lihua Ceramics Co. Ltd., M/s Foshan Henry Trading Co. Ltd. collectively as Foshan Group has submitted the following:

- Foshan group strongly objects to the observations of the Authority in the disclosure statement in relation to their request of continuing MET status to them. It was submitted that none of their comments on verification report had been incorporated in the disclosure statement which puts the credibility of the verification report and the disclosure statement under question mark. Authority is requested to deal with the comments on the verification report before making any final decision. A fresh disclosure statement be issued.
- That there is not even a whisper as to why the case laws and precedents cited by them are not applicable in this case particularly when the Foshan group was granted MET status for the very same product vide their final findings F. No. 15/23/2009 DGAD dated 25.4.2009. Since there is no change in any of the criteria under which Foshan Group were given MET status, the Authority ought to have continued their MET treatment in the present investigations also.
- If the views of this Authority are different from the earlier decisions of the same Authority and the settled jurisprudence on the issue, it is incumbent upon the Authority to record the reasons for making this significant departure and communicate the same in a fresh disclosure in terms of Rule 16 of the Anti-dumping Rules.
- That the post-disclosure hearing was conducted at the request of the Domestic Industry without communicating any details to the interested parties which would have enabled them to prepare their arguments appropriately. The Authority should have given sufficient time to all interested parties and opportunity to meet with the arguments and submissions of the applicant industry particularly when the same related to technical specifications of the product and product differentiation. Since the objections of the Domestic Industry were not communicated to them, there was no time to obtain the technical assistance of the clients who could not have travelled to India at such a short notice.
- In relation to exclusion of micro crystal and full body tiles, it was submitted that these products are commercially not substitutable with soluble salt tiles and double charge tiles and therefore, exclusion is correct and in accordance

with the settled principles in this regard. Foshan group expressed shock and refuted the contention of the representatives of the domestic producers that there is nothing like Micro Crystal tiles and that it is just a nomenclature. Since both the Micro Crystal as well as Full Body tiles are not manufactured by the Domestic Industry, there is no question of including the same in the scope of the PUC. Further, the prices of these tiles are much above the prices of SS and DC tiles implying that they are not even commercially substitutable.

- In relation to a doubt raised about the ability of the Customs Department to distinguish between the included and excluded tiles, it was submitted that the loose statements made by the Domestic Industry displayed a complete lack of understanding of the customs procedures and their ability on technical issues. It was submitted that there is the well-settled standard procedure for drawing of samples and their testing procedures which can be verified from the Department of Revenue. The representatives of the Domestic Industry were making wild and unsubstantiated statements about the lack of technical ability and proper procedures for the Customs to examine the technical specifications of the imported goods. It was submitted that Micro Crystal and Full Body tiles can be easily distinguished even with naked eye and test reports which is the standard procedure in such cases, can also easily confirm the product for the Customs Officer to make proper assessment.
- Foshan Group contested the claim of the Domestic Industry that the responses of certain producers/exporters ought to be rejected as their “value chain” was not complete, Foshan group submitted that only general statements were made without referring to any particular producer/exporter. It was also submitted that the representative of the Domestic Industry did not even elaborate as to what it means by the phrase “value chain”. It has been submitted that the information of Foshan Group cannot be rejected as they had filed full information in the statutorily prescribed formats and also responded appropriately to all the queries of the Authority, which was duly verified by the Authority. Therefore, the contention of the Domestic Industry is completely baseless and unsubstantiated and ought to be rejected outright.
- As regards the issue of addition of freight to the NIP for comparison with the landed value for calculation of injury margin, it was submitted that the proposition is not only ill-conceived but against the basic principles of economics and “fair comparison”. As a matter of fact, the Authority compares the landed value with the ex-factory NIP for the purpose of injury margin for the simple reason that the goods enter the commerce of the country only at the point when they either clear the customs area (in case of imported goods) or the factory (in case of domestically produced goods). It is further submitted that the Authority has been following this practice in all cases which has also

been confirmed by the CESTAT. Since this order of the CESTAT has not been stayed by any competent court, it is binding on the Authority. It was further informed that at present, this matter is sub-judice in the case of Alkali Manufacturers' Association Vs. Designated Authority Writ Petition (Civil) No. 4345 of 2013 before the High Court of Delhi.

- That Rule 16 obligates the Authority to disclose all essential facts including the case laws which are to form the basis of its final determination. Unfortunately, this has not been done in the present case. Foshan group further requested the Authority to deal with all the issues raised by them and issue a fresh disclosure statement in accordance with the specific mandate of Rule 16 (and Article 6.9 of the Anti-dumping Agreement) as well as in the interest of justice, fair play and the principles of natural justice Rule 16 (and Article 6.9 of the Anti-dumping Agreement) as well as in the interest of justice, fair play and the principles of natural justice.
 - It was further submitted that the proposed conclusions on injury and causal link in the disclosure statement do not support the claim of the Domestic Industry for imposition of any anti-dumping duty. They submitted that price undercutting, price underselling are negative. Since the industry is earning super profits, their prices cannot be said to be suppressed or depressed. They relied on the recent investigation of AA Dry Cell Batteries originating in or exported from China PR and Vietnam [F. No. 14/31/2014 DGAD dated 27.9.2016], wherein, the Authority had not recommended any anti-dumping duties despite finding significant dumping margin and injury margin on grounds that Domestic Industry earned significant profit and there is no injury to Domestic Industry from the imports of subject goods from subject countries.
 - Foshan Group requested to issue a fresh disclosure statement dealing with all the essential facts and the case laws cited by them on the ground that almost all the critical facts as well as case laws have been summarily ignored in the present disclosure statement which is not only against the principles of natural justice but also contrary to the specific requirements of Rule 16 of the Anti-dumping Rules read with Article 6.9 of the Anti-dumping Agreement.
- (v) M/s Dua Associates representing M/s Foshan Gani Ceramic Tiles Co. Ltd. and M/s Qinyuan Ceramic Tiles Co. Ltd. has made the following submissions:
- The Hon'ble Authority has not determined injury margin of non-sampled exporters on the basis of weighted average injury margin determined for all the sampled exporters.

- The injury margin determined for non-sampled exporters [Grade DC-Size 600 x 600] & [Grade DC-Subtotal] is higher relative to highest injury margin for any sampled exporters. Such a determination runs contrary to Annexure II: Principles for Determination of Injury, of Anti-dumping Rules.
- The Hon'ble Authority in the instant Disclosure Statement has erroneously applied Rule 17(3) of the Anti-dumping Rules for determination of injury margin of non-sampled exporters. However, the injury margin of non-sampled exporters should be computed as per the Principles for Determination of Injury /Annexure II to Anti-dumping Rules. Both, Anti-dumping Rules and Anti-dumping Agreement does not allow the Investigating Authority to exclude zero or de-minimus injury margin determination of sampled exporters for computation of injury margin for non-sampled exporters. Accordingly, the injury margin for non-sampled exporters should be inevitably determined on basis of weighted average injury margin determined for all the sampled exporters. Further reliance has been placed on Para 7.380, 7.382 of Panel Report in EU – Footwear (China) and the findings of the Authority in earlier anti-dumping investigations concerning imports of Vinyl Chloride (PVC) Suspension Grade, Silk Fabrics and Jute products.
- Proviso to Rule 18 (2)(ii) of the Anti-dumping Rules/Article 9.4 (ii) of the Anti-dumping Agreement provides exclusion of zero or de-minimus dumping margin for determining the ceiling of dumping margin for non-sampled exporters. Rule 18 of the Anti-dumping Rules /Article 9.4 of Anti-dumping Agreement does not provide methodology for determination of injury margin nor allow exclusion of zero or de-minimus injury margin for determination of injury margin for non-sampled exporters. Reliance has been placed on Para 116 of the Appellate Body Report in US – Hot Rolled Steel.
- Annexure- II: Principles for Determination of Injury elaborates methodology for determination of price undercutting / injury margin. Annexure-II provides determination of injury analysis on the basis of objective examination of all imports and does not permit the exclusion of zero or de-minimus injury margin determined for sampled exporters for the determination of injury margin for non-sampled exporters. The Authority should invariably determine the injury margin for non-sampled exporters on the basis of weighted average injury margin for all the sampled exporters.
- Since the PUC determined in present investigation is Soluble Salt and Double Charge Vitrified Tiles, the Authority to avoid any ambiguity at subsequent stage, should kindly record 'Soluble Salt and Double Charge Vitrified Tiles' as the description of goods in the duty table. The claim of the domestic producer for inclusion of GVT and HVST is unsubstantiated and the Authority after due verification has concluded that there were insignificant imports and production of

GVT and HVST.

- The Applicant has claimed rejection of EQR of sampled exporters on account of incomplete value chain. However, the Authority in the present disclosure statement has not sufficiently detailed its findings on such pertinent issue. The Authority is requested to provide elaborate finding on the claim of the Applicant.
- The Authority in the disclosure statement has erred in interpretation of Rule 2(b) of AD Rules. The scope of 'domestic industry' should be interpreted in light of settled WTO jurisprudence and the judgment dated April 27, 2012 by Hon'ble High Court of Madras in the matter titled Nirma Ltd. vs. Saint Gobain Glass India Limited.

(vi) M/s MS Pothal & Associates representing Guangdong Haosen Ceramics Co., Ltd., Foshan Haosen Import and Export Co., Ltd., Foshan Kihut Ceramic Co., Ltd., Kun Lagy Limited, Hong Kong., Guangdong Gelaisi Ceramics Co., Ltd., Foshan SanshuiHuiwanjia Ceramics Co., Ltd., Foshan Newpearl Trade Co., Ltd., Foshan Worceter Trade Co., Ltd., Foshan Qiangbiao Ceramics Co., Ltd., Foshan Hongliao Trade Co., Ltd., Sheenway Corporation Ltd, Hong Kong., Foshan Chan Cheng Jinyi Ceramics Co., Ltd., Foshan Gold Full House Building Material Co., Ltd., Foshan Nanhai Rongjia IM & EX Co., Ltd., Foshan Clouds Import & Exports Co., Ltd., Monalisa Group Co., Ltd., Guangdong Monalisa Trading Co., Ltd., Penda Marketing Pvt. Ltd., Dazzle Designer Tiles Private Limited, Malwa Ceramics Pvt. Ltd., Kailas Ceramics (P) Ltd. submitted the following

- Laminatic Porcelain Panels should be excluded from the scope of PUC since these products are not produced and sold by the domestic industry and also they are not like article to the goods produced and sold by the domestic industry. In the post disclosure comments also the Authority should uphold its decision to exclude the same from the scope of PUC in the final finding as well since laminatic porcelain panels are different products all together and have no bearing on the PUC in the present investigation. A product sample was provided to the Authority through a letter which is in the public domain. (A product sample could not be circulated among interested parties as the same is not pragmatic but if some interested parties wants to inspect the sample piece submitted in the Office of the Authority they can do so).
- It has been argued by the domestic industry that if these products are of high prices, then the Designated Authority should fix a bench mark import price for such products. It is our respectful submission that such a fixation of price is not permissible as our argument is that Laminatic Porcelain Panels do not fall within the category of PUC at all and there is no justification for keeping such a product within the scope of PUC. And any

recommendation concerning a product which is beyond the scope of PUC is impermissible and it would go beyond the investigative purview of this Authority.

- Inclusion of outward freight in NIP/Consideration of outward freight for determination of Injury Margin: The contentions of the DI with regard to outward freight are not on merit and such arguments cannot sustain until and unless Annexure III to the rules are in operation. The attempt of the DI is to misguide the Authority by submitting that what is excluded by Annexure III for the purpose of NIP can be brought into picture by including the same in injury margin by coining an argument that 'injury margin' is not defined in the Rules. It's been the proposition of the DI that the injury margin should be calculated as NIP plus Outward Freight minus Landed price which has no basis.
- Incomplete value chain: The contentions of the DI that value chain of exporters is incomplete vis-à-vis the 4 sampled export groups as below are absolutely baseless and are contrary to the verified facts disclosed in the Disclosure statement dated 24.3.2017.
 - a) Guangdong Gelaisi Ceramics Co., Ltd (Producer) or Foshan SanshuiHuiwanjia Ceramics Co., Ltd (Producer) and Foshan Newpearl Trade Co., Ltd (Exporter)
 - b) Guangdong Haosen Ceramics Co., Ltd (Producer) and Foshan Haosen Import and Export Co., Ltd (Exporter)

Guangdong Haosen Ceramics Co., Ltd (Producer) and Foshan Haosen Import and Export Co., Ltd (Exporter) and Kun Lagy Limited, Hong Kong (Exporter)

Guangdong Haosen Ceramics Co., Ltd (Producer) and Foshan Kihut Ceramic Co., Ltd (Exporter).
 - c) Foshan Chan Cheng Jinyi Ceramics Co., Ltd (Producer) and Foshan Worceter Trade Co., Ltd (Exporter)

Foshan Chan Cheng Jinyi Ceramics Co., Ltd (Producer) and Foshan Worceter Trade Co., Ltd (Exporter) and Sheenway Corporation Ltd, Hong Kong (Exporter)
 - d) Foshan Qiangbiao Ceramics Co., Ltd (Producer) and Foshan Hongliao Trade Co., Ltd (Exporter) and Sheenway Corporation Ltd, Hong Kong (Exporter)

Foshan Qiangbiao Ceramics Co., Ltd (Producer) and Foshan Worceter Trade Co., Ltd (Exporter) and Sheenway Corporation Ltd, Hong Kong (Exporter)

- The DI has raised allegations against the exporter chains right from the beginning of the investigations and what has been raised in the post disclosure oral hearing is not any different. Nor they have adduced any evidence afresh to substantiate their contentions or to disprove the facts disclosed in the Disclosure statement dated 24.3.2017. Repeating a misconceived and wrong statement multiple times do not make them right in it-self and are liable to be rejected. The exporter groups as above were denied individual margin in the PF for such reasons provided therein and by the time of Disclosure statement, onsite verification of EQ Responses by the above parties were carried out by the Designated Authority. Thus, the facts disclosed in the Disclosure statement dated 24.3.2017 is what relevant for the present investigation and not the baseless contentions of the domestic industry which is raised with an agenda to deprive the exporters of what are they entitled for in an investigation as per the AD Agreement and CTA.
- Landed price calculations concerning Sheenway Corporation Ltd: In the post disclosure hearing submission it has been stated the Authority has shared the relevant export price/landed price data concerning Sheenway among other parties represented by us. However, it is pointed that there appears some formula error on the data pertaining to Sheenway as it appears that the correct freight element is not reflecting in the landed price of Sheenway. The Authority may cross check the landed price calculation of Sheenway for the purpose of final finding. The formula errors are in the excel file concerning the landed price calculation.
- Rejoinder submissions: We have tried to counter all the contentions of the DI raised in the post disclosure statement oral hearing concerning us in this written submission. However, it has been communicated by the Ld. Authority in the oral hearing that no Rejoinder opportunity shall be provided considering the time constraints and written submission should be filed by 11 AM on 5.4.2017. It is our respectful submission that we may be allowed the rejoinder opportunity if there are any fresh allegations against the above mentioned parties which are surfaced in the written submissions by the DI other than what is raised in the said hearing.
- Need for a fresh Disclosure statement: It is our primary submission that the DI could not bring on record any new facts to call for a change in the Disclosure statement dated 24.3.2017 which is already circulated. The contentions raised in the post Disclosure statement oral hearing by the DI are at the best comments on disclosure statement and have nothing brought on record to bring any change in the material facts already disclosed vide the disclosure statement dated 24.3.2017.

(Vii) M/s Reena Khair, advocate representing M/s Indian Council of Ceramic Tiles & Sanitaryware, and M/s Kajaria Ceramics Ltd., M/s Somany Ceramics Ltd., M/s H & R Johnson Ltd., and M/s Asian Granito India Ltd. has made the following submission:

- Exclusion of GVT and PGVT tiles are not justified as these are being produced by Domestic Industry.

- Responses filed by Producer/exporter who do not carry complete production process be rejected and also those producer/exporter where Value Chain is not complete be rejected. The information and documents are not complete and substantive to consider individual Dumping Margin to such producers/exporters.
- Freight is an important component of cost and NIP evaluation and thereafter injury determination be undertaken by including freight.
- NCV version of all documents/verification reports of producers/exporters be made available for comments.

Examination by Authority

264. The Authority has examined submissions made by various interested parties in response to the disclosure as under. Further on request of Domestic Industry, the Authority held a post disclosure hearing on 3rd April, 2017 to enable the interested parties to highlight the submissions made by them in respect to the disclosure statement. The following interested parties attended the post disclosure hearing. The post disclosure submissions have been examined to the extent they are relevant.

- (i) M/s TPM Consultants representing the domestic industry
- (ii) M/s Lakshmikumaran & Sridharan Attorneys on behalf of China Chamber of Commerce of Metal, Minerals & Chemical Importers & Exporters, Southern Building Materials and Sanitary Co., Ltd of Qingyuan City, Jiangxi Fuligao Ceramics Co. Ltd. Guangdong Luxury Micro-crystal Stone Technology Co., Ltd. and New Zhong Yuan Ceramics Import & Export Co., Ltd. of Guangdong ("NZY Group"), Guangdong Yongsheng Ceramics Co. Ltd and Foshan Ishine Trading Company Limited, China PR
- (iii) M/s Dua Associates representing M/s Foshan Gani Ceramic Tiles Co. Ltd. and M/s Qinyuan Ceramic Tiles Co. Ltd.
- (iv) M/s M.S. Pothal & Associates representing Guangdong Haosen Ceramics Co., Ltd., Foshan Haosen Import and Export Co., Ltd., Foshan Kihut Ceramic Co., Ltd., Kun Lagy Limited, Hong Kong., Guangdong Gelaisi Ceramics Co., Ltd., Foshan Sanshui Huiwanjia Ceramics Co., Ltd., Foshan Newpearl Trade Co., Ltd., Foshan Worcester Trade Co., Ltd., Foshan Qiangbiao Ceramics Co., Ltd., Foshan Hongliao Trade Co., Ltd, Sheenway Corporation Ltd, Hong Kong., Foshan Chan Cheng Jinyi Ceramics Co., Ltd., Foshan Gold Full House Building Material Co., Ltd., Foshan Nanhai Rongjia IM & EX Co., Ltd., Foshan Clouds Import & Exports Co., Ltd., Monalisa Group Co., Ltd., Guangdong Monalisa Trading Co., Ltd., Penda Marketing Pvt. Ltd., Dazzle Designer Tiles Private Limited, Malwa Ceramics Pvt. Ltd., Kailas Ceramics (P) Ltd.
- (v) M/s APJ-SLG Law offices representing M/s Foshan Lihua Ceramics Co. Ltd., M/s Foshan Henry Trading Co. Ltd.

- (vi) M/s Reena Khair, advocate representing M/s Indian Council of Ceramic Tiles & Sanitaryware, and M/s Kajaria Ceramics Ltd., M/s Somany Ceramics Ltd., M/s H & R Johnson Ltd., and M/s Asian Granito India Ltd.

M/s Penda Marketing Pvt. Ltd. and certain other importers have participated in the post disclosure hearing.

(i) Product Under Consideration (PUC)

The Domestic Industry in its post disclosure submissions dated 31st March, 2017 highlighted inclusion of GVT/PGVT product types in PUC. The same was emphasised in the post disclosure hearing on 3rd April, 2017. No other product type was categorically emphasised for inclusion in PUC. However later in its comments dated 5th April, 2017, Domestic Industry enclosed certain invoices to justify production of full body product types. The Authority noted that in letter dated 6th March, 2017, Domestic Industry has provided production of PUC, product wise which includes SS, DC, GVT and PGVT only.

The Authority noting that the production of GVT/PGVT grades of PUC by Domestic Industry is about 5% of the total production in POI which is significant enough and therefore has considered inclusion of these two product types also in the PUC. In view of this, the Authority therefore holds that all other product types i.e. Micro-crystal tiles, full body tiles and thin panels below 5 mm thickness whose production could not be evidenced by the Domestic Industry during investigation by substantive records need to be excluded. The weighted average dumping and injury margin have been re assessed by including GVT/PGVT product types as well in the PUC. These margins have been mentioned in the relevant paras under assessment of dumping margin.

(ii) Dumping Margin

As regards evaluation of dumping margin methodology the Authority notes that the Domestic Industry submissions to reject all responses of producers/exporters being deficient on account of incomplete value chain is not on merits. The cooperating producers and exporters responses have been evaluated on aspects of normal value and export price after due verification and reasons of considering these responses for evaluation has been detailed in relevant paras. On the claim of 'market economy' treatment to producers/exporters represented by M/s APJ-SLG Law offices, it is noted that reasons of rejecting the market economy claim of the producer/exporter was recorded in details in the disclosure and also in the present finding in the relevant paras. Grant of market economy is on the basis of comprehensive assessment of various parameters and is case and situation specific. Therefore the Authority holds that there are no merits and grounds to grant market economy treatment as requested by the producer/exporter.

As regards submission by M/s ELP Advocates to consider individual dumping margin determination for the producers/exporters represented by them the Authority holds that the sampling methodology adopted by it as per AD Rules keeping in view various parameters viz. volume of export as mentioned in preliminary findings. The size of sample has been decided to ensure coverage which is representative and also the administrative feasibility.

(iii) Injury Margin

As regards evaluating injury margin after inclusion of freight, the Authority holds that such a assessment requires complete data which needs to be comprehensively evaluated and requires a generic policy decision. The consistent practise of Authority for injury margin assessment is to compare landed value (without freight) with the NIP on an equivalent level of comparison. The same methodology has been adopted in this case. Further NIP has been determined as per annexure 3 of AD Rules and comparison of landed value with NIP has been done for the entire POI and that the POI cannot be broken into separate quarters for evaluating injury for only a part of POI which will erode representativeness and appropriateness of comparison.

As regards issue of issuing a fresh disclosure, the Authority holds that the data on record was disclosed to interested parties and only the issues which were presented by various interested parties in the post disclosure comments and presented in hearing held on 3rd April, 2017 have been redressed, hence there is no need for issuing another disclosure.

(iv) Other issues

As regards sample check of consignments by Customs for identification of PUC, the custom authorities undertake such an examination in accordance with their established norms and procedures of choosing samples and analysing them technically by appropriate agencies/officials. Any attempt to circumvent AD Duty can be addressed by the Custom Authority or if necessary can be represented to DGAD for appropriate consideration under the Anti-Circumvention Rules.

Q.2 Conclusion on Material Injury and Threat of Material Injury and causal links

265. The examination of various factors and an overall analysis of the same indicates that while the performance of the domestic industry did not show any significant deterioration during the injury investigation, there is a clear trend of rising imports and falling prices of the imports starting from the third quarter of the POI, resulting in volume and price pressure on the domestic industry and decline in volume of sales and profitability. The threat parameters examined above also clearly shows that there are significant capacities in the subject country and other contingent factors that could result in significant rise in dumped imports in the imminent future in the absence of a measure. Therefore, the Authority concludes that there is a real and potential threat of material injury being caused to the

domestic industry, the signs of which are visible in the POI itself, from the dumped imports from the subject country.

R. Indian industry's interest & other issues

266. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of antidumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

S. Conclusions

267. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:

- a) There has been significant increase in the volume of dumped imports from the subject country in absolute terms throughout the injury period and in relation to production and consumption in India;
- b) The subject goods are entering the Indian market from the subject countries at dumped prices;
- c) Though the performance of the domestic industry, in terms of volume and price parameters during the POI as a whole does not show any deterioration last two quarters of the POI shows significant volume and price effects of dumped imports from the subject country due to significant increase in imports and decline in prices;
- d) Overall assessment of the trend in increasing imports and decline in prices coinciding with imposition of trade remedy measures on export of tiles from China to those countries, sluggish demand and over-capacity in China indicates that there is an imminent threat of intensified dumping in India and consequent injury to the domestic industry in the absence of a measure.

T. Recommendations

268. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted the investigation into dumping, injury and causal links, in terms of the provisions laid down under the Anti-Dumping Rules, and having established positive dumping margin as well as a threat of material injury to the domestic industry on account of such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is required to offset dumping and prevent injury to the domestic industry.
269. Therefore, Authority considers it necessary and recommends imposition of definitive anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder for a period of five years from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.12/2016-Customs (ADD) dated 29th March, 2016.
270. Having regard to the lesser duty rules followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury so determined in this finding for the period under investigation, so as to remove the injurious effects of the dumped imports on the domestic industry. Accordingly, antidumping duty as indicated in Column 8 of the duty table given below, is recommended to be imposed on all imports of subject goods originating in or exported from the subject country, for a period of five years from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.12/2016-Customs (ADD) dated 29th March, 2016.

Duty Table

Sl. No.	Heading / Sub-heading*	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	69.07, 69.08, 69.14*	Soluble Salt, Double Charge, GVT and PGVT Porcelain/Vitrified Tiles with less than 3% water absorption and All sizes**	China PR	China PR	M/s Southern Building Materials & Sanitary Co. Ltd. of Qingyuan City, M/s Jiangxi Fuligao Ceramics Co. Ltd. and M/s Guangdong Luxury Micro-crystal Stone Technology Co. Ltd.	M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. of Guangdong	NIL	SQM	US\$
2	-Do-	-Do-	China PR	China PR	M/s Guangdong Haosen Ceramics Co., Ltd,	M/s Foshan Haosen Import and Export Co., Ltd, M/s Foshan Kihut Ceramic Co., Ltd, & M/s Kunlgy Ltd, Hong Kong	0.83	SQM	US\$
3	-Do-	-Do-	China PR	China PR	M/s Foshan Lihua Ceramics Co. Ltd.	M/s Foshan Henry Trading Co. Ltd	NIL	SQM	US\$
4	-Do-	-Do-	China PR	China PR	M/s Qingyuan Qiangbiao Ceramics Co., Ltd. And M/s Foshan Qiangbio Ceramics Co. Ltd	M/s Foshan Hongliao Trade co. Ltd., China PR; M/s Sheenway Corporation Ltd., Hong	0.28	SQM	US\$

						Kong			
5	-Do-	-Do-	China PR	China PR	M/s Foshan Chancheng Jinyi Ceramics Co. Ltd. And M/s Xin Xing Xian Zhisheng Ceramics Co., Ltd.	M/s Foshan Worceter Trade Co. Ltd. And M/s Sheenway Corporation Ltd., Hong Kong	NIL	SQ M	US\$
6	-Do-	-Do-	China PR	China PR	M/s Guangdong Gelaisi Ceramics Co. Ltd, and M/s Foshan Sanshui Huiwanjia Ceramics Co. Ltd	M/s Foshan Newpearl Trade Co. Ltd	NIL	SQ M	US\$
7	Do	do	China PR	China PR	Non-Sampled Producer/ exporters as per list given below***		0.79	SQ M	US\$
8	Do	do	China PR	China PR	Any combination other than mentioned in SI No-1 to 7 above		1.87	SQ M	US\$
9	Do	do	China PR	Any country other than China PR	Any	Any	1.87	SQ M	US\$
10	Do	do	Any country other than China PR	China PR	Any	Any	1.87	SQ M	US\$

* The subject goods are being imported under tariff headings No. 69.07, 69.08, 69.14. However, the customs classification is indicative only and in no way binding on the scope of this investigation.

** The product does not cover Micro-crystal tiles, Full body tiles and Thin Panels below 5 mm thickness.

***** List of Non-sampled exporters from China PR**

Sl. No	Name of the producer	Name of the Exporter
1	Foshan Helai Building Materials Co., Ltd and Foshan City Gaoming district hui Mei AO Building Material Co., Ltd.	Foshan Xinzhongwei Economic and Trade Co., Ltd, M/s Globlink Overseas (HK) Ltd.
2	Foshan City TaoQuiang Building Material Co., Ltd.	Foshan Fortune Imp. And Exp. Trade Co., Ltd.
3	Monalisa Group Co., Ltd.	Guangdong Monalisa Trading Co., Ltd.
4	Foshan Gold Full House Building Material Co., Ltd.	Foshan Nanhai Rongjia IM & EX Co., Ltd, and Foshan Clouds Import & Exports Co., Ltd.
5	Guangdong Yongsheng Ceramics Co., Ltd.	Foshan Ishine Trading Co., Ltd.
6	Foshan Sunny Ceramic Co., Ltd.	Foshan Gold Medal Import and Export Trading Co., Ltd.
7	Enping City Huachang Ceramic Co., Ltd.	Enping City Huachang Ceramic Co., Ltd.
8	Foshan Oceanland Ceramics Co., Ltd	Foshan Oceanland Ceramics Co., Ltd
9	Guangdong Overland Ceramics Co., Ltd	Guangdong Overland Ceramics Co., Ltd
10	Guangdong Kito Ceramics Co., Ltd	Guangdong Kito Ceramics Co., Ltd
11	Foshan Sincere Building Material Co., Ltd	Foshan Sincere Building Material Co., Ltd
12	Guangdong Guanxing Ceramics Enterprise Co., Ltd	Guangdong Guanxing Ceramics Enterprise Co., Ltd
13	Qingyuan Quya Ceramics Co., Ltd	Qingyuan Quya Ceramics Co., Ltd
14	Jingdezhen Kito Ceramic Co., Ltd	Jingdezhen Kito Ceramic Co., Ltd
15	Foshan Louis Valentino Ceramic Co., Ltd	Foshan Louis Valentino Ceramic Co., Ltd
16	Guangdong Xinfengjing Ceramics Co., Ltd	Guangdong Xinfengjing Ceramics Co., Ltd
17	Guangdong Tianbi Ceramics Co., Ltd	Guangdong Tianbi Ceramics Co., Ltd
18	Foshan HCC Building Material Co., Ltd	Foshan HCC Building Material Co., Ltd
19	Zhanjiang Zhonghong Ceramics Co., Ltd	Foshan Beyond Import and Export Co., Ltd
20	Heyuan Romantic Ceramics Co.,	Foshan Beyond Import and Export Co.,

	Ltd	Ltd
21	Foshan Nanhai Yonghong Ceramic Co., Ltd	Foshan Jun Enterprise Co., Ltd
22	Foshan Dunhunang Building Material Co., Ltd	Foshan Dunhunang Building Material Co., Ltd
23	Foshan Sanshui Hongyuan Ceramics Enterprise Co., Ltd	Foshan Sanshui Hongyuan Ceramics Enterprise Co., Ltd
24	Foshan Gani Ceramic Tiles Co. Ltd.	Qingyuan Ceramic Tiles Co. Ltd.

U. Further procedure

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

272. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and the Rules, and Public Notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

Inder Jit Singh
Additional Secretary & Designated Authority