



**Government of Pakistan  
National Tariff Commission**

**Preliminary Determination and Levy of Provisional Antidumping Duty on  
Dumped Imports of Tiles, which includes Ceramic, Porcelain, Vitrified,  
Granite Wall and Floor Tiles in Glazed/Unglazed, Polished/ Unpolished  
Finish, Originating in and/or Exported from the People's Republic Of China**

**A.D.C No. 11/2006/NTC/CT**

**February 20, 2010**

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The National Tariff Commission (hereinafter referred to as the "Commission") having regard to the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the "Ordinance") and the Anti-Dumping Duties Rules, 2001 (hereinafter referred to as the "Rules") relating to investigation and determination of dumping of goods into the Islamic Republic of Pakistan (hereinafter referred to as "Pakistan"), material injury to the domestic industry caused by such imports, and imposition of anti-dumping duties to offset the impact of such injurious dumping, and to ensure fair competition thereof and to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "Agreement on Antidumping").

2. In Pursuance to the short order of the Supreme Court of Pakistan dated October 29, 2009 in Civil Petition Nos. 1608, 1654, 1686, 1687, 1706, 1707 and 1708 of 2009 (paragraph 14 infra) and subsequent directions of the Hon'ble Lahore High Court Rawalpindi Bench, dated December 21, 2009 in Writ Petition No. 1490 of 2009 (paragraph 16 infra) and directions of the High Court of Sindh, Karachi, the Commission has proceeded afresh on the complaints against the petitioners keeping in view provisions of the Ordinance, the Rules and National Tariff Commission Act 1990 (hereinafter referred to as "NTC Act"). The Commission has made this preliminary determination under Section 37 of the Ordinance in compliance of the Short order dated 29.10.2009 of the Hon'ble Supreme Court. This report of preliminary determination is being issued in accordance with the provisions of the Ordinance to give effect the findings of the Commission against dumped imports of Tiles, subject to the detailed judgment of the Hon'ble Supreme Court in above-mentioned cases. The Commission shall make final determination in accordance with the requirements of Section 39 of the Ordinance after detailed judgment is passed by the Hon'ble Supreme Court of Pakistan.

**A. BACKGROUND**

3. The Commission conducted an antidumping investigation on request of domestic industry (paragraph 19 infra) manufacturing wall and floor tiles, which includes ceramic, porcelain/vitrified/granite tiles in glazed/unglazed, polished/unpolished finish (hereinafter referred to as "Tiles") in the year 2006-2007 under Ordinance and Rules. The Commission initiated that investigation on March 27, 2006 under Section 23 of the Ordinance (paragraph 25.1 infra), made preliminary determination on November 28, 2006 (paragraph 33 infra) and final determination under Section 39 of the Ordinance on March 24, 2007 (paragraph 37 infra).

4. After taking into account provisions of Sections 20, 23, 24, 27, 37 and 39 of the Ordinance, the Commission initiated an investigation on March 27, 2006 and made preliminary

determination and final determination on November 28, 2006 and March 24, 2007 respectively. Commission's initiation, preliminary determination and final determination were challenged by the following parties in the Lahore High Court, Rawalpindi Bench through Writ Petition Nos. 97/07, 101/07, 36/07, 100/07, 21/07, 98/07, 99/07, 37/07, 102/07, 103/07, 1257/07, 222/07 and 1464/07 etc. which were subsequently transferred to Islamabad High Court, Islamabad.

- i. M/s M.I Sanitary Store
- ii. M/s Abu Yousaf Traders
- iii. M/s Euro Tiles and Dranites Etc
- iv. M/s Sajid Traders
- v. M/s W.H. Traders
- vi. M/s Al Sharja Trading Company
- vii. M/s Al-Raheem Tradres
- viii. M/s Real Trading Company
- ix. M/s Mehmood Sons
- x. M/s Hameed & Yasir International
- xi. M/s China National Machinery
- xii. M/s Waheed Sons

5. The petitioners raised following main issues in their writ petitions, which are summarized as under:

- i. That the Application of the complainant (Master Tiles and Ceramics) was prepared on 15.03.2006 and same was entertained on 23.02.2006, hence the entire proceedings are based on antedated application and are malafide.
- ii. That the initiation of investigation under Section 23 of the Ordinance is illegal and without lawful authority.
- iii. That the Commission did not comply with the requirements of Section 20 of the Ordinance, regarding *locus standi* of the applicant, while issuing the order dated 14-03-2006 (order of initiation), hence, the entire proceedings are biased and against the law.
- iv. That the Commission has illegally and without lawful authority started the proceedings for investigation, as no notice to the Government of China has ever been issued under Section 21 of the Ordinance.
- v. That the Commission has not calculated the injury to the domestic industry as a whole.
- vi. That the Commission has not considered the nature of the product, as the applicant has not been manufacturing porcelain tiles.

- vii. That the Commission has illegally taken action, without lawful authority getting undue benefit of the confidentiality under Section 31 of the Ordinance.
- viii. That the Commission has not considered the cases of other domestic industries, like Marshal Tiles, National Tiles, Sonex Tiles etc., while determining share of the applicant in the local industry.
- ix. That the Commission has neither verified the number of products shown to be manufactured by the applicant from local market as well as physical verification of the factory.
- x. That the Commission, without complying with the requirements of Section 20, 21, 23 and 24 of the Ordinance, issued an interim report, based on its improvised investigation, and anti dumping duty was imposed vide notification dated 30.11.2006.
- xi. That the Commission issued a notification dated 30-30-2007 for final imposition of anti-dumping duties in terms of Section 39 of the Ordinance illegally and without considering the material evidence available on record and without passing the orders in this regard."
- xii. Composition of the Commission. Section 5 of the Ordinance deals with the composition of the Commission and provides that Commission shall consist of a Chairman and two Members. However, Commission's preliminary and final determinations are signed by the Chairman and a Member.

6. The honourable Islamabad High Court, Islamabad dismissed all above mentioned writ petitions on July 02, 2009 after discussing all issues mentioned hereinabove in following words:

"... For what has been discussed above, there is no force in all these Writ Petitions which are hereby dismissed with no order as to costs." (copy attached as Annexure-I)

7. Decision of the Islamabad High Court, Islamabad in above mentioned writ petitions was challenged in the Supreme Court of Pakistan through Civil Petition Nos. 1608, 1654, 1686, 1687, 1706, 1707 and 1708 of 2009 by the following petitioners in September 2009:-

- i. M/s Awami Sanitary Mart
- ii. M/s Waheed Sons
- iii. M/s Real Trading Company
- iv. M/s Orange International
- v. M/s W.H. Traders
- vi. M/s Friends International
- vii. M/s Euro Tiles&Granites

8. The petitioners raised following main issues in their above-mentioned writ petitions, which are summarized as under:

- i. The basic order of initiation of investigation was not speaking order.
- ii. Concealments were made by the Commission before the Hon'ble High Court with regard to its order of initiation.
- iii. The order passed by one Member and Chairman is not an order of the Commission.
- iv. The Commission has not established injury to the Applicant.
- v. The basic order of initiation was passed during the stay order issued by the Hon'ble High Court.
- vi. The Commission has not issued notice under Section 21 of the Ordinance, required to be given to the exporting countries.
- vii. The Commission has not established dumping and injury under Section 23 of the Ordinance.

9. The following questions of law were also raised by the petitioners in memorandum of their petitions regarding legal and procedural requirements to be met by the Commission:

- i. Whether the Commission, under Section 23 of the Ordinance is duty bound to pass a detailed order prior issuance of notice under Section 27 of the Ordinance?
- ii. Whether an order under Section 23 has been passed?
- iii. Whether the Applicant qualifies as domestic industry under Section 2 (d) read with Section 20 and 24 of the Ordinance?
- iv. Whether the proceedings initiated by the Commission are based on malafidies, fanciful, arbitrary and discriminatory as the investigation was initiated on antedated application?
- v. Whether the order passed by one Member and Chairman of the Commission is an order of the Commission as required for initiation of investigation, order for imposition of interim duty, order for final determination of antidumping duties etc. under the provision of the Ordinance? As the composition of the Commission has been provided under Section 5 of the National tariff Commission Act, 1990, which is comprising of one Chairman and two members of the Commission.
- vi. Whether the domestic industry proved the injury caused by the importers of tiles from China as required under the Ordinance?

- vii. Whether the basic order of initiation of investigation passed allegedly on 14.03.2006 was void? As the stay order was passed on 13.03.2006 in W.P. No 582/06 and the same was communicated to the Commission.
  - viii. Whether the order passed by the Commission regarding imposition of interim antidumping duty and final antidumping duty based on the material evidence or not?
  - ix. Whether the investigation proceedings conducted by the Commission and its implementation is hit by the principle that no person can be judge of his own cause? As the Commission investigated itself and also implemented the imposition of antidumping duty through its own notification.
  - x. Whether, Section 31 of the ordinance, regarding confidentiality, is applicable without specific order in this regard?
  - xi. Whether the Commission under the grab of confidential requirements under Section 31 of the Ordinance can avoid from passing the specific order in this regard and can initiate the proceedings according to its liking and disliking?
  - xii. Whether the increase of dumping margin in the case of the petitioners from zero rate to 32.24% is without material evidence? As entire information was submitted and dumping margin was calculated at zero in preliminary determination, whereas in final determination dumping margin was calculated at 23.24%.
10. After discussion on the issue stated at paragraph 9(v) supra, the Hon'ble Supreme Court of Pakistan passed following short order on October 29, 2009:

*"Iftikhar Muhammad Chaudhry, CJ:- For the reasons to be recorded later, the impugned judgment as well as order dated 28<sup>th</sup> November 2007 and others reported to have been passed subsequently, by the National Tariff Commission are set aside. Cases are remanded to the National Tariff Commission to proceed afresh on the complaint against the petitioners keeping in view the provisions of Section 11 of the National Tariff Commission Act, 1990. It would be appreciated if the Commission may dispose of the matter expeditiously, preferably within a period of eight weeks. Petitions are converted into appeal and allowed in the above terms leaving the parties to bear their own cost."*

11. In pursuance of short Order of the Supreme Court of Pakistan, the Commission, on November 13, 2009 initiated fresh proceedings on imposition of antidumping duty on imports of Tiles into Pakistan originating in and/or exported from the People's Republic of China (hereinafter referred to as "China"). For this purpose, the Commission issued a notice, which



was published in Official Gazette<sup>1</sup> and two widely circulated national newspapers<sup>2</sup> (one in English language and one in Urdu Language). Copy of the notice of initiation of proceedings was sent to all interested parties known to the Commission on November 13, 2009 including petitioners.

12. Commission's preliminary determination and final determination was also challenged in the High Court of Sindh, Karachi through Civil Petition No. D-1196/2007. The petitioner raised following main issues in this petition, which are summarized as under:

- i. In absence of identification of investigated C&F export price, antidumping duty which is equal to dumping margin can neither be levied nor collected.
- ii. In absence of identification of investigated C&F export price based on sizes, uses, and specification there exists no basis of imposition and levy of antidumping duty.
- iii. Dumping margin determined once on the basis of export price at a particular time period, is not likely to be static as a result it cannot be applied on all incoming imports of tiles.
- iv. That the investigation for imposition of antidumping duty has been initiated at the instance of only one manufacturer whose share in domestic market has been incorrectly calculated as 56%.
- v. The production of M/s National Tiles and M/s Marshal Tiles and Ceramics, who are two prominent producers of tiles have not been taken into account.
- vi. That sales tax profiles of M/s Sonex Tiles and record of Frontier Ceramics, evidencing that they are also the manufacturers of tiles was totally ignored.
- vii. Dumping margin has been drawn on the basis, which is not prescribed in the Ordinance.
- viii. Volume of dumped imports has been drawn illogically without ascertaining the consumption of investigated product in the country contrary to provisions of the Ordinance.
- ix. Determination of injury resulting imposition of antidumping duty is not compatible".

13. On December 4, 2009, the High Court of Sindh, Karachi disposed of that petition and decided as follows:

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<sup>1</sup> Official Gazette of Pakistan (Extraordinary) part III dated November 13, 2009.

<sup>2</sup> The 'Business Recorder' and the 'Nawa-e-Waqt' of November 13, 2009 issue

*"... the petitioners grievance is also in respect of levying and charging of antidumping duty... that the petitioner will be satisfied, if an order is passed similar in nature as has been passed by the Hon'ble supreme Court in the above referring order. Counsels for the respondents have no objection, if the matter is remanded in terms of the order of the Hon'ble Supreme Court.... The petition and the listed application stands disposed of in the above terms."*

14. On December 21, 2009 Lahore High Court, Rawalpindi Bench decided writ petition No. 1490/2007 and passed following order:

*"Advocate for the Applicant states that the anti-dumping duties imposed by the National tariff Commission have been set aside by the August Supreme Court vide order dated 29.10.2009 and the case has been remanded to the National Tariff Commission for decision afresh within eight weeks preferably and that in compliance with the aforesaid order, the National tariff Commission has initiated proceedings. The case of petitioner is that in the present writ petition it has challenged the determination of the anti-dumping duty by the National tariff Commission on the ground that the same are on the lower side.*

*2. As such, the learned counsel for the petitioner submits that the point of view of the petitioner must be considered by the National tariff Commission, who must take into account the grounds raised in the present writ petition before it reaches a decision on the contesting claims of the other parties and the petitioners.*

*3. In view thereof, this writ petition is disposed of with a direction to National Tariff Commission to decide the matter in accordance with law and give due consideration to the grounds taken in this writ petition."*

15. The petitioner (M/s Master Tiles and Ceramic Industries Ltd., Gujranwala) raised following main issues in its writ petition No. 1490 of 2007:

- i. That the petitioners are aggrieved of the final determination to the extent of dumping margin calculations therein and consequent determination of anti dumping duty rates.
- ii. The Commission has improperly exercised its discretion while applying the lowest available "normal value" in order to impose the minimum rates of duty despite non-cooperation of exporters.
- iii. The Commission as a matter of practice determines the "normal value" on the basis of best available information by applying highest available normal value. However, the Commission, contrary to its own consistent practice, has applied the lowest available "normal value" of the product in order to impose the minimum rates.

- iv. The Commission has erroneously relied on the domestic sales price of *Zungui* and *Shimanli* in respect of those types, grades and sizes which were never purchased from those producers whereas admittedly *Junging* had made purchases in this category from other producers who did not cooperate.
- v. That in rendering the impugned decision the Commission has failed to comply properly and adequately with the requirements of Section 39(3) of the Ordinance in terms of which it is under a mandatory obligation to mention in the final determination "relevant information on the matters of fact and law and reasons that have led to the determination".

16. Keeping in view the directions of the Supreme Court of Pakistan (paragraph 10 supra), the High Court of Sindh, Karachi (paragraph 13 supra) and the Lahore High Court, Rawalpindi Bench (paragraph 14 supra) the Commission has considered issues raised by the petitioners in superior Courts and has taken into account their views/comments submitted during these proceedings.

17. The Supreme Court of Pakistan in its short order has observed, "*For the reasons to be recorded later, the impugned judgment as well as order dated 28<sup>th</sup> November 2007 and others reported to have been passed subsequently, by the National Tariff Commission are set aside. Cases are remanded to the National Tariff Commission to proceed afresh on the complaint against the petitioners keeping in view the provisions of Section 11 of the National Tariff Commission Act, 1990. It would be appreciated if the Commission may dispose of the matter expeditiously, preferably within a period of eight weeks. Petitions are converted into appeal and allowed in the above terms leaving the parties to bear their own cost.*" To effect compliance of the short order of the Hon'ble Supreme Court of Pakistan, the Commission took following decisions:

- i. Investigated product in these proceedings would be the same as defined in Commission's notice No. 11/2006/NTC/CT published in the Official Gazette and national press on March 27, 2006;
- ii. The evidence and information submitted by the interested parties and/or collected by the Commission during investigation would be used for these proceedings;
- iii. Interested parties would be provided opportunities to comment on these proceedings;
- iv. Date of initiation of proceedings would be the date of publication of notice in the press in Pakistan; and

- v. The Commission will make every effort to dispose of this matter within the time period provided by the Supreme Court of Pakistan.

**B. PROCEDURE**

18. The procedure set out below has been followed with regard to these proceedings.

**19. Receipt of Application**

19.1 The Commission received a written application on February 23, 2006 under Section 20 of the Ordinance from Master Tiles & Ceramic Industries Limited, G.T Road Gujranwala (hereinafter referred to as the "Applicant"), a domestic producer of Tiles on behalf of the domestic industry. The Applicant alleged that Tiles originating in and/or exported from China is being dumped into Pakistan, which has caused and is causing material injury to the domestic industry producing Tiles.

19.2 The Commission informed the Embassy of China in Islamabad of the receipt of application in accordance with the requirements of Section 21 of the Ordinance through a note verbale dated February 24, 2006.

**20. Evaluation and Examination of the Application**

The examination of the application showed that it met the requirements of Section 20 of the Ordinance as it contained sufficient evidence of dumping of Tiles into Pakistan from China and material injury to the domestic industry caused therefrom. Requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

**21. The Domestic Industry**

21.1 Section 2(d) of the Ordinance defines domestic industry as:

*" "domestic industry" means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case "domestic industry" shall mean the rest of the domestic producers".*

21.2 As per information obtained by the Commission from different sources, the domestic industry of Tiles comprises of the following six units with an installed production capacity of 19.03 million square meters (“SQM”) per annum on three shift basis:

**Table-I**

<b>S.No</b>	<b>Name of the Unit</b>	<b>Installed Capacity (million SQM)</b>
i.	Master Tiles and Ceramic Industries Ltd., Gujranwala	7.50
ii.	Karam Ceramics Ltd., Karachi	2.76
iii.	Sonex Tiles and Ceramic Industries Ltd., Gujranwala	2.00
iv.	Shabbir Tiles and Ceramic Ltd., Karachi	3.37
v.	EMCO Industries Ltd., Karachi	1.90
vi.	Swat Ceramics (Pvt.) Ltd., Swat.	1.50
	<b>Total</b>	<b>19.03</b>

21.3 The Commission’s investigation has shown that the following units were themselves importers of the investigated product during the period of investigation. Therefore, the Commission has excluded these units from definition of domestic industry in accordance with Section 2(d) of the Ordinance:

- i. Shabbir Tiles and Ceramic Ltd., Karachi;
- ii. EMCO Industries Ltd., Karachi; and
- iii. Swat Ceramics (Pvt.) Ltd., Swat.

21.4 The investigation has also shown that Sonex Tiles and Ceramic Industries Ltd., Gujranwala started commercial production in January 2006, which is out side period of investigation (“POI”) (paragraph 59.2 infra). Thus, for the purposes of this investigation, the Commission has determined that during POI, domestic Tiles industry was comprised of the following two units:

- i. Master Tiles and Ceramic Industries Ltd., Gujranwala (Applicant); and
- ii. Karam Ceramics Ltd., Karachi.

## **22. Standing of the Application**

22.1 In terms of Section 24(1) of the Ordinance,

*“.... an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced*

*by that portion of the domestic industry expressing either support for or opposition to the application."*

Furthermore, Section 24(2) of the Ordinance provides that:

*"..... no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of the domestic like product produced by the domestic industry."*

22.2 The application was filed by the Master Tiles and Ceramic Industries Ltd., Gujranwala, who is a major producer of Tiles in Pakistan. Other unit in the domestic industry namely Karam Ceramics Ltd., Karachi remained indifferent in this investigation.

22.3 As per information supplied in the application and obtained from other sources, the Applicant produced 28.62 percent of total domestic production of Tiles and 56.33 percent of the production of the units determined domestic industry for the purposes of this investigation (paragraph 21.4 supra) during the year 2005 (January to December, POI for dumping determination). Details of production of Tiles by the entire domestic industry during POI was as follows:

**Table-II  
Production of Tiles During POI and Status of Units with respect to the Application**

S.No	Name of the Unit	Production (million SQM)	% Share in total domestic Production	% Share in Production of domestic industry	Supporting/ Opposing/ Indifferent
i.	Master Tiles and Ceramic Industries Ltd., Gujranwala	3.56	28.62%	56.33%	Applicant
ii.	Karam Ceramics Ltd., Karachi	2.76	22.19%	43.67%	Indifferent
iii.	Shabbir Tiles and Ceramic Ltd., Karachi	2.95	23.71%	Itself importer of Tiles	Indifferent
iv.	EMCO Industries Ltd., Karachi	1.67	13.42%	Itself importer of Tiles	Indifferent
v.	Swat Ceramics (Pvt.) Ltd., Swat	1.50	12.06%	Itself importer of Tiles	Indifferent
vi.	Sonex Tiles and Ceramic Industries Ltd., Gujranwala	Started commercial production after POI			Indifferent
	<b>Total</b>	<b>12.44</b>	<b>100.00%</b>	<b>100.00%</b>	

22.4 The above table shows that the Applicant was the major domestic producer of Tiles in Pakistan during POI representing 28.62 percent of total domestic production and 56.33 percent of domestic industry's (paragraph 21.4 supra) production. Karam Ceramics Ltd, who remained indifferent in this investigation (paragraph 22.2 supra), represented 22.19 percent of total domestic production and 43.67 percent of domestic industry's production of Tiles during POI.

22.5 Other three units; (i) Shabbir Tiles and Ceramic Ltd., Karachi, (ii) EMCO Industries Ltd., Karachi and (iii) Swat Ceramics (Pvt.) Ltd., Swat who represented 49.20 percent of total production of Tiles during POI, were themselves importers of the investigated product (paragraph 24.3 infra). Thus, these units have been excluded from definition of domestic industry in accordance with Section 2(d) of the Ordinance (paragraphs 24.1 and 24.3 supra). Production of these units has been not considered in determination of standing of the application. Sonex Tiles and Ceramic Industries Ltd., Gujranwala started commercial production in January 2006 (paragraph 21.4), which is outside the POI.

22.6 Taking into account above facts, the Commission has determined standing of the application on the basis of the production of Tiles during POI of the Applicant and Karam Ceramics Ltd., Karachi, which are the domestic industry for the purposes of this investigation (paragraph 21.4 supra).

22.7 The above table shows that the Applicant accounted for 56.33 percent of the production of Tiles during the year 2005. Other producer in the domestic industry (Karam Ceramics Ltd., Karachi) has not opposed the application.

22.8 On the basis of the above information and analysis, the Commission has determined that the application has been made on behalf of domestic industry, as it fulfils the requirements of Section 24 of the Ordinance.

22.9 Some petitioners (paragraph 5 supra) has claimed that the Commission should determine standing on the basis of total production of Tiles instead of production of domestic industry determined for the purposes of this investigation. The Commission has determined domestic industry for the purposes of this investigation and standing of the application in accordance Sections 2(d) and 24 of the Ordinance (paragraph 22 supra). However, arguendo if claim of the petitioners at paragraph 5 is accepted, even then the application has met requirements of Section 24 of the Ordinance, as all units of Tiles other than the Applicant remained indifferent in this investigation. It is obvious from the above table that the Applicant accounted for 28.62 percent of total domestic production of Tiles during POI and no domestic producer, including those who were themselves importers of Tiles, have opposed the application. Thus, the application was filed by the producer who accounted for 28.62 percent of total production of Tiles during POI and was supported by 100 percent of the producers who expressed their opinion.

23. **Applicants' Views**

The Applicant, *inter alia*, raised following issues in the application regarding dumping of Tiles and material injury to the domestic industry caused therefrom:

- i. Tiles imported from China into Pakistan and the Tiles produced in Pakistan by the domestic industry are like products;
- ii. Exporters/producers from China were/are exporting Tiles to Pakistan at dumped prices; and
- iii. Exports of Tiles by the Chinese exporters/producers to Pakistan at dumped prices has caused and was/is causing material injury to the domestic industry producing Tiles mainly through:
  - a. Increased volume of dumped imports of Tiles from China;
  - b. price undercutting;
  - c. price depression;
  - d. price suppression;
  - e. loss in market share by the domestic industry;
  - f. negative effects on capacity utilization of the domestic industry;
  - g. negative effects on cash flow of the domestic industry; and
  - h. decline in profits of the domestic industry.

**24. Exporters/ Foreign Producers of Tiles involved in Dumping**

The Applicant identified 219 exporters/producers involved in alleged dumping of Tiles from China. However, the Applicant provided complete addresses of 35 exporters/producers from China. The Applicant has also stated that there may be other exporters/producers of investigated product (paragraph 25 infra) who are not known to it and requested for imposition of antidumping duty on all imports of the investigated product originating in and/or exported from China. Upon initiation of investigation (paragraph 25 infra), copy of the notice of initiation was sent to all those known exporters/producers from China on March 27, 2006 directly to those whose complete addresses were available with the Commission. For the exporters/producers whose addresses were not available with the Commission, a copy of the notice of initiation was sent to Embassy of China in Islamabad, requesting the esteemed Embassy to forward the same to all exporters/producers involved in exports of Tiles to Pakistan from China.



## **25. Initiation of Investigation**

25.1 The Commission under Section 23 of the Ordinance, upon examining the accuracy and adequacy of the evidence and information provided in the application, established that there was sufficient evidence of alleged dumping of Tiles into Pakistan and consequent material injury to the domestic industry to justify initiation of an investigation. Application also fulfilled requirement of Section 24(2) of the Ordinance, as the application was filed by the producer who accounted for more than 25 percent of total domestic production of Tiles during POI (paragraph 22 supra). Consequently, the Commission decided on March 14, 2006 to initiate an antidumping in this case. However, on March 13, 2006 upon the request of some of the importers filed through writ petitions, the Lahore High Court, (Rawalpindi bench) issued a stay order of the proceedings, which was received at the Commission on March 14 2006. The importers had alleged that the Commission has initiated an antidumping investigation against alleged dumping of Tiles from China without complying with the requirements of Section 27 of the Ordinance. The High Court vacated its stay order by disposing off writ petitions on March 20, 2006 on submission of the Commission to the Court that no investigation was initiated till that date. Furthermore, the investigation could only be initiated through compliance with the requirements of Section 27 of the Ordinance. Upon vacation of the stay, the Commission issued a notice of initiation in under Section 27 of the Ordinance, which was published in the Official Gazette<sup>3</sup> of Pakistan and in two widely circulated national newspapers<sup>4</sup> (one in English language and one in Urdu Language) on March 27, 2006. Investigation concerning imports into Pakistan of Tiles (classified under PCT<sup>5</sup> No. 6907.1000, 6907.9000, 6908.1000 and 6908.9000 contained in the First schedule of Customs Act, 1969 (IV of 1969)) originating in and/or exported from China was thus initiated on March 27, 2006 (pursuant to Commission's decision of March 14, 2006 to initiate).

25.2 The Commission notified the Embassy of China in Pakistan of the initiation of investigation against alleged dumped imports of Tiles from China (by sending a copy of the notice of initiation through Ministry of Foreign Affairs, Pakistan on March 27, 2006) with a request to forward it to all exporters/producers involved in export of Tiles from China.

25.3 Copies of notice of initiation were sent directly to 35 Chinese exporters/producers (whose complete addresses were available with the Commission), the known Pakistani importers, and the Applicant on March 27, 2006, in accordance with requirements of Section

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<sup>3</sup> The official Gazette of Pakistan (Extraordinary) dated March 27, 2006.

<sup>4</sup> The 'Daily Express and the 'Business Recorder' of March 27, 2006 issue.

<sup>5</sup> "PCT" is the abbreviation for Pakistan Customs Tariff. PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

27(1) of the Ordinance. For the exporters/producers whose addresses were not available with the Commission, the Embassy of China in Islamabad was requested to forward the same to all exporters/producers involved in export of Tiles to Pakistan from China. Copies of the notice of initiation were also sent to known Pakistani importers, the Applicants and indifferent domestic producers on March 27, 2006 in accordance with requirements of Section 27 of the Ordinance.

25.4 Since the number of exporters/producers involved in alleged dumping was too large, the Commission, through notice of initiation, requested exporters/producers for certain information in order to resort to the provisions of Section 14(2) of the Ordinance. All interested parties were informed, through notice of initiation, that if they did not respond to the Commission's request for information, the Commission shall resort to the use of best available information in terms of Section 32 of the Ordinance.

25.5 In accordance with Section 28 of the Ordinance, on March 28, 2006 the Commission sent copies of full text of the written application (non-confidential version) to the Embassy of China in Pakistan through the Ministry of Foreign Affairs, Pakistan with a request to forward it to all exporters/producers involved in export of Tiles from China.

25.5 The Commission's investigation was again suspended in compliance with order of the Lahore High Court, Rawalpindi Bench on April 6, 2006, issued upon the request of some importers of Tiles filed with the Lahore High Court. This time the importers pleaded that the application submitted by the Applicant to the Commission does not meet the requirements of Section 24 of the Ordinance. The investigation remained suspended till June 7, 2006, when the Lahore High Court, Rawalpindi Bench decided to vacate its stay order. The investigation was resumed on June 7, 2006 after decision of the Lahore High Court, Rawalpindi Bench and a notice of resumption of the investigation was published in the official Gazette<sup>6</sup> of Pakistan and in two widely circulated national newspapers<sup>7</sup> (one in English language and one in Urdu Language) on June 12, 2006.

## **26. Investigated Product, Domestic Like Product and Like Product**

26.1 Sections 2(k), 2(e) and 2(m) of the Ordinance defines the "investigated product", the "domestic like product" and the "like product, as follows:

### **i. Investigated Product:**

<sup>6</sup> The official Gazette of Pakistan dated June 12, 2006

<sup>7</sup> The 'Daily Dawn' and 'Khabrain' of June 12, 2006 issue

*“a product, which is subject to an antidumping investigation as described in the notice of initiation of the investigation”.*

**ii. Domestic Like Product:**

*“the domestically produced product, which is a like product to an investigated product”.*

**iii. Like Product:**

*“a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product”.*

26.2 For the purposes of this investigation and given the definitions set out above, the investigated product, domestic like product and the like product were identified as follows:

**26.2.1 Investigated Product:**

The investigated product is Tiles, which includes ceramic, porcelain/vitrified/granite wall and floor tiles in glazed/unglazed, polished/unpolished finish, produced in and/or exported from China. Investigated product is used for walls and floors of bathrooms, kitchens, drawing rooms, TV lounges and bedrooms etc. It is also used for interiors and facings of schools, offices, industries, hospitals, airports, restaurants, hotels, cafes, cinema theatres, gymnasiums, mosques, high rise buildings, plazas, supermarkets, shopping malls etc. The investigated product is classified under Pakistan Customs Tariff (“PCT”) Heading Nos. 6907.1000, 6907.9000, 6908.1000 and 6908.9000.

**26.2.2 Domestic Like Product**

The domestic like product is Tiles, which includes ceramic, porcelain/vitrified/ granite wall and floor tiles in glazed/unglazed, polished/ unpolished finish, produced by the domestic industry. Domestic like product is used for identical purposes as to those of the investigated product. It is also classified under PCT Heading Nos. 6907.1000, 6907.9000, 6908.1000 and 6908.9000.

**26.2.3 Like Product:**

The like product is Tiles, which includes ceramic, porcelain/vitrified/ granite wall and floor tiles in glazed/unglazed, polished/ unpolished finish, produced and sold by the exporters/foreign producers of China in their domestic market, and Tiles, which includes ceramic, porcelain/vitrified/ granite wall and floor tiles in glazed/unglazed, polished/ unpolished finish, imported into Pakistan from countries other than China. The like product is

classified under PCT/H.S Nos. 6907.1000, 6907.9000, 6908.1000 and 6908.9000. Major uses of the like product are identical to those of the investigated product and domestic like product.

26.3 In order to establish whether the investigated product, the domestic like product and the like product are alike products, as contended by the Applicant, the Commission reviewed all relevant information received/obtained from various sources including the Applicant, and the exporters/foreign producers in the following terms:

- i. basic raw materials used in the production of the investigated product, the domestic like product, and the like product are the same;
- ii. all the three products (the investigated product, the domestic like product and the like product) are produced with same/similar manufacturing process;
- iii. all the three products have similar appearance;
- iv. all the three products are substitutable in use.; and
- v. all the three products are classified under the same PCT/HS Nos.

26.4 In light of the above, the Commission has determined that the investigated product, the domestic like product and the like product are alike products.

## **27. Period of Investigation**

27.1 In terms of Section 36 of the Ordinance, period of investigation (hereinafter referred to as "POI") is:

- i. *"for the purposes of an investigation of dumping, an investigation period shall normally cover twelve months preceding the month of initiation of the investigation for which data is available and in no case the investigation period shall be shorter than six months."*
- ii. *"for the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:  
"Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of the available information regarding domestic industry and an investigated product".*

27.2 POI selected for dumping and injury were, therefore, as follows:

For determination of dumping:	from January 1 to December 31, 2005; and
For determination of material injury:	from July 1, 2002 to December 31, 2005.

**28. Information/Data Gathering**

28.1 The Commission sent exporter's questionnaire, on June 9, 2006, directly to 35 Chinese exporters/producers of the investigated product whose complete addresses were available with the Commission for submission of data and information, and asked them to respond within 37 days of the dispatch of the exporter's questionnaire i.e by July 16, 2006. For other Chinese exporters/producers whose addresses were not available with the Commission, on March 28, 2006 a copy of the questionnaire was sent to the Embassy of China in Islamabad with a request to forward it to all producers/exporters of the investigated product, so that they can respond to the Commission and provide requisite information.

28.2 The following nine exporters responded to the Commission's request for information in response to the questionnaire, for supplying information on the exporters' questionnaire:

- i. Foshan Junjing Industrial Co., Ltd.;
- ii. J&M Designer Ltd.;
- iii. Guangdong Nanhai Light Industrial Products, Import & Export Corporation;
- iv. Guangzhou Metal and Minerals Import & Export Ltd. China;
- v. New Zhongyuan Ceramics Import & Export Co. Ltd.;
- vi. Foshan San De Bo Ceramics Co. Ltd.;
- vii. Foshan Lungo Ceramics Co. Ltd.
- viii. Foshan Everlasting Enterprise Co. Ltd.; and
- ix. China National Machinery & Equipment, Import & Export Corporation.

28.3 However, all nine exporters requested for an extension in time period for submission of information for three weeks i.e. till August 7, 2006, through their respective attorneys/legal representatives. The Commission acceded to their requests after taking into account the due causes shown by these exporters in their requests and granted three weeks extension in time period for submission of information on exporters' questionnaire. Responses to the questionnaires from above-mentioned nine exporters were received at the Commission on August 7, 2006, and upon examination certain deficiencies were found in the information supplied. These deficiencies were communicated to the exporters on August 15, 2006 and were

requested to supply the deficient information within seven days. Further details are given at paragraph 29 infra.

28.4 The other foreign producers/exporters who were requested for information directly or through the Embassy of China in Islamabad did not respond to the Commission's request for information.

28.5 On June 12, 2006 questionnaires were sent to 19 Pakistani importers of Tiles known to the Commission and these importers were asked to respond to the Commission within 37 days of the dispatch of the questionnaires. None of the Pakistani importers responded to the Commission and did not provide requisite information including the petitioners mentioned at paragraphs 4 and 7 supra).

28.6 The Commission has an access to the database of import statistics of Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this investigation, the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and Chinese exporters/producers of the investigated product.

28.7 Thus, the Commission has sought from all available sources the relevant data and information deemed necessary for the purposes of this investigation to determine dumping of the investigated product and injury caused therefrom. In terms of Rule 12 of the Rules, the Commission, during the course of the investigation, satisfied itself as to the accuracy of information supplied by the interested parties to the extent possible for the purposes of this investigation.

## **29. Questionnaire(s) Response by the Foreign Producers/Exporters**

### **29.1 Questionnaire Response by Foshan Junjing Industrial Co., Ltd.**

29.1.1 The Commission sent questionnaire to Foshan Junjing Industrial Co., Ltd. (hereinafter referred to as "Junjing") on June 09, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by Junjing, it is a private limited company incorporated under the Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan as well as to other countries during POI. According to Junjing, the investigated product, which it exported to Pakistan during POI was purchased from more than 75 Chinese producers of Tiles. However, it

supplied information on domestic sales and cost to make and sell of the following two producers:

- i. Foshan Zungi Tiles Co. Ltd; and
- ii. Foshan Guangdong Shimanli Ceramic Co. Ltd.

29.1.2 The information submitted by Junjing in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 15, 2006.

29.1.3 Junjing was asked to provide deficient information/data no later than August 21, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Junjing responded to the deficiencies vide its letter dated August 28, 2006. However, the information received was still deficient in some respects. The Commission obtained deficient information, which was necessary for the purposes of this investigation during on-the-spot investigations conducted at premises of Junjing and the above mentioned two producers from 16<sup>th</sup> to 19<sup>th</sup> September 2006 (paragraph 29.1.1 supra) to verify information submitted by Junjing.

29.1.4 The Commission has accepted information supplied by Junjing for the purposes of this investigation. Normal value for exports of the investigated product by Junjing is determined on the basis of information supplied by it for above mentioned two producers (paragraph 29.1.1 supra) and best information available under Section 32 of the Ordinance. Export price for Junjing in this investigation is determined on the basis of information provided by it in response to the questionnaire (paragraph 46 infra).

## **29.2 Questionnaire Response by J&M Designers Ltd.**

29.2.1 The Commission sent questionnaire to J&M Designers Ltd. (hereinafter referred to as "J&M Designers") on June 09, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by J&M Designers, it is a private limited company incorporated under Hong Kong company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan during POI. According to Junjing, the investigated product, which it exported to Pakistan during POI was purchased from four Chinese producers of Tiles. However, it supplied information on domestic sales and cost to make and sell of only one producer, Fujian Minqing Oumei Ceramics Co. Ltd ("Minqing Oumei").

29.2.2 The information submitted by J&M Designers in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 18, 2006.

29.2.3 J&M Designers was asked to provide deficient information/data no later than August 25, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. J&M Designers responded to the deficiencies. However, the information received was still deficient in some respects. The Commission obtained deficient information, which was necessary for the purposes of this investigation during on-the-spot investigations conducted for J&M Designers and Minqing Oumei at premises of Minqing Oumei from September 23, 2006 to verify information submitted by J&M Designers.

29.2.4 The Commission has accepted information supplied by J&M Designers for the purposes of this investigation. Normal value for exports of the investigated product by J&M Designers is determined on the basis of information supplied by it for above mentioned producer (paragraph 29.2.1 supra) and best information available under Section 32 of the Ordinance. Export price for J&M Designers in this investigation is determined on the basis of information provided by it in response to the questionnaire (paragraph 47 infra).

### **29.3 Questionnaire Response by Guangdong Nanhai Light Industrial Products, Import & Export Corporation**

29.3.1 The Commission sent questionnaire to Guangdong Nanhai Light Industrial Products, Import & Export Corporation (hereinafter referred to as "Nanhai") on June 09, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by Nanhai, it is a private limited company incorporated under Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan and other countries during POI. According to Nanhai, the investigated product, which it exported to Pakistan during POI was purchased from more than 35 Chinese producers of Tiles. However, it supplied information on domestic sales and cost to make and sell of only one producer, Foshan Center Ceramics Co. Ltd ("Center Ceramics").

29.3.2 The information submitted by Nanhai in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 19, 2006.

29.3.3 Nanhai was asked to provide deficient information/data no later than August 25, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this



investigation. Nanhai responded to the deficiencies vide its letter dated August 25, 2006. However, the information received was still deficient in some respects. The Commission obtained deficient information, which was necessary for the purposes of this investigation during on-the-spot investigations conducted at its premises and Center Ceramics from 20 to 21 September 2006 to verify information submitted by Nanhai.

29.3.4 The Commission has accepted information supplied by Nanhai for the purposes of this investigation. Normal value for exports of the investigated product by Nanhai is determined on the basis of information supplied by it for above mentioned producer (paragraph 29.3.1 supra) and best information available under Section 32 of the Ordinance. Export price for Nanhai in this investigation is determined on the basis of information provided by it in response to the questionnaire (paragraph 48 infra).

#### **29.4 Questionnaire Response by Guangzhou Metal and Minerals Import & Export Ltd.**

29.4.1 The Commission sent questionnaire to Guangzhou Metal and Minerals Import & Export Ltd. (hereinafter referred to as "Guangzhou") on June 9, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by Guangzhou, it is a private limited company incorporated under Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan and other countries during POI. According to Guangzhou, the investigated product, which it exported to Pakistan during POI was purchased from many Chinese producers of Tiles. However, it did not supply information on domestic sales and cost to make and sell of any producer from whom it bought investigated product.

29.4.2 The information submitted by Guangzhou in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 18, 2006.

29.4.3 Guangzhou was asked to provide deficient information/data no later than August 25, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Guangzhou responded to the deficiencies vide its letter dated August 25, 2006. However, the information received was still deficient in some respects. The Commission obtained deficient information relating to its export sales of the investigated product, which was necessary for the purposes of this investigation, during on-the-spot investigations conducted at its premises from 22 to 23 September 2006 to verify information submitted by Guangzhou.

29.4.4 The Commission has accepted information supplied by Guangzhou for the purposes of this investigation. As it did not supply any information on normal i.e. information on domestic sales and cost to make and sell of the producers from whom it purchased investigated product during POI. Thus, normal value for exports of the investigated product by Guangzhou is determined on best information available under Section 32 of the Ordinance. Export price for Guangzhou in this investigation is determined on the basis of information provided by it in response to the questionnaire (paragraph 49 infra).

#### **29.5 Questionnaire Response by New Zhongyuan Ceramics Import & Export Co. Ltd.**

29.5.1 The Commission sent questionnaire to New Zhongyuan Ceramics Import & Export Co. Ltd (hereinafter referred to as "New Zhongyuan") on June 9, 2006. Its response was received in the Commission on August 7, 2006. According to the information provided in response to the questionnaire, New Zhongyuan is a private limited company incorporated under the Chinese company laws. It has been involved in export of Tiles to Pakistan as well as to other countries during POI. New Zhongyuan neither produced nor sold Tiles in its domestic market during POI. According to the information, New Zhongyuan only exported Tiles to Pakistan and other countries, which it purchased from its following four related producers:

- i. Foshan New Zhongyuan Ceramics Co. Ltd;
- ii. Heyuan Wanfeng Ceramics Co. Ltd;
- iii. Qingyuan Southern Building Materials & Sanitary Ware Co. Ltd; and
- iv. Shunde Yuezhong Branch of Guangdong New Zhongyuan Ceramics Co. Ltd.

29.5.2 New Zhongyuan provided information on its export sales and domestic sales of its related producers during POI and cost to make and sell of the producers. The information submitted by New Zhongyuan in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 12, 2006.

29.5.3 New Zhongyuan was asked to provide the deficient information/data no later than August 19, 2006 so as to enable the Commission to consider and analyze the same for the purposes of this investigation. New Zhongyuan requested for extension in time for six days to respond the deficiencies. New Zhongyuan responded to the deficiencies vide its letter dated August 28. However, the information received was still deficient.

29.5.4 The Commission conducted on-the-spot investigations from 11 to 14 September 2006 on the premises of New Zhongyuan and its related four producers to verify information submitted by it in response to the questionnaire and to obtain further information (if any) necessary for

this investigation. During on-the-spot investigations, New Zhongyuan failed to provide documents (commercial invoices, freight invoices, LC, packing list etc) necessary to verify its information relating to its export sales of the investigated product during POI. However, the Commission determined preliminary individual dumping margin for New Zhongyuan in preliminary determination on the basis of that information (paragraph 33 *infra*) and provided another opportunity to it to provide relevant evidence(s) to substantiate information submitted in response to the questionnaire, but it failed to do so. Therefore, the Commission disregarded its information on export sales of the investigated product submitted in response to the questionnaire (paragraph 50 *infra*).

#### **29.6 Questionnaire Response by Foshan San De Bo Ceramics Co. Ltd**

29.6.1 The Commission sent questionnaire to Foshan San De Bo Ceramics Co. Ltd. (hereinafter referred to as "San De Bo") on June 09, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by San De Bo, it is a private limited company incorporated under the Chinese company laws. It neither produced nor it sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan as well as to other countries during POI. According to San De Bo, the investigated product, which it exported to Pakistan during POI was purchased from its following four related producers:

- i. Foshan New Zhongyuan Ceramics Co. Ltd;
- ii. Heyuan Wanfeng Ceramics Co. Ltd;
- iii. Qingyuan Southern Building Materials & Sanitary Ware Co. Ltd; and
- iv. Shunde Yuezhong Branch of Guangdong New Zhongyuan Ceramics Co. Ltd.

29.6.2 San De Bo provided information on its export sales and domestic sales of its related producers during POI and cost to make and sell of the producers. The information submitted by San De Bo in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 12, 2006.

29.6.3 San De Bo was asked to provide the deficient information/data no later than August 28, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. San De Bo responded to the deficiencies vide its letter dated August 28. However, the information received was still deficient.

29.6.4 The Commission did not conduct on-the-spot investigation at premises of San De Bo to verify information submitted by it in response to the questionnaire. However, to verify

information on domestic sales and cost to make and sell of its related producers, on-the-spot investigations were conducted at premises of its related producers from 12 to 14 September, 2006, as the same producers were also supplying investigated product to New Zhongyuan (paragraph 29.5.1 supra). The Commission asked San De Bo to provide relevant documents (commercial invoices, freight invoices, LC, packing list etc) to satisfy itself to the accuracy of the information provided for export sales of the investigated product. San De Bo failed to provide documents necessary to verify its information relating to its export sales of the investigated product during POI. However, the Commission determined preliminary individual dumping margin for San De Bo in preliminary determination on the basis of information provided by it (paragraph 36 infra) and provided another opportunity to it to provide relevant evidence(s) to substantiate information submitted in response to the questionnaire, but it failed to do so. Therefore, the Commission disregarded its information on export sales of the investigated product submitted in response to the questionnaire (paragraphs 51.12 to 51.15 infra).

#### **29.7 Questionnaire Response by Foshan Lungo Ceramics Co. Ltd.**

29.7.1 The Commission sent questionnaire to Foshan Lungo Ceramics Co. Ltd.. (hereinafter referred to as "Lungo") on June 9, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by Lungo, it is a private limited company incorporated under the Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan as well as to other countries during POI. According to Lungo, the investigated product, which it exported to Pakistan during POI was purchased from its following four related producers:

- i. Foshan New Zhongyuan Ceramics Co. Ltd;
- ii. Heyuan Wanfeng Ceramics Co. Ltd;
- iii. Qingyuan Southern Building Materials & Sanitary Ware Co. Ltd; and
- iv. Shunde Yuezhong Branch of Guangdong New Zhongyuan Ceramics Co. Ltd.

29.7.2 Lungo provided information on its export sales and domestic sales of its related producers during POI and cost to make and sell of the producers. The information submitted by Lungo in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 12, 2006.

29.7.3 Lungo was asked to provide the deficient information/data no later than August 28, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this

investigation. Lungo responded to the deficiencies vide its letter dated August 28, 2006. However, the information received was still deficient.

32.7.4 The Commission did not conduct on-the-spot investigation at premises of Lungo to verify information submitted by it in response to the questionnaire. However, to verify information on domestic sales and cost to make and sell of its related producers, on-the-spot investigations were conducted at premises of its related producers from 12 to 14 September 2006, as the same producers were also supplying investigated product to New Zhongyuan (paragraph 29.5.1 supra). The Commission asked Lungo to provide relevant documents (commercial invoices, freight invoices, LC, packing list etc) to satisfy itself to the accuracy of the information provided for export sales of the investigated product Lungo failed to provide documents necessary to verify its information relating to its export sales of the investigated product during POI. However, the Commission determined preliminary individual dumping margin for Lungo in preliminary determination on the basis of information provided by it (paragraph 36 infra) and provided another opportunity to it to provide relevant evidence(s) to substantiate information submitted in response to the questionnaire, but it failed to do so. Therefore, the Commission disregarded its information on export sales of the investigated product submitted in response to the questionnaire (paragraphs 52.11 to 52.14 infra).

## **29.8 Questionnaire Response by Foshan Everlasting Enterprise Co. Ltd.**

29.8.1 The Commission sent questionnaire to Foshan Everlasting Enterprise Co. Ltd. (hereinafter referred to as "Everlasting") on June 9, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by Everlasting, it is a private limited company incorporated under Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan and other countries during POI. According to Everlasting, the investigated product, which it exported to Pakistan during POI was purchased from seven Chinese producers of Tiles. However, it supplied information on domestic sales and cost to make and sell of only one producer, Foshan Jianxing Ceramic Company Ltd. ("Jianxing").

29.8.2 The information submitted by Everlasting in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 18, 2006.

29.8.3 Everlasting was asked to provide deficient information/data no later than August 25, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Everlasting responded to the deficiencies vide its letter dated August 28, 2006.

However, the information received was still deficient in some respects. On-the-Spot investigation was not conducted at the premises of Everlasting, it was requested to supply deficient information, including information on domestic sales and cost to make of sell of the producers from whom it purchased investigated product and necessary documents for the purposes of verification of the information. It did not supply requisite information and evidences.

29.8.4 The Commission determined preliminary individual dumping margin for Everlasting in preliminary determination on the basis of information provided by it (paragraph 33 infra) and provided another opportunity to it to provide relevant information and evidence(s) to substantiate information submitted in response to the questionnaire. Everlasting supplied some documents in relating to its export sales of the investigated product. Examination of those documents revealed that Everlasting had not supplied information as per the specified format of the questionnaire, as it reported different types (glazed tiles and design/borders) of the investigated product under one transaction. Therefore, the Commission could not verify information from the documents supplied by Everlasting. It was not possible to separate different types of the investigated product reported under a single transaction. Thus, the Commission was unable to determine export price for different types/models on the basis of the information provided by it on its export sales of the investigated product. Therefore, the Commission disregarded its information on export sales of the investigated product submitted in response to the questionnaire (paragraphs 53.10 to 53.11 infra).

## **29.9 Questionnaire Response by China National Machinery & Equipment, Import & Export Corporation**

29.9.1 The Commission sent questionnaire to China National Machinery & Equipment, Import & Export Corporation (hereinafter referred to as "China National Machinery") on June 9, 2006. Its response was received at the Commission on August 7, 2006. According to the information provided by China National Machinery, it is a private limited company incorporated under Chinese company laws. It neither produced nor sold Tiles in its domestic market during POI. It has been involved in export of Tiles to Pakistan and other countries during POI. According to China National Machinery, the investigated product, which it exported to Pakistan during POI was purchased from one producer namely Fujian Huida Co. Ltd. In response to the questionnaire, it supplied partial information on domestic sales of this producer.

29.9.2 The information submitted by China National Machinery in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified.

Accordingly, those data deficiencies were communicated to it vide Commission's letter dated August 15, 2006.

29.9.3 China National Machinery was asked to provide deficient information/data no later than August 21, 2006, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. China National Machinery responded to the deficiencies vide its letter dated August 21, 2006. However, the information received was still deficient in some respects. On-the-Spot investigation was not conducted at the premises of China National Machinery, it was requested to supply deficient information, including information on domestic sales and cost to make of sell of the producer from whom it purchased investigated product and necessary documents for the purposes of verification of the information. It did not supply requisite information and evidences.

29.9.4 The Commission determined preliminary individual dumping margin for China National Machinery in preliminary determination on the basis of information provided by it (paragraph 33 infra) and provided another opportunity to it to provide relevant information and evidences to substantiate information submitted in response to the questionnaire. China National Machinery supplied some documents in relating to its export sales of the investigated product. Examination of those documents revealed that the information supplied on export sales was not verifiable. Furthermore, China National Machinery did not supply some vital information (cost of production etc) for determination of normal value for the investigated product exported by it. Therefore, the Commission disregarded partial information submitted by China National Machinery in response to the questionnaire (paragraphs 54.2 to 54.5 infra)

### **30. Verification of the Information**

30.1 In terms of Sections 23, 32(4), 35 of the Ordinance and Rule 12 of the Rules, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information and verify/examine the accuracy of the information supplied by the interested parties.

30.2 In order to verify information/data provided by the Applicant and to obtain further information and evidences, on-the-spot investigation was conducted at the premises of the Applicant from July 13 to 15, 2005.

30.3 Since the number of exporters/producers involved in alleged dumping was large, the Commission decided to limit its investigation to the following five exporters on the basis of the largest percentage of volume of the exports from China:

- i. Foshan Junjing Industrial Company Ltd.;
- ii. Guangdong Nanhai Light Industrial Products Import & Export. Co.;
- iii. JNM Designer Ltd., Hongkong ;
- iv. Guangzhou Metals & Minerals Imp. & Exp. Ltd.; and
- v. New Zhongyuan Ceramics Import & Export Co. Ltd,

30.4 In order to verify information submitted by the above-mentioned Chinese exporters in response to the questionnaire(s) and to obtain further information necessary for the purposes of this investigation, on the spot investigations were conducted from September 10 to 23, 2006 at the premises of these five Chinese exporters and eight producers from whom these exporters purchased investigated product during POI for export to Pakistan.

### **31. Public File**

The Commission, in accordance with Rule 7 of the Rules, has established and maintained a public file at its offices. This file remained available to the interested parties for review and copying from Monday to Thursday between 1100 hours to 1300 hours throughout the investigation (except public holidays). This file contains non-confidential versions of the application, response to the questionnaires, submissions, notices, correspondence, and other documents for disclosure to the interested parties.

### **32. Confidentiality**

In terms of Section 31 of the Ordinance, any information, which is marked confidential by the interested parties in their submissions and considered confidential by the Commission, shall, during and after the investigation, be kept confidential. Furthermore, any information, which is by nature confidential in terms of Section 31 of the Ordinance, shall also be kept confidential. However, in accordance with Section 31(5) of the Ordinance, interested parties submitting confidential information were required to submit non-confidential summary(ies) of the confidential information, which shall permit a reasonable understanding of the substance of information submitted in confidence. Non-confidential summaries submitted by different interested parties have been placed in the public file and were available to all interested parties (paragraph 31 supra).

### **33. Preliminary Determination**



33.1 The Commission made preliminary determination in this investigation on November 28, 2006 on the basis of information available with the Commission at that time. In accordance with Section 37 of the Ordinance, the Commission issued a notice of preliminary determination, which was published in Official Gazette<sup>8</sup> of Pakistan and in two widely circulated national newspapers<sup>9</sup> (one English and one Urdu Language) on November 30, 2006 notifying the preliminary findings and conclusions and imposition of provisional anti-dumping duty ranging from zero percent (0%) to 21.02 percent *ad valorem* of C&F price for a period of four months effective from November 30, 2006.

33.2. The Commission decided to limit its investigation to the following five exporters on the basis of the largest percentage of volume of the exports from China due to large number of exporters/producers involved in alleged dumping of the investigated product (paragraph 30.3 supra):

- i. Foshan Junjing Industrial Company Ltd.,;
- ii. Guangdong Nanhai Light Industrial Products Import & Export. Co.;
- iii. JNM Designer Ltd., Hongkong ;
- iv. Guangzhou Metals & Minerals Imp. & Exp. Ltd.; and
- v. New Zhongyuan Ceramics Import & Export Co. Ltd,

33.3 However, following four exporters, who were not selected for the detailed investigation, requested the Commission not to limit the investigation and requested for individual dumping margins.

- i. Foshan San De Bo Ceramics Co. Ltd.; Foshan ("San De Bo");
- ii. Foshan Lungo Ceramics Co. Ltd. Foshan ("Lungo");
- iii. Foshan Everlasting Enterprise Co., Ltd, Foshan ("Everlasting"); and
- iv. China National Machinery & Equipment Import & Export corporation, Fujian Company Ltd., Fuzhou ("China National Machinery").

33.4 The Commission decided to determine individual dumping margin for all the nine exporters who responded to the Commission's questionnaire (paragraph 29 supra). The Commission accepted information supplied by the exporters for the purposes of preliminary determination. However, those exporters were requested to supply supporting evidence and deficient information after preliminary determination. On the basis of information available

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<sup>8</sup> The Official Gazette of Pakistan dated November 30, 2006

<sup>9</sup> The Daily 'Business Recorder' and 'Assas' of November 30, 2006 issue

with the Commission at the time of preliminary determination, the Commission determined following preliminary dumping margins for Chinese exporters of the investigated product:

**Table-III  
Preliminary Dumping Margins**

S. No.	Exporter Producer Name	Preliminary dumping margin
i.	China National Machinery	-29.35%
ii.	New Zhongyuan	5.82%
iii.	Lungo	6.68%
iv.	San De Bo	11.29%
v.	Junging	23.16%
vi.	Nanghai	29.84%
vii.	J&M	40.69%
viii.	Everlasting	29.19%
ix.	All others	29.19%

33.5 The Commission sent notice of preliminary determination to the Embassy of China in Islamabad, the exporters, the importers the Applicant and other domestic producers in accordance with the requirements of Section 37(4) of the Ordinance on November 30, 2006.

33.6 Findings of the Commission in the preliminary determination were as follows:

- i. The application was filed by the domestic industry;
- ii. The investigated product and the domestic like product were like products;
- iii. The investigated product was exported to Pakistan by the exporters below its normal value during POI;
- iv. The volume of duped imports from China and dumping margins established were above de-minimis level;
- v. The domestic industry suffered material injury during the POI;
- vi. A significant part of material injury to domestic industry was caused by dumped imports;
- vii. Imposition of provisional antidumping duties on investigated product was needed to prevent further injury to the domestic industry during course of investigation.

34. **Disclosure after Preliminary Determination**

34.1 In terms of Rule 11 of the Rules, the Commission, upon request made by foreign producers/exporters within fifteen days of the publication of notice of preliminary determination, shall hold disclosure meeting(s) with the producer(s) or the exporter(s) to

explain dumping calculation methodology applied for that producer/exporter. The Commission shall also provide an opportunity to producer or exporter or their legal representatives to examine and receive copies of the dumping calculation done by the Commission for their exports.

34.2 Following exporters requested the Commission for disclosure meetings to discuss dumping calculations methodology and to receive copies of preliminary dumping calculations:

- i. Foshan Junjing Industrial Company Ltd.;
- ii. Guangdong Nanhai Light Industrial Products Import & Export. Co.;
- iii. JNM Designer Ltd., Hongkong ;
- iv. Guangzhou Metals & Minerals Imp. & Exp. Ltd.; and
- v. New Zhongyuan Ceramics Import & Export Co. Ltd,
- vi. Foshan Everlasting Enterprise Co., Ltd, Foshan; and
- vii. China National Machinery & Equipment Import & Export corporation, Fujian Company Ltd., Fuzhou

34.3 Disclosure meetings were held with representatives of the above-mentioned exporters were held on January 8, 2007 and January 9, 2007 at the offices of the Commission, in which methodology applied for preliminary dumping calculations was explained and copies of the detailed preliminary calculations for normal value, export price and dumping margin were provided to the representatives of the exporters/foreign producers. The exporters/foreign producers offered their comments on methodology used and dumping calculations. Those comments were taken into account in this final determination.

### **35. Hearing in Original Investigation**

Upon request of the Applicant, a hearing was held on February 3, 2007 under Rule 14 of the Rules. List of participants is placed at Annexure-II. In the hearing, interested parties commented on Commission's preliminary determination. The information submitted by the participants during the hearing, whether orally (oral statements were subsequently confirmed in writing as per Rule 14 of the Rules) or in writing, was made available to other interested parties by placing it in the public file maintained by the Commission (paragraph 31 supra). The Commission considered information submitted by interested parties in the hearing in its final determination.

### **36. Disclosure of Essential Facts**

36.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Antidumping, the Commission disclosed essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the "SEF") on February 28, 2007 to all interested parties including the known exporters/foreign producers, the Applicant, other domestic producers, the known Pakistani importers, and to the embassy of China in Pakistan.

36.2 Under Rule 14(9) of the Rules, the interested parties were required to submit their comments (if any) on the facts disclosed in SEF, in writing, not later than fifteen days of such disclosure. The Commission received comments from following interested parties:

- i. The Applicant;
- ii. Junjung;
- iii. JNM Designers;
- iv. Nanhai;
- v. Ghangzhou
- vi. Everlasting;
- vii. New Zhongyuang;
- viii. San De Bo; and
- ix. Lungo

36.3 The Commission considered comments/information received on essential facts in its final determination.

### **37. Final Determination of Original Investigation**

37.1 The Commission made final determination in original investigation on March 24, 2007 on the basis of verifiable information available with the Commission at that time. In accordance with Section 39(3) of the Ordinance, the Commission issued a notice of final determination, which was published in Official Gazette<sup>10</sup> of Pakistan and in two widely circulated national newspapers<sup>11</sup> (one English and one Urdu Language) on March 30, 2007 under Section 39(5) of the Ordinance notifying final findings and conclusions and imposition of definitive anti-dumping duty ranging from 14.85 percent to 23.65 percent *ad valorem* of C&F price for a period of five years effective from November 30, 2006. The Commission also made available a detailed report on final determination to all interested parties in accordance with Section 39(5) of the Ordinance by placing it in public file (paragraph 31 supra) and by posting on Commission's website: [www.ntc.gov.pk](http://www.ntc.gov.pk).

<sup>10</sup> The Official Gazette of Pakistan dated March 30, 2007

<sup>11</sup> The Daily 'Business Recorder' and 'Khabrain' of March 30, 2007 issue

37.2. On the basis of information available with the Commission it determined following dumping margins for Chinese exporters of the investigated product:

**Table-IV  
Dumping Margins**

S. No.	Exporter Producer Name	Dumping margin
i.	Junging	21.50%
ii.	Nanghai	30.45%
iii.	J&M	33.92%
iv.	Guangzhou	54.73%
v.	All Others	54.73%

37.3 The Commission sent notice of final determination to the Embassy of China in Islamabad, the exporters, the importers the Applicant and other domestic producers in accordance with the requirements of Section 39(6) of the Ordinance on March 30, 2007.

37.4 Findings of the Commission in final determination were as follows:

- i. the application was filed on behalf of domestic industry as the Applicant represents major proportion of the production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- iii. during the POI, the investigated product was exported to Pakistan by the exporters/producers, from China, at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for investigated product were above the negligible and *de minimis* levels respectively;
- v. the domestic industry suffered material injury during the POI on account of, volume of dumped imports, price undercutting, price depression, price suppression, loss in market share, decline in profit, negative effects on production and capacity utilization, and increase in inventories (in terms of Section 15 and 17 of the Ordinance); and
- vi. there was a causal relationship between dumped imports and material injury suffered by the domestic industry.

38. **Disclosure after Final Determination**

38.1 In terms of Rule 16 of the Rules, the Commission, upon request made by foreign producers/exporters within fifteen days of the publication of notice of final determination, shall hold disclosure meeting(s) with the producer(s) or the exporter(s) to explain dumping calculation methodology applied for that producer/exporter. The Commission shall also provide an opportunity to the producer or exporter or their legal representatives to examine and receive copies of the dumping calculation done by the Commission for their exports.

38.2 Following exporters requested the Commission for disclosure meetings to discuss dumping calculations methodology and to receive copies of dumping calculations:

- i. Foshan Junjing Industrial Company Ltd.;
- ii. Guangdong Nanhai Light Industrial Products Import & Export. Co.;
- iii. JNM Designer Ltd., Hongkong ;
- iv. Guangzhou Metals & Minerals Imp. & Exp. Ltd.

38.3 Disclosure meetings with representatives of the above-mentioned exporters were held on April 25, 2007 at the offices of the Commission, in which methodology applied for dumping calculations was explained and copies of the detailed calculations for normal value, export price and dumping margin were provided to the representatives of the exporters/foreign producers.

38. **Hearing in Current Proceedings**

The Commission held a hearing on December 15, 2009 in these proceedings initiated in compliance with decision of the Supreme Court of Pakistan (paragraph 10 supra). List of participants is placed at Annexure-III. In the hearing, interested parties commented on Commission's determination in this investigation. The information submitted by the participants during the hearing, whether orally (oral statements were subsequently confirmed in writing) or in writing, was made available to other interested parties by placing it in the public file maintained by the Commission (paragraph 31 supra). The Commission has considered views/comments and information submitted by interested parties in the hearing or otherwise in this determination (paragraph 39 infra).

39. **Views/Comments of the Petitioners**

The comments received and germane to these proceedings under the Ordinance are reproduced in Column A below and the Commission's response thereto are set out in Column B in the following table:

**Column A (Views/Comments of interested Parties)**

"That all proceedings conducted by the Commission are illegal, without lawful authority, as the same has been done without order of initiation of proceedings under Section 23 of the Ordinance. Supreme Court of Pakistan has set aside all relevant orders passed on the said complaint with the direction that " The cases are remanded to the Commission to proceed afresh on the complaint against the petitioner keeping in view the provisions of Section 11 of the National Tariff Commission Act, 1990. Hence, in light of the aforesaid direction of the august Supreme Court, it is the duty of the Commission to proceed afresh from the complaint not from mid of the earlier proceedings that are illegal and without lawful authority."

"That the Supreme Court has allowed the parties "to raise questions relating to the present proceedings on law and factual controversies." The Supreme Court has categorically directed the Commission to proceed afresh from the complaint in accordance with provisions of Section 11 of NTC Act 1990 alongwith all other enabling provisions, which includes initiation and conduct of investigation and submission of information."

"That the Commission was required to pass an order under Section 23 of the Ordinance on "Locus-Standi" of the complaint filed under Section 20 read with Section 24 of the Ordinance. The Commission has not done this after decision of the Supreme Court of Pakistan."

**Column B (Commission's Response)**

In light of the orders of the Hon'ble Supreme Court of Pakistan, the Commission proceeded afresh on the complaint against petitioners and issued a notice in newspapers on November 13, 2009. It is pertinent to mention here that Section 23 of the Ordinance is related to the examination of the application and initiation of the investigation upon the satisfaction of the Commission that there is sufficient evidence to justify initiation.

Section 11 of the NTC Act, 1990 mandates the Commission to advise the Government on tariff measures or other forms of assistance, whereas, anti-dumping investigations are conducted under Anti-Dumping Duties Ordinance, 2000.

The Commission initiated fresh proceedings vide its notice dated November 13, 2009 and all interested parties were given ample opportunities to make their views/ comments on law and factual controversies during the hearing held at the Commission's office on December 15, 2009.

It is however clarified that the Hon'ble Supreme Court of Pakistan set aside Commission's preliminary and final determinations. Supreme Court of Pakistan did not set aside the order of initiation.

The Commission has determined the accuracy and adequacy of the evidence provided in the application in accordance with Section 23 of the Ordinance. It also determined standing of domestic industry filing the application in terms of Section 24 of the Ordinance. While doing so the Commission has not violated orders of the Supreme Court of Pakistan.

“That the application filed by Master Tiles and Ceramic Industries Ltd. (MTCL) for imposition of antidumping duty neither justifies nor can it be considered for the purpose of imposition of antidumping duties. As injury is determined on the information of the years of 2003, 2004 and 2005 and same cannot be considered for the purposes of imposition of duty in the year 2010. This is absolutely illegal as well as without lawful authority and the Commission has no jurisdiction to impose such duty, as required under Section 36 of the Ordinance for assessment of dumping and injury.”

Since the subject proceedings are taking place to effect compliance with the short order of the Supreme Court which states that *cases are remanded to the National Tariff Commission to proceed afresh on the complaint against the petitioners*, which means that the Hon’ble Supreme Court has recognized the continued presence and validity of the complaint (i.e. the original application of MTCL). The Commission determined POI in accordance with Section 36 of the Ordinance.

“That MTCL submitted application to the Commission on November 29, 2005. However, the investigation has been initiated on anti-dated application allegedly submitted on February 16, 2006. Figures of exports are different in confidential and non-confidential versions of the present application due to the fact that application dated February 16, 2006 was never prepared on February 16, 2006 rather it was prepared on March 15, 2006. Hence, the present application is based on dubious and wrong facts”.

The Commission received and acknowledged an anti-dumping application under Section 20 of the Ordinance on behalf of the domestic industry through MTCL on February 23, 2006 against the alleged dumping of Tiles from China. The Commission did not receive the said application on November 29, 2005 which can be verified from the record of the Commission.

### **C. DETERMINATION OF DUMPING**

#### **40. Dumping**

In terms of Section 4 of the Ordinance dumping is defined as follows:

*“an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value”.*

#### **41. Normal Value**

41.1 In terms of Section 5 of the Ordinance “normal value” is defined as follows:

*“a comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an exporting country”.*

41.2 Further, Section 6 of the Ordinance states:

*“(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any*



*particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:*

*“a) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or*

*“b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.*

*“(2) Sales of a like product destined for consumption in domestic market of an exporting country or sales to an appropriate third country may be considered to be a sufficient quantity for the determination of normal value if such sales constitute five per cent or more of the sales of an investigated product to Pakistan.”.*

41.3 Ordinary course of trade is defined in Section 7 of the Ordinance as follows:

*“(1) The Commission may treat sales of a like product in domestic market of an exporting country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the Commission determines that such sales were made –*

*“(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;*

*“(b) in substantial quantities; and*

*“(c) at prices which do not provide for the recovery of all costs within a reasonable period of time.*

*“(2) For the purposes of sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that –*

*“(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or*

*“(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.*

*“(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time.”*

**42. Export Price**

The “export price” is defined in Section 10 of the Ordinance as “a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan”.

**43. Dumping Determination**

43.1 As stated earlier (paragraph 25 supra) the Applicants identified 219 exporters/foreign producers from China involved in alleged dumping of the investigated product. The Commission sent questionnaires to 35 exporters/foreign producers whose complete addresses were available with the Commission (paragraph 28 supra). A copy of the questionnaire was also provided to the Embassy of China in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in China to submit information to the Commission.

43.2 The Commission received response of the questionnaire from following nine exporters (paragraph 28.2 supra). As none of them was producer of the investigated product, these exporters have also supplied information of nine Chinese producers on their domestic sales etc. of the like product to determine normal value for the investigated product, from whom these exporters partially bought investigated product during POI. Names of the producers are placed at Annexure-IV:

- i. Foshan Junjing Industrial Co. Ltd., Foshan, China (“Junging”);
- ii. J & M Designers Ltd, Hongkong (“J&M Designers”);
- iii. Guangdong Nanhai Light Industrial Products Imp. & Exp. Co., Ltd., Foshan, China (“Nanhai”);
- iv. Guangzhou Metals & Minerals Imp. & Exp. Ltd. Guangzhou, China (“Guangzhou”);
- v. New Zhongyuan Ceramics Import & Export Co. Ltd of Guangdong, Foshan, China (“New Zhongyuan”);
- vi. Foshan San De Bo Ceramics Co. Ltd., Foshan, China (“San De Bo”);
- vii. Foshan Lungo Ceramics Co. Ltd, Foshan, China. (“Lungo”);
- viii. Foshan Everlasting Enterprise Co., Ltd., Foshan, China (“Everlasting”); and

- ix. China National Machinery & Equipment Import & Export corporation, Fujian Company Ltd., Fuzhou, China (“China National Machinery”).

43.3 Information supplied by the above-mentioned exporters in response to the questionnaires was either deficient/partial/incomplete or was not verifiable. The Commission provided ample opportunities to the exporters to provide necessary information and documents (paragraph 29 supra).

43.4 None of the above-mentioned exporters was itself producer of Tiles and these exporters did not sold Tiles in their domestic market during the POI. Similarly none of the producers (referred in Annexure-V, whose information was submitted by the exporters for the purposes of determination of normal value) was exporter of Tiles to Pakistan during the POI. The exporters bought investigated product from many Chinese producers and exported it to Pakistan during the POI. However, according to the exporters’ responses received at the Commission, only nine producers cooperated with them and provided information/data in response to the Commission’s questionnaire.

43.5 Since, the number of exporters/producers involved in dumping of the investigated product was large (paragraphs 24 and 28 supra), the Commission decided to limit its investigation to the following five exporter on the basis of the largest percentage of volume of the exports from China in accordance with Section 14(2) of the Ordinance:

- i. Foshan Junjing Industrial Co., Ltd.;
- ii. J&M Designer Ltd.;
- iii. Guangdong Nanhai Light Industrial Products, Import & Export Corporation;
- iv. Guangzhou Metal and Minerals Import & Export Ltd. China; and
- v. New Zhongyuan Ceramics Import & Export Co. Ltd.

43.6 However, the following four exporters, who were not selected for the detailed investigation, requested the Commission not to limit the investigation and requested for individual dumping margins.

- i. Foshan San De Bo Ceramics Co. Ltd.;
- ii. Foshan Lungo Ceramics Co. Ltd.
- iii. Foshan Everlasting Enterprise Co. Ltd.; and
- iv. China National Machinery & Equipment, Import & Export Corporation.

43.7 The Commission acceded to request of the exporters and decided to determine individual dumping margins for all exporters who cooperated and provided complete verifiable requisite information. However, the exporters did not provide deficient information (paragraph 29 supra). At the time of preliminary determination, the Commission decided to determine preliminary individual dumping margin for all the nine exporters on the basis of available information. Therefore, the Commission determined individual dumping margin for all the nine exporters who responded to the questionnaire on the basis of the information available with the Commission at that time (paragraph 33 supra). However, the exporters were again asked to provide deficient information and evidences necessary for determination of their individual dumping margins after preliminary determination. During investigation, following exporters failed to provide missing/deficient information and/or evidences in support of the information submitted to the Commission (details are given at paragraphs from 50 to 54 infra). Therefore, the Commission was constrained not to determine individual dumping margin for these exporters:

- i. New Zhongyuan Ceramics Import & Export Co. Ltd;
- ii, Foshan San De Bo Ceramics Co. Ltd;
- iii. Foshan Lungo Ceramics Co. Ltd.
- iv. Foshan Everlasting Enterprise Co. Ltd.; and
- v. China National Machinery & Equipment, Import & Export Corporation.

43.8 In this investigation the Commission has determined individual dumping margin for the following four exporters who provided necessary verifiable information. Dumping margins for these exporters have been determined on the basis of information provided by them and the best information available under Section 32 of the Ordinance details are given at paragraphs 46 to 49 and 56 infra):

- i. Foshan Junjing Industrial Co., Ltd.;
- ii. J&M Designer Ltd.;
- iii. Guangdong Nanhai Light Industrial Products, Import & Export Corporation; and
- iv. Guangzhou Metal and Minerals Import & Export Ltd. China;

43.9 The Commission has established a residual dumping margin/duty rate for all other Chinese exporters/producers of the investigated product who failed to provide necessary verifiable information or did not provide any information to the Commission in this investigation (paragraphs 44 to 57 infra).

43.10 For the purposes of determination of dumping in this investigation, the Commission has divided investigated product into three broad categories, ceramic (“glazed”), porcelain (“polished”) and design/borders tiles, on the basis of inputs, production process and price. Dumping in this investigation is determined by comparing weighted average normal value with weighted average export price of the relevant type, and size at ex-factory level.

**44. Determination of Normal Value**

The Commission received information on domestic sales and cost of production etc. of nine Chinese producers of Tiles (submitted by the exporters) (paragraphs 28.2 to 29 supra). Normal value in this investigation has been determined on the basis of that information (paragraphs 46 to 55 infra).

**45. Determination of Export Price**

The Commission received information on export sales of the investigated product from nine exporters/foreign producers (paragraph 28.2 and 29 supra) in response to the questionnaires sent to various exporters/foreign producers (paragraph 31.1 supra). Export price of investigated product in this determination for exporters who provided necessary verifiable information has been determined on the basis of the information provided by them (paragraphs 50 to 53 infra). The Commission was constrained to determine export price for the exporters who did not provide necessary verifiable information (paragraphs 54 to 57 infra) or the exporters who did not provide any information (paragraphs 59 infra).

**46. Determination of Dumping for Foshan Junjing Industrial Company Ltd.**

**Normal Value**

46.1 According to the information supplied by Junjing it purchased investigated product from more than 75 producers, which was subsequently exported to Pakistan during POI. It supplied information on domestic sales of only two producers namely Foshan Zungui Ceramic Co. Ltd. (“Zungui”) and Foshan Guangdong Shimanli Ceramic Co. Ltd. (“Shimanli”). Normal value for the investigated product which Junjing purchased from Zungui and Shimanli has been determined on the basis of the domestic sales prices of the like product (relevant type, grade, size etc.) sold by these two producers in their domestic market during the POI.

46.2 Normal value for types and sizes of the investigated product, which Junjing purchased from other producers, whose information on domestic sales of the like product was not supplied by it, is determined on the basis of the best information available in terms of Section 32

of the Ordinance. In this regard, normal value is determined on the basis of comparable types and sizes of domestic sales of other producers available with the Commission. In this situation, the weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

46.3 According to the information provided by Zungui, it produced and sold only ceramic (glazed) tiles in its domestic market during the POI. All its domestic sales were to unrelated customers.

46.4 Zungui sold \*\*\* square meter ("SQM") of ceramic (glazed) tiles of different sizes including borders/design tiles in its domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of the export sales of the investigated product exported by Junging, which it had purchased from Zungui.

46.5 Zungui sold like product on ex-factory/ex-works basis with no price discrimination based on quantity or level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or cash in advance. All expenses from ex-factory level, including transportation etc., were borne by the buyer.

46.6 Junging purchased \*\*\* SQM of glazed tiles of size 100x100mm, 200x300mm, 250x330mm, 300x450mm and 300x600mm from Zungui. Normal value for these sizes of the investigated product has been determined on the basis of domestic sales of same/similar sizes made by Zungui in its domestic market during POI. Section 7 of the Ordinance requires the Commission to determine whether Zungui's sales were made in the ordinary course of trade in its domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

46.7 As per the information provided by Shimanli, it produced and sold only porcelain (polished) tiles in its domestic market during POI. Shimanli sold \*\*\* SQM of Porcelain (polished) tiles in its domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of the export sales of the investigated product exported by Junging, which it had purchased from Shimanli. All its domestic sales were to unrelated customers.

46.8 Shimanli sold like product on ex-factory/ex-works basis with no price discrimination based on quantity or level of trade (wholesaler, retailer, end user etc). Payment terms were cash

at sight or in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers.

46.9 Junging purchased \*\*\* SQM of porcelain tiles of size 500x500mm, 600x600mm and 800x800mm from Shimanli. Normal value for these sizes of the investigated product has been determined on the basis of the domestic sales of the same sizes made by Shimanli in its domestic market during POI. Section 7 of the Ordinance requires the Commission to determine whether Shimanli's sales were made in the ordinary course of trade in the domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

46.10 As stated earlier (paragraphs 29.1.1 and 46.1 supra) Junging also exported investigated product, which it had purchased from other producers whose information on sales of the like product in their domestic market is not available with the Commission. According to the information provided by Junging, it purchased \*\*\* SQM of glazed, polished and design/borders of different sizes of the investigated product from other producers (whose information is not available with the Commission). The Commission has used the best information available in accordance of Section 32 of the Ordinance to determine normal value for the investigated product whose corresponding domestic sales were not available.

46.11 In determination of normal value for the investigated product whose corresponding domestic sales were not available, normal value is determined on the basis of domestic sales of other producers whose information is available with the Commission for comparable type and size of the like product. In this situation, the weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

### **Export Price**

46.12 Export price for Junging is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan during the POI (provided in Attachment C-3 of the questionnaire response).

46.13 According to the information, during the POI, Junjing purchased investigated product from different un-related Chinese producers of the investigated product and exported to Pakistan at a price considered appropriate by it. It exported ceramic (glazed), porcelain (polished) and border/design tiles in different sizes (ranging from 20x30mm to 800x800mm) of the investigated product to Pakistan during POI. Its total exports sales of the investigated product to Pakistan during the POI were \*\*\* SQM. All export sales to Pakistan, during the POI,

were to un-related customers. The Commission has determined export price separately for different types and sizes.

46.14 To arrive at the ex-factory level, Junjing reported adjustments on account of handling cost, inland freight, ocean freight and bank charges (commission). During on-the-spot investigation conducted at the premises of Junging (paragraph 30.4 supra), it was found that Junging is a separate entity then the producer of the investigated product, it had incurred following further expenses on export sales of the investigated product during POI. These expenses have been also adjusted in export price to arrive at ex-factory level:

- i. administrative expenses;
- ii. financial expenses; and
- iii. operating (office) expenses

Furthermore, Junging's profit earned on export sales of the investigated product has also adjusted to arrive at ex-factory level.

46.15 During on-the-spot investigation, it was found that the value of the investigated product reported in response to the Questionnaire has been adjusted for 13 percent Value Added Tax ("VAT"), as 13 percent of VAT was refunded by the Government of China on export sales of Tiles. The investigating team verified refund of VAT from the relevant documents and found that VAT refund rate was 13 percent on exports while VAT at the rate of 17 percent of sales price was levied on sales of Tiles in Chinese domestic market. The export price has, therefore, been adjusted at the rate of 4 percent of net value on account of VAT to reach at ex-factory level.

46.16 Thus the export price at ex-factory level is worked out by deducting values reported for the above-mentioned adjustments from the gross value of the sales transactions.

#### **47. Determination of Dumping for J&M Designers**

##### **Normal Value**

47.1 According to the information supplied by J&M Designers it purchased investigated product from four producers namely Fuzhou pingchi Oumei Factory ("Oumei"), Foshan Sky planet ("Sky Planet"), Sanming foreign ("Sanming") and Fujian Furi, which was subsequently exported to Pakistan during POI. However, it supplied information on domestic sales and cost of sales etc. of only one producer i.e. Oumei. Normal value for glazed type of the like product of size 200x300, which J&M Designers purchased from Oumei has been determined on the basis of the domestic sales price. Normal value for those types and sizes which either Oumei had no



domestic sales or domestic sales were not in the ordinary course of trade in terms of Section 7 of the Ordinance during the POI has been determined on the basis of its cost to make and sell.

47.2 Normal value for the investigated product which J&M Designers purchased from other producers, whose information on domestic sales of the like product was not supplied by it has been determined on the basis of the best information available in terms of Section 32 of the Ordinance. In this regard, normal value is determined on the basis information on domestic sales of other producers of comparable type and size available with the Commission. In this situation, weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

47.3 As per the information provided by Oumei, it produced and sold only ceramic (glazed) tiles in its domestic market during POI. Oumei sold \*\*\* SQM of ceramic (glazed) tiles in its domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of the export sales of the investigated product exported by J&M Designers, which it had purchased from Oumei. All its domestic sales were to unrelated customers.

47.4 Oumei sold like product on ex-factory/ex-works basis with no price discrimination based on quantity or level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or cash in advance. All expenses from ex-factory level, including transportation etc., were borne by the customers.

47.5 J&M Designers purchased \*\*\* SQM of ceramic glazed tiles of 112x225mm, 200x300mm and 250x330mm from Oumei. However, Oumei sold only 200x300mm in its domestic market during the POI. Normal value for this size of the investigated product has been determined on the basis of the domestic sales of the same size made by Oumei in its domestic market. Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Oumei were made in the ordinary course of trade in the domestic market. In determination of normal value for the above-mentioned size, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance. Normal value for those sizes, which either Oumei had no domestic sales or domestic sales were not in ordinary course of trade in terms of Section 7 of the Ordinance has been determined on the basis of its cost to make and sell.

47.6 As stated earlier (paragraphs 29.2.1 and 47.1 supra) J&M Designers also exported investigated product, which it had purchased from other producers and some specific sizes from Oumei whose information on sales of the like product in their domestic market is not

available with the Commission. According to the information provided by J&M Designers, it purchased \*\*\* SQM of glazed and border/design tiles of different sizes of the investigated product (including sizes purchased from Oumei for which domestic sales are not available) from other producers (whose information is not available with the Commission). The Commission has used the best information available in terms of Section 32 of the Ordinance to determine normal value for the investigated product whose corresponding domestic sales were not available.

47.7 In determination of normal value for the investigated product whose corresponding domestic sales were not available, normal value is determined on the basis of information on domestic sales of other producers available with the Commission for comparable type and size. In this situation, weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

#### **Export Price**

47.8 Export price for J&M Designers is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan during the POI (provided in Attachment C-3 of the questionnaire response).

47.9 According to the information, during POI, J&M Designers purchased investigated product from four different un-related Chinese producers of Tiles through exporting companies based in China and exported (shipped) directly from China to Pakistan at a price considered appropriate by it. It exported design tiles and ceramic (glazed) types in different sizes to Pakistan during POI. Its total exports of the investigated product to Pakistan during POI were \*\*\* SQM. All export sales to Pakistan, during POI, were to un-related customer. The Commission has determined export price separately for different types and sizes.

47.10 To arrive at the ex-factory level, J&M Designers reported adjustments on account of handling cost, inland freight, ocean freight, bank charges (commission), credit cost and Chinese exporting company's commission. During on-the-spot investigation (paragraph 30.4 supra), it was found that J&M Designers is a separate entity then the producer of the investigated product and it had incurred following further expenses on export sales of the investigated product during POI. These expenses have also been adjusted in export price to arrive at ex-factory level:

- i. administrative expenses; and
- ii. operating (office) expenses

Furthermore, J&M's Designers profit earned on export sales of the investigated product has also been adjusted to arrive at ex-factory level.

47.11 During on-the-spot investigation, it was found that the value of the investigated product reported in response to the Questionnaire has been adjusted for 13 percent of VAT, as 13 percent VAT was refunded by the Government of China on export sales of Tiles. The investigating team verified the refund of VAT from the relevant documents and found that VAT refund rate was 13 percent on exports while VAT at the rate of 17 percent of the sales price was levied on sales of Tiles in the Chinese domestic market. The export price has, therefore, been adjusted at the rate of 4 percent of net value on account of VAT to reach at ex-factory level.

47.12 After preliminary determination J&M Designers pointed out that the credit cost is covered in its profit margin as it did not borrow money from banks for exports of the investigated product but it charged a higher price to cover up sales made at credit, resulting a higher profit margin. Thus credit cost needs not to deduct from gross export price as its profit margin is being deducted to arrive at ex-works level. The Commission has accepted this argument and credit cost (supplied by J&M Designers) has not been deducted from gross export price. J&M Designers also claimed that incorrect figures for ocean freight and handling cost were reported in some transactions inadvertently in response to the questionnaire. However, documents submitted in support there of did not substantiate this claim. Thus, the Commission has not accepted these adjustments with respect of ocean freight and handling cost.

47.13 Thus the export price of J&M Designers at ex-factory level is worked out by deducting values reported for the above-mentioned adjustments from the gross value of the sales transactions.

**48. Determination of Dumping for Nanhai Light Industrial Products Import & Export Company ("Nanhai")**

**Normal Value**

48.1 As per information supplied by Nanhai it purchased investigated product from more than 35 producers, which was subsequently exported to Pakistan during POI. It supplied information on domestic sales of only one producer namely Foshan Center Ceramics Company Limited ("Center"). However, the Commission received information on domestic sales of another producer namely Zungui with response to the questionnaire of Junging. Normal value for the investigated product which Nanhai purchased from Center and Zungui has been

determined on the basis of the domestic sales prices of the like product (relevant type, grade, size etc.) sold by these two producers in their domestic market during the POI.

48.2 Normal value for the investigated product which Nanhai purchased from other producers, whose information on domestic sales of the like product was not supplied by Nanhai has been determined on the basis the of best information available in terms of Section 32 of the Ordinance. In this regard, normal value is determined on the basis of the information on domestic sales of other producers available with the Commission for comparable type and size. In this situation, weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

48.3 As per the information provided by Center, it produced and sold only porcelain (polished) tiles in its domestic market during POI. Center sold \*\*\* SQM of Porcelain (polished) tiles in its domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of the export sales of the investigated product exported by Nanhai, which it had purchased from Center. All its domestic sales were to unrelated customers.

48.4 Center sold like product on ex-factory/ex-works basis with no price discrimination based on quantity or level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers.

48.5 Nanhai purchased \*\*\* SQM of porcelain tiles of 600x600mm from Center. Normal value for this size of the investigated product has been determined on the basis of domestic sales of the same size made by Center in its domestic market during POI. Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Center were made in ordinary course of trade in the domestic market. In determination of normal value for the above-mentioned size, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

48.6 According to the information provided by Nanhai, it purchased \*\*\* SQM of the investigated product (glazed, 250x330 mm and 300x450mm) from Zungui. Normal value for these sizes and type of the investigated product has been determined on the basis of domestic sales of same/similar sizes made by Zungui in its domestic market during POI.

48.7 The Commission was required to determine whether Zungui's domestic sales were in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance. Analysis of the information revealed that its domestic sales were in sufficient quantities as those were more than 5 percent of the export sales of the investigated product exported by Nanhai, which it had purchased from Zungui.

48.8 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Zungui were made in the ordinary course of trade during POI. In determination of normal value for the above-mentioned type and sizes, the Commission disregarded sales, which were not made in ordinary course of trade in terms of Section 7 of the Ordinance.

48.9 As stated earlier (paragraphs 29.3.1 and 48.1 supra) Nanhai also exported investigated product, which it had purchased from other producers whose information on sales of the like product in their domestic market is not available with the Commission. According to the information provided by Nanhai, it purchased \*\*\* SQM of glazed, polished and border/design tiles of different sizes of the investigated product from other producers (whose information is not available with the Commission). The Commission has used the best information available in terms of Section 32 of the Ordinance to determine normal value for the investigated product whose corresponding domestic sales were submitted by Nanhai.

48.10 In determination of normal value for the investigated product whose corresponding domestic sales were not available, normal value is determined on the basis of domestic sales of other producers of comparable type and size available with the Commission. In this situation, weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

#### **Export Price**

48.11 Export price for Nanhai is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan during POI (provided in Attachment C-3 of the questionnaire response).

48.12 According to the information, Nanhai purchased investigated product from different un-related Chinese producers and exported to Pakistan at a price considered appropriate by it during POI. It exported design/border tiles, ceramic (glazed) and porcelain (polished) types in different sizes (ranging between 100x100mm to 600x600mm) of the investigated product to

Pakistan during POI. Its total exports of the investigated product to Pakistan during POI were \*\*\* SQM. All export sales to Pakistan, during POI, were to un-related customers. The Commission has determined export price separately for different types and sizes.

48.13 To arrive at the ex-factory level, Nanhai reported adjustments on account of handling cost, inland freight, ocean freight and bank charges (commission). During on-the-spot investigation conducted at its premises (paragraph 30.4 supra), it was found that it is a separate entity than the producer of the investigated product. It had incurred following further expenses on export sales of the investigated product during POI. These expenses have also been adjusted in export price to arrive at ex-factory level:

- i. administrative expenses; and
- ii. operating (office) expenses

Furthermore, Nanhai's profit earned on export sales of the investigated product has also been adjusted to arrive at ex-factory level.

48.14 During on-the-spot investigation at the premises of Nanhai, it was found that the value of the investigated product reported in response to the Questionnaire has been adjusted for 13 percent of VAT, as 13 percent VAT was refunded by the Government of China on export sales of Tiles. The investigating team verified refund of VAT from the relevant documents and found that VAT refund rate is 13 percent on exports while VAT at the rate of 17 percent of the sales price was levied on sales of Tiles in Chinese domestic market. The export price has, therefore, been adjusted at the rate of 4 percent of net value on account of VAT to reach at ex-factory level.

48.15 Thus export price at ex-factory level is worked out by deducting values reported for the above-mentioned adjustments from the gross value of the sales transactions.

**49. Determination of Dumping for Guangzhou Metal and Minerals Import & Export Company ("Guangzhou"):**

**Normal Value**

49.1 In the preliminary determination, individual dumping margin for Guangzhou was not determined on the basis that it did not supply information on domestic sales for any of the producer from whom it had purchased investigated product. It was provided an opportunity to supply information on domestic sales and other relevant information (costs etc) for the producers from whom it had purchased investigated product during POI. Guangzhou informed

the Commission that none of the producer, from whom it had purchased investigated product during the POI, was willing to supply requisite information.

49.2 During on-the-spot investigation conducted at its premises, Guangzhou informed the investigators that it purchased investigated product from many producers including Zungui, Shimanli and Oumei, which was subsequently exported to Pakistan during POI. However, it did not identify which type and size of the investigated product was purchased from which producer. Although it did not supply information on domestic sales of any producer in response to the questionnaire, however, the Commission received information on domestic sales of Zungui, Shimanli and Oumei, through other exporters (Junging and J&M).

49.3 Normal value for the investigated product which Guangzhou exported to Pakistan is determined on the basis the best information available in terms of Section 32 of the Ordinance. In this regard first of all domestic sales of Zungui, Shimanli and Oumei were considered and if sales of comparable type and size of the like product was available from domestic sales of these producers, normal value has been determined on the basis of those sales (Annexures VI, IX and X). In cases where these producers did not had domestic sales for comparable type and size of the like product, normal value is determined on the basis of domestic sales of other producers of comparable type and size. In this situation, weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

49.4 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of the producers were made in ordinary course of trade in domestic market. In determination of normal value, the Commission has disregarded sales, which were not in the ordinary course of trade in terms of Section 7 of the Ordinance. Details of sales by these three producers in their domestic market are given at paragraphs 46 and 47 supra.

### **Export Price**

49.5 Export price for Guangzhou is determined on the basis of information provided by it on its export sales of the investigated product to Pakistan during POI (provided in Attachment C-3 of the questionnaire response).

49.6 According to the information, during POI, Guangzhou purchased investigated product from many un-related Chinese producers of the investigated product, which was exported to Pakistan at a price considered appropriate by it. It exported ceramic (glazed) and porcelain (polished) types of the investigated product in different sizes (200x300, 250x330, 396x396, 500x500 and 600x600) to Pakistan during POI. Its total exports of the investigated product to

Pakistan during POI were \*\*\* SQM. All export sales to Pakistan, during POI, were to un-related customer. The Commission has determined export price separately for different types and sizes.

49.7 To arrive at the ex-factory level, Guangzhou reported adjustments on account of handling cost, inland freight and ocean freight. During on-the-spot investigation (paragraph 30.4 supra), it was found that it is a separate entity then the producer of the investigated product and it had incurred following further expenses on export sales of the investigated product during the POI. These expenses have also been adjusted in export price to arrive at ex-factory level:

- i. administrative expenses;
- ii. operating (office) expenses; and
- iii. financial expenses

Furthermore, Guangzhou's profit earned on export sales of the investigated product has also been adjusted to arrive at ex-factory level.

49.8 During on-the-spot investigation, it was found that value of the investigated product reported in response to the Questionnaire has been adjusted for 13 percent of VAT, as 13 percent VAT was refunded by the Government of China on export sales of Tiles. The investigating team verified the refund of VAT from the relevant documents and found that VAT refund rate was 13 percent on exports while VAT at the rate of 17 percent of the sales price was levied on sales of Tiles in Chinese domestic market. The export price has, therefore, been adjusted at the rate of 4 percent of net value on account of VAT to reach at ex-factory level.

49.9 Thus the export price at ex-factory level is worked out by deducting values reported for the above-mentioned adjustments from the gross value of sales transactions.

## **50. Determination of Dumping for New Zhongyuan Ceramics Import & Export Co.**

### **Normal Value**

50.1 According to the information supplied by New Zhongyuan Ceramics Import & Export Co ("New Zhongyuan") it purchased investigated product from four of its related producers namely Foshan New Zhongyuan, Shunde, Heyuan and Qingyuan, which was subsequently exported to Pakistan during POI. It supplied information on domestic sales of all the four producers. Normal value for the investigated product which New Zhongyuan purchased from above mentioned producers has been determined on the basis of domestic sales prices of the like product sold by these producers in their domestic market during POI.



50.2 As per the information, these four producers produced and sold ceramic (glazed), porcelain (polished), design and paving tiles in their domestic market during POI.

50.3 According to New Zhongyuan, it purchased \*\*\* SQM of ceramic glazed and design tiles of different sizes (200x300, 250x33mm, 300x300mm, 300x450mm, 330x330mm, 330x600mm) of the investigated product from Foshan New Zhongyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of domestic sales made by Foshan New Zhongyuan in its domestic market during POI.

50.4 Foshan New Zhongyuan sold \*\*\* SQM of ceramic (glazed) and design tiles of different sizes to its related and unrelated customers in domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of export sales of the investigated product exported to Pakistan by New Zhongyuan, which it had purchased from Foshan New Zhongyuan.

50.5 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Foshan New Zhongyuan were made in the ordinary course of trade in domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

50.6 Foshan New Zhongyuan sold like product to related and unrelated customers. Analysis of the information showed that the sales to related parties were also at arms length. Thus in determination of normal value, sales to both related and unrelated customers have been considered.

50.7 Foshan New Zhongyuan sold like product on ex-factory/ex-works basis with no price discrimination based on quantity, level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or cash in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers. However, it claimed an adjustment in normal value on account of advertisement expenses incurred on domestic sales. Sales price has been adjusted for advertisement expenses to arrive at ex-factory level.

50.8 According to the information provided by New Zhongyuan, it purchased \*\*\* SQM of porcelain (polished) tiles of different sizes (300x300, 400x400mm, 500x500mm, 600x600mm, 800x800mm, 1000x1000mm, 1200x1800mm) of the investigated product from Shunde. Normal value for these sizes of the investigated product has been determined on the basis of comparable sizes of domestic sales made by Shunde in its domestic market during POI.

50.9 Shunde sold \*\*\* SQM of porcelain (polished) and design tiles of different sizes ranging from 300x300mm to 1200x1800mm to its related and unrelated customers in domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of export sales of the investigated product exported by New Zhongyuan, which it had purchased from Shunde.

50.10 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Shunde were made in the ordinary course of trade in the domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

50.11 Shunde sold like product to related and unrelated customers. Analysis of the information showed that some sales to related parties were not at arms length. Thus in determination of normal value, sales to related parties, which were not at arms length, have not considered.

50.12 Shunde sold like product on ex-factory/ex-works basis with no price discrimination based on quantity and level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers. However, it claimed an adjustment on account of advertisement expenses incurred on domestic sales. Sales price has been adjusted for advertisement expenses to arrive at ex-factory level.

50.13 According New Zhongyuan, it purchased \*\*\* SQM of ceramic (glazed) and paving tiles of different sizes (100x100, 108x108mm, 150x150mm, 190x190mm, 200x200mm, 300x300mm, 300x600mm, 500x500mm, 600x600mm) of the investigated product from Heyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of domestic sales made by Heyuan in its domestic market during POI.

50.14 Heyuan sold \*\*\* SQM of ceramic (glazed) tiles, \*\*\* SQM of porcelain (polished) and \*\*\* SQM and paving tiles of different sizes to its related and unrelated customers in its domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of export sales of the investigated product exported by New Zhongyuan, which it had purchased from Heyuan.

50.15 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Heyuan were made in the ordinary course of trade in domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

50.16 During POI, Heyuan sold like product to related and unrelated customers. Analysis of the information showed that some sales to related parties were not at arms length. In determination of normal value, sales to related parties, which were not at arms length, have not been considered.

50.17 Heyuan sold like product on ex-factory/ex-works basis with no price discrimination based on quantity and level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers. However, it claimed an adjustment expenses on account of advertisement incurred on domestic sales. Sales price has been adjusted for advertisement expense to arrive at ex-factory level.

50.18 According to New Zhongyuan, it purchased 82931.34 SQM of porcelain (polished) tiles of 500x500mm, 600x600mm and 800x800mm sizes of the investigated product from Qingyuan. Normal value for these sizes of the investigated product has been determined on the basis of comparable sizes of domestic sales made by Qingyuan in its domestic market during POI.

50.19 Qingyuan sold \*\*\* SQM of porcelain (polished) tiles to its related and unrelated customers in domestic market during POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of export sales of the investigated product exported by New Zhongyuan, which it had purchased from Qingyuan.

50.20 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Qingyuan were made in the ordinary course of trade in domestic market. In

determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade in terms of Section 7 of the Ordinance.

50.21 Qingyuan sold like product to related and unrelated customers. Analysis of the information showed that some sales to related parties were not at arms length. In determination of normal value, sales to related parties, which were not at arms length, have not been considered.

50.22 Qingyuan sold like product on ex-factory/ex-works basis with no price discrimination based on quantity and level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or in advance. All expenses from ex-factory level, including transportation etc. were borne by the customers. However, it claimed an adjustment on account of advertisement expenses incurred on domestic sales. Sales price has been adjusted for advertisement expenses to arrive at ex-factory level.

#### **Export Price**

50.23 New Zhongyuan provided information on its export sales of the investigated product. During on-the-spot investigation conducted at its premises (paragraph 30.4 supra) it failed to provide relevant documents (i.e. commercial invoices, LC etc), which were asked by the investigators to verify information supplied by it. New Zhongyuan was informed that the Commission will only take into account this information in this investigation if it is verifiable.

50.24 New Zhongyuan contested and supplied further documents (Unify invoice etc.) to prove its claim. Investigation of those documents revealed that unify invoice is prepared for VAT refund purposes usually two to four weeks after export shipment is made. Source documents to prepare unify invoice is the commercial invoice, packing list, shipping invoice etc. But New Zhongyuan did not supply verifiable commercial invoices, sea freight invoices and other relevant documents.

50.25 The Commission determined individual dumping margin for New Zhongyuan in preliminary determination on the basis of information submitted by it (paragraph 33 supra) and provided it another opportunity to provide relevant documents. New Zhongyuan's representatives held a meeting with officers of the Commission on February 3, 2007 at offices of the Commission on this issue. However, they were unable to prove their claim from the documents submitted as, source documents (commercial invoices, freight invoices, LC, packing list etc) were not provided to the Commission.

50.26 Since the information submitted by New Zhongyuan on its export sales of the investigated product was not verifiable, the Commission has disregarded that information. The Commission considered using best information available in terms of Section 32 of the Ordinance to construct export price for New Zhongyuan. For this purpose information on export price obtained from PRAL was considered. The Commission was unable to determine export price on the basis of PRAL's information due to the following reasons:

- i. It does not contain detailed description of the product. Especially details of types and sizes of the products are not available in that information.
- ii. Time lag between export and import of the investigated product.
- iii. Under-invoiced declared import value of the investigated product.

50.27 Other source upon which that the Commission could have relied upon for this purpose was the information provided by the importers. As stated in paragraph 28.5 supra, none of the importers responded to the Commission. Therefore, the Commission could not determine export price for New Zhongyuan. Resultantly, individual dumping margin for New Zhongyuan has been not determined (paragraph 56 infra).

#### **51. Determination of Dumping for Foshan San De Bo Ceramic Co. Ltd.**

**51.1** The Commission decided to limit this investigation to five exporters on the basis of the largest percentage of volume of the exports from China in accordance with Section 14(2) of the Ordinance (paragraph 30.3 supra). However, on request of Foshan San De Bo Ceramic Co. Ltd. ("San De Bo"), the Commission decided to determine individual dumping margin for it (paragraph 33.4 supra). In preliminary determination, the Commission determined its individual dumping margin on the basis of information submitted by it (paragraph 33 supra).

##### **Normal Value**

51.2 As per information supplied by San De Bo it purchased investigated product from four of its related producers namely Foshan New Zhongyuan, Shunde, Heyuan and Qingyuan, which was subsequently exported to Pakistan during POI. It supplied information on domestic sales of all four producers. Normal value for the investigated product which San De Bo purchased from above mentioned producers has been determined on the basis of the domestic sales prices of the like product sold by these producers in their domestic market during POI.

51.3 According to the information provided by San De Bo, the four producers produced and sold ceramic (glazed), porcelain (polished), design/border and paving tiles in their domestic market during POI.

51.4 As per the information San De Bo purchased \*\*\* SQM of ceramic glazed and design tiles of different sizes (250x330mm 330x330mm, 300x450mm, 300x600mm and 330x600mm) of the investigated product from Foshan New Zhongyuan. Normal value for these types of the investigated product has been determined on the basis of comparable sizes of the like product sold by Foshan New Zhongyuan in its domestic market during POI.

51.5 Details of sales of the like product by Foshan New Zhongyuan in its domestic market are given at paragraphs 50.2 to 50.7 supra.

51.6 San De Bo, it purchased \*\*\* SQM of porcelain (polished) tiles of 300x300mm and 600x600mm sizes of the investigated product from Shunde. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product sold by Shunde in its domestic market during POI.

51.7 Details of sales of the like product by Shunde in its domestic market are given at paragraphs 50.8 to 50.12 supra.

51.8 San De Bo purchased \*\*\* SQM of polished and paving tiles of 150x510mm and 600x600mm of the investigated product from Heyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product

sold by Heyuan in its domestic market during POI.

51.9 Details of sales of the like product by Heyuan in its domestic market are given at paragraphs 50.13 to 50.17 supra.

51.10 San De Bo purchased \*\*\* SQM of porcelain (polished) tiles of 600x600mm size of the investigated product from Qingyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product sold by Qingyuan in its domestic market during POI.

51.11 Details of sales of the like product by Qingyuan in its domestic market are given at paragraphs 50.18 to 50.22 supra.

### **Export Price**

51.12 In response to the questionnaire San De Bo provided information on its export sales of the investigated product. On-the-spot investigation was not conducted at its premises to verify the information. San De Bo was requested to supply information in a specified format and necessary documents for purposes of the verification of the information provided in response to the questionnaire.

51.13 San De Bo supplied some documents (Unify invoice etc.) in support of the information submitted for exports of the investigated product. Investigation of those documents revealed that unify invoice was prepared for VAT refund purposes usually two to four weeks after export shipment was made. Source documents to prepare unify invoice is the commercial invoice, packing list, shipping invoice etc. But San De Bo did not supply verifiable commercial invoices and other relevant documents.

51.14 San De Bo's representatives held a meeting with officers of the Commission on February 3, 2007 on this issue. However, they fail to prove their claim from the documents submitted, as source documents (commercial invoices, freight invoices, LC, packing list etc) were not provided.

51.15 Since the information on export sales was not verifiable, the Commission has disregarded that information for the purposes of this investigation. The Commission considered using best information available in terms of Section 32 of the Ordinance to construct export price for San De Bo. For the purposes, information on export price obtained from PRAL was

considered. The Commission was unable to determine export price on the basis of PRAL's information due to the following reasons:

- i. It does not contain detailed description of the product. Especially details of types and sizes of the products are not available in that information.
- ii. Time lag between export/sale by San De Bo and import into Pakistan of the investigated product.
- iii. Under-invoiced declared import value of the investigated product.

51.16 Other source upon which that the Commission could have relied upon for this purpose, was the information provided by the importers. As stated in paragraph 28.5 supra, none of the importers responded to the Commission. Therefore, the Commission could not determine

export price for San De Bo. Resultantly, individual dumping margin for San De Bo has been not determined (paragraph 56 infra).

## **52. Determination of Dumping for Foshan Lungo Ceramic Co.**

52.1 The Commission decided to limit this investigation to five exporters on the basis of the largest percentage of volume of the exports from China in accordance with Section 14(2) of the Ordinance (paragraph 30.3 supra). However, on request of Foshan Lungo Ceramic Co. Ltd. ("Lungo"), the Commission decided to determine individual dumping margin for it (paragraph 33.4 supra). In preliminary determination, the Commission determined its individual dumping margin on the basis of information submitted by it (paragraph 33 supra).

### **Normal Value**

52.2 According to the information supplied by Lungo it purchased investigated product from four of its related producers namely Foshan New Zhongyuan, Shunde, Heyuan and Qingyuan, which was subsequently exported to Pakistan during POI. It supplied information on domestic sales of all the four producers. Normal value for the investigated product which Lungo purchased from above mentioned producers has been determined on the basis of domestic sales prices of the like product sold by these producers in their domestic market during POI.

52.3 According to the information provided by Lungo, it purchased \*\*\* SQM of ceramic glazed and design tiles of different sizes (250x330mm, 300x300mm, 300x450mm, 300x600mm and 330x600mm) of the investigated product from Foshan New Zhongyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product sold by Foshan New Zhongyuan in its domestic market during POI.

52.4 Details of sales of the like product by Foshan New Zhongyuan in its domestic market are given at paragraphs 50.2 to 50.7 supra.

52.5 Lungo purchased \*\*\* SQM of porcelain (polished) tiles of different sizes (500x500mm, 600x600mm, 800x800mm, and 1000x1000mm) of the investigated product from Shunde. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product sold by Shunde in its domestic market during POI.

52.6 Details of sales of the like product by Shunde in its domestic market are given at paragraphs 50.8 to 50.12 supra.



52.7 Lungo purchased \*\*\* SQM of polished tiles of 500x500mm and 600x600mm of the investigated product from Heyuan. Normal value for these sizes of the investigated product has been determined on the basis of comparable sizes of the like product sold by Heyuan in its domestic market during POI.

52.8 Details of sales of the like product by Heyuan in its domestic market are given at paragraphs 50.13 to 50.17 supra. Summary of calculations of normal value is placed at Annexure-XVII.

52.9 Lungo purchased \*\*\* SQM of porcelain (polished) tiles of 500x500mm and 600x600mm sizes of the investigated product from Qingyuan. Normal value for these sizes of the investigated product have been determined on the basis of comparable sizes of the like product sold by Qingyuan in its domestic market during POI.

52.10 Details of sales of the like product by Qingyuan in its domestic market are given at paragraphs 50.18 to 50.22 supra.

#### **Export Price**

52.11 In response to the questionnaire Lungo provided information on its export sales of the investigated product. On-the-spot investigation was not conducted at its premises to verify the information. Lungo was requested to supply information in a specified format and necessary documents for the purposes of verification of the information provided in response to the questionnaire.

52.12 Lungo supplied some documents (Unify invoice etc.) in support of the information submitted for exports of the investigated product. Investigation of those documents revealed that unify invoices were prepared for VAT refund purposes usually two to four weeks after export shipments were made. Source documents to prepare unify invoice is the commercial invoice, packing list shipping invoice etc. But Lungo did not supply verifiable commercial invoices and other relevant documents.

52.13 Lungo's representatives held a meeting with officers of the Commission on February 3, 2007 on this issue. However, they failed to prove their claim from the documents submitted. Source documents (commercial invoices, freight invoices, LC, packing list etc) were not submitted to the Commission.

52.14 Since the information on export sales was not verifiable, the Commission has disregarded that information. The Commission considered best information available in terms of Section 32 of the Ordinance to construct export price for Lungo. For this purpose, information on export price obtained from PRAL was considered. The Commission was unable to determine export price on the basis of PRAL's information due to the following reasons:

- i. It does not contain detailed description of the product. Especially details of types and sizes of the products are not available in that information.
- ii. Time lag between export/sale by Lungo and import into Pakistan of the investigated product.
- iii. Under-invoiced declared import value of the investigated product.

52.15 Other source upon which that the Commission could have relied upon for this purpose, was the information provided by the importers. As stated in paragraph 28.5 supra, none of the importers responded to the Commission. Therefore, the Commission could not determine export price for Lungo. Resultantly, individual dumping margin for Lungo has been not determined (paragraph 56 infra).

### **53. Determination of Dumping for Foshan Everlasting Enterprise Co., Ltd.**

53.1 The Commission decided to limit this investigation to five exporters on the basis of the largest percentage of volume of the exports from China in accordance with Section 14(2) of the Ordinance (paragraph 30.4 supra). However, on request of Foshan Everlasting Enterprise Co., Ltd ("Everlasting"), the Commission decided to determine individual dumping margin for it (paragraph 33.4 supra). In preliminary determination, the Commission determined its individual dumping margin on the basis of information submitted by it (paragraph 33 supra).

#### **Normal Value**

53.2 As per the information provided by Everlasting it purchased investigated product from seven producers, which was subsequently exported to Pakistan during POI. In response to the questionnaire, it supplied information on domestic sales of only one producer namely Foshan JianXing Ceramic Co., Ltd. ("Jianxing"). On-the-spot investigation was not conducted at the premises of Jianxing to verify the information.

53.3 Everlasting was requested to supply information on domestic sales of the other producers from whom it has purchased investigated product during POI. It was also requested to supply necessary documents for the purposes of verification of the information. Everlasting supplied some documents for Jianxing but it did not supply information and documents on domestic sales of other producers.

53.4 Normal value for the investigated product, which Everlasting purchased from Jianxing has been determined on the basis of domestic sales price of the like product sold by it in its domestic market during POI.

53.5 Everlasting purchased \*\*\* SQM of ceramic glazed tiles of 200x200mm, 300x300mm and 400x400mm from Jianxing. Normal value for these sizes of the investigated product has been determined on the basis of comparable sizes of the like product sold by Jianxing in its domestic market.

53.6 As per the information, Jianxing produced and sold only ceramic (glazed) tiles in its domestic market during the POI. Jianxing sold \*\*\* SQM of ceramic (glazed) tiles in its domestic market during the POI. These sales are in sufficient quantities to determine normal value in terms of Section 6(2) of the Ordinance, as those are more than 5 percent of the export sales of the investigated product exported by Everlasting, which it had purchased from Jianxing. All its domestic sales were to unrelated customers during POI.

53.7 Section 7 of the Ordinance requires the Commission to determine whether domestic sales of Jianxing were made in the ordinary course of trade in domestic market. In determination of normal value for the above-mentioned sizes, the Commission has disregarded sales, which were not in ordinary course of trade, in terms of Section 7 of the Ordinance.

53.8 Jianxing sold like product on ex-factory/ex-works basis with no price discrimination based on quantity or level of trade (wholesaler, retailer, end user etc). Payment terms were cash at sight or cash in advance. All expenses from ex-factory level, including transportation etc., were borne by the customers.

53.9 Normal value for the investigated product which Everlasting purchased from other producers, whose information on domestic sales of the like product was not submitted by it, has been determined on the basis the best information available in terms of Section 32 of the Ordinance. In this regard, normal value is determined on the basis of domestic sales of other producers of comparable type and size available with the Commission. In this situation,

weighted average price of the relevant type and size of the like product is applied for the purposes of normal value.

### **Export Price**

53.10 Everlasting was requested to provide information on its export sales of the investigated product on transaction-by-transaction basis in a specified format in response to the questionnaire. Since on-the-Spot investigation was not conducted at the premises of Everlasting, (paragraph 30.3 supra). It was requested to supply necessary documents for the purposes of verification of the information. Everlasting supplied some documents in this regard. Examination of those documents revealed that Everlasting had not supplied information as per the specified format of the questionnaire. It has reported different types (glazed tiles and design/borders) of the investigated product under one transaction. It was not possible to separate different types of the investigated product reported in a single transaction. Thus, the Commission was unable to determine export price for different types/models on the basis of information provided by Everlasting for its export sales of the investigated product during POI.

53.11 Since the information on export sales provided by Everlasting was not usable, the Commission has disregarded the same and considered relying on the best information available in terms of Section 32 of the Ordinance to construct export price for it. For this purpose information obtained from PRAL was considered. The Commission was unable to determine export price on the basis of PRAL's information due to the following reasons:

- i. It does not contain detailed description of the product. Especially details of types and sizes of the products are not available in that information.
- ii. Time lag between export/sale by Everlasting and import into Pakistan of the investigated product.
- iii. Under-invoiced declared import value of the investigated product.

53.12 Other source upon which that the Commission could have relied upon for this purpose, was the information provided by the importers. As stated in paragraph 28.5 supra, none of the importers responded to the Commission. Therefore, the Commission could not determine export price for Everlasting. Resultantly, individual dumping margin for Everlasting has been not determined (paragraph 56 infra).

## **54. Determination of Dumping for China National Machinery & Equipment Import and Export Corporation Ltd.**

54.1 The Commission decided to limit this investigation to five exporters on the basis of the largest percentage of volume of the exports from China in accordance with Section 14(2) of the Ordinance (paragraph 30.3 supra). However, on request of China National Machinery & Equipment Import and Export Corporation Ltd., Ltd (“China National Machinery”), the Commission decided to determine individual dumping margin for it (paragraph 33.4 supra). In preliminary determination, the Commission determined its individual dumping margin on the basis of information submitted by it (paragraph 33 supra).

#### **Normal Value**

54.2 As per the information supplied by China National Machinery, it purchased investigated product from one producer namely Fujian Huida, which was subsequently exported to Pakistan during POI. In response to the questionnaire, it supplied partial information on domestic sales of this producer. Deficiencies were conveyed to China National Machinery, which it failed to remove.

54.3 As some vital information (cost of production etc) for determination of normal value was missing, normal value for the investigated product exported by China National Machinery could not be determined.

#### **Export Price**

54.4 China National Machinery supplied information on its exports of the investigated product, which was deficient in certain respects. Deficiencies were conveyed to China National Machinery but it did not supply the requisite information. As on-the-spot investigation was not conducted at the premises of China National Machinery (paragraph 30.4 supra), it was requested to supply deficient information and necessary documents for the purposes of verification of the information supplied in response to the questionnaire. China National Machinery supplied some documents in this regard but the Commission’s examination of those documents revealed that the information supplied by it on export sales was not verifiable.

54.5 Since the information on export sales provided by Everlasting was not usable, the Commission has disregarded the same and considered relying on the best information available in terms of Section 32 of the Ordinance to construct export price for it. For this purpose information obtained from PRAL was considered. The Commission was unable to determine export price on the basis of PRAL’s information due to the following reasons:

- i. It does not contain detailed description of the product. Especially details of types and sizes of the products are not available in that information.

- ii. Time lag between export/sale by Everlasting and import into Pakistan of the investigated product.
- iii. Under-invoiced declared import value of the investigated product.

54.6 Other source upon which that the Commission could have relied upon for this purpose, was the information provided by the importers. As stated in paragraph 28.5 supra, none of the importers responded to the Commission. Therefore, the Commission could not determine export price for China National Machinery. Resultantly, individual dumping margin for China National Machinery has been not determined (paragraph 56.2 infra).

#### **55. Determination of Dumping for Other Chinese Exporters/Producers**

55.1 Normal value for Chinese exporters/producers other than exporters mentioned at paragraphs 46 to 54 supra, who did not respond to the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance.

55.2 For the purposes of determination of normal value for other Chinese exporters/producers, the information provided by some Chinese producers in response to the questionnaire on their sales price of the like product in the domestic market is used. The Commission was of the view that it is the best available information for this purpose. Weight average price of the domestic like product of responding producers is considered as normal value for other Chinese exporters/producers of the investigated product.

55.3 The Commission considered information obtained from PRAL to determine export price for other Chinese exporters/producers who did not cooperate with the Commission in providing information. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters. However, the Commission could not determine export price for these exporters as different types and sizes of the investigated product could not be determined from that information. Therefore, the Commission has determined that the highest individual dumping margin determined for cooperating exporter (ghaunzhou) is a representative dumping margin for non-cooperating exporters/foreign producers of the investigated product.

#### **56. Dumping Margin**

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56.1 The Ordinance defines “dumping margin” in relation to a product as “*the amount by which its normal value exceeds its export price*”. In terms of Section 14(1) of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. However, Section 14(2) provides that if the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine individual dumping margin for each known exporter or producer concerned of the investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

56.2 The Commission has investigated all exporters who responded to the questionnaire. However, individual dumping margins have been determined for those exporters who supplied verifiable necessary information and the antidumping duty for those exporters has been established on the basis of individual dumping margins. However, a residual dumping margin and antidumping duty rate for all other exporters, who did not cooperate or whose information was either deficient or not verifiable, is determined in terms of Section 32 of the Ordinance.

56.3 Section 12 of the Ordinance provides three methods for fair comparison of normal value and export price in order to establish dumping margin. The Commission has established dumping margin by comparing weighted average normal value with weighted average price of all comparable export transactions.

56.4 The Commission has also complied with the requirements of Section 11 of the Ordinance which states that “*the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and delivery at the same place*”.

56.5 Taking into account all requirements set out above, the dumping margins have been determined as follows:

**Table-V  
Dumping Margins**

Exporter Name	Percentage of Export price	Percentage of C&F Price
Junging	21.50	14.85
Nanghai	30.45	21.08
J&M	33.92	16.46

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Guangzhou	54.73	23.65
All Others	54.73	23.65

**57. Negligible Volume of Dumped Imports**

57.1 In terms of Section 41(3) (b) of the Ordinance, volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than 3 percent of total imports of the like product unless imports of the investigated product from all countries under investigation which individually account for less than three percent of the total imports of a like product collectively account for more than seven percent of imports of a like product.

57.2 In this regard, data and information available with the Commission on volume of dumped imports of the investigated product during POI (from January 01 2005 to December 31, 2005) is given in the table below:

**Table-VI  
Volume of Imports During POI**

Imports from:	Imports in:	
	Absolute quantity (SQM)	% of total imports
China (dumped)	9555368.75	87.49%
Other sources	1366730.07	12.51%
Grand Total	10922098.82	

Source: Cooperating Exporters and PRAL

57.3 Above table shows that the volume of dumped imports of the investigated product from China was well above the negligible threshold (less than three percent) for volume of imports of the like product during POI.

**D. INJURY TO DOMESTIC INDUSTRY**

**58. Determination of Injury**

58.1 Section 15 of the Ordinance sets out the principles for determination of material injury to the domestic industry in the following words:

*“A determination of injury shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to:*



- “a. volume of dumped imports;*
- “b. effect of dumped imports on prices in domestic market for like products; and*
- “c. consequent impact of dumped imports on domestic producers of such products...”*

58.2 Section 15 of the Ordinance further provides that:

*“ No one or several of the factors identified ..... shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury” .*

58.3 The Commission has taken into account all factors in order to determine whether the domestic industry suffered material injury during POI. Material injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Ordinance.

## **59. Domestic Industry**

59.1 During POI, domestic industry manufacturing domestic like product was consisting of six units with an installed production capacity of 19.03 SQM per annum. However, on the basis of information and analysis, for the purposes of this investigation, following two units are considered as the “domestic industry” in terms of Section 2(d) of the Ordinance for the purposes of this investigation (paragraph 21.4 supra):

- i. Master Tiles and Ceramic Industries Ltd., Gujranwala (Applicant); and
- ii. Karam Ceramics Ltd., Karachi.

59.2 The injury analysis carried out in following paragraphs is based on the information gathered by the Commission for this investigation of the Applicant and Karam Ceramics Ltd. Karam Ceramics was asked to provide information regarding its unit for injury analysis of the domestic industry, which it did not. The publically available information of Karam Ceramics Ltd., i.e. annual reports of Karam Ceramics for the FY 2004 and FY 2005 were obtained, in order to carry out the injury analysis of the domestic industry. Karam Ceramics manufactured Tiles and sanitary ware during the POI and the annual reports contain consolidated accounts. However, the annual reports for FY 2004 and FY 2005 showed that Karam Ceramics produced small quantity of sanitary ware during the POI. The installed capacity of sanitary ware plant

was 3000 MT, whereas, the production during FY 2003 was 671 MT, in FY 2004 it was 80 MT and in FY 2005 it was 35 MT. Karam Ceramics closed its sanitary ware plant and it was disposed off during the second half of FY 2005. Separate information is available only for installed capacity and production. The accounts are consolidated and overall position of profit and loss, and cash flow of Karam Ceramics has been analyzed in the following paragraphs to determine material injury to domestic industry of Tiles.

## **60. Volume of Alleged Dumped Imports**

### **Facts**

60.1 In order to ascertain the volume of dumped imports of the investigated product, the Commission obtained import data from PRAL, and the Applicant. As stated earlier in paragraph 28.5 the importers were also requested to provide information on imports, to which they did not respond.

60.2 With regard to the volume of dumped imports, in terms of Section 15(2) of the Ordinance, the Commission considered whether there has been a significant increase in dumped imports, either in absolute terms or relative to the production of the domestic like product in Pakistan. The following table shows imports of the investigated product during the POI:

**Table-VII**

(SQM)

Period	Dumped Imports of IP		Total Production in Pakistan
	Absolute Quantity	% age of domestic production	
FY 2003	100.00	17.78%	562.48
FY 2004	294.65	36.03%	817.87
FY 2005	564.40	59.26%	952.42
Jul-Dec 2005	426.22	90.52%	470.87

\*Actual figures of volume of dumped imports and total production have been indexed with respect to quantity of imports for FY 2003 as base.

### **Analysis**

60.3 The above table shows that the imports of the investigated product increased in absolute terms by 194.65 percent in FY 2004, 91.55 percent in FY 2005 and 51.04 percent between July to December 2005 on annualized basis. The production of domestic like product in Pakistan increased by 45.40 percent in FY 2004, (as the Applicant enhanced its installed production capacity by putting up a new plant of \*\*\* SQM Tiles which started production in October 2003),

16.45 percent in FY 2005 and decreased by 1.12 percent during the period from July to December 2005 on annualized basis. Thus imports in absolute terms of the investigated product increased more rapidly as compared to the increase in production of the domestic like product in Pakistan.

60.4 Imports of the investigated product also increased relative to the domestic production throughout the POI. In relative terms, dumped imports were 17.78 percent of domestic production in FY 2003, 36.03 percent in FY 2004, 59.25 percent in FY 2005 and 90.52 percent during the period from July to December 2005 on annualized basis.

### **Conclusion**

60.5 On the basis of the above analysis, the Commission has concluded that the dumped imports increased in absolute as well as relative to domestic production throughout the POI and the domestic industry suffered material injury on account of volume of dumped imports.

## **61. Price Effects**

61.1 The effect of dumped imports on the sales price of domestic like product in Pakistan has been examined to establish whether there has been significant price undercutting (the extent to which the price of the imported product is lower than the price of the domestic producers), price depression (the extent to which the domestic producers experienced a decrease in its selling prices over time), and price suppression (the extent to which increases in the cost of production could not be recovered in selling price by the domestic producers). In this final determination, the analysis of effect of dumped imports on the sales price of domestic like product in Pakistan is constrained to be limited to the Applicant, because the information regarding sales prices of other producers were not available with the Commission. The production of the Applicant accounts for 28.62 percent of total domestic production in Pakistan, hence any inference drawn from the Applicant data would be considered as of domestic industry as a whole.

### **61.2 Price undercutting**

#### **Facts**

61.2.1 Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product and the price undercutting during the POI is given in the following table:

**Table-VIII** (Rs/SQM)

<b>Period</b>	<b>Average ex-factory price of domestic like product</b>	<b>Average landed cost of investigated product</b>	<b>Price under-cutting</b>
FY 2003	100.00	94.40	5.60
FY 2004	87.29	79.98	7.31
FY 2005	83.73	84.29	--
Jul-Dec 2005	91.37	87.00	4.37

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\*Actual figures of average ex-factory price of domestic like product and average landed cost of investigated product have been indexed with respect to of average ex-factory price of domestic like product for FY 2003 as base.

**Analysis**

61.2.2 It appears from the above table that the weighted average landed cost of the investigated product was lower than the weighted average ex-factory price of the domestic like product in the range of 4.37 to 7.31 during the POI, except in FY 2005.

**Conclusion**

61.2.3 On the basis of the above, the Commission has concluded that the domestic industry suffered material injury on account of price undercutting due to dumped imports.

**61.3 Price Depression**

**Facts**

61.3.1 The weighted average ex-factory price of the domestic like product during the POI is given in the table below:

<b>Period</b>	<b>Weighted Average ex-factory price of domestic like product</b>	<b>Price depression</b>
FY 2003	100.00	--
FY 2004	87.29	12.71
FY 2005	83.73	4.06
Jul. - Dec.2005	91.37	--

\*Actual figures of average ex-factory price of domestic like product taking FY 2003 as base.

**Analysis**

61.3.2 The weighted average ex-factory price of domestic like product decreased by 12.71 percent in the FY 2004 and 4.06 percent in FY 2005 on account of unfair competition from dumped imports.

**Conclusion**

61.3.3 On the basis of the above analysis, the Commission has concluded that the domestic industry experienced significant price depression during FY 2004 and FY 2005. The domestic industry, therefore, suffered injury on account of price depression during FY 2004 and FY 2005.

**61.4 Price Suppression**

**Facts**

61.4.1 The following table shows the weighted average cost of production ("COP") and the weighted average ex-factory sales price of the domestic like product during the POI:

**Table-X**

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(Rs./SQM)

Period	Weighted Average cost to make & sell of domestic like product	Weighted Average ex-factory price of domestic like product	Price Suppression		
			Increase/ (decrease) in COP	Increase/ (decrease) in price	Price suppression
FY 2003	100.00	115.85	-	--	--
FY 2004	87.29	101.13	(4.21)	(14.72)	10.51
FY 2005	83.73	97.01	3.10	(4.12)	7.22
Jul. to Dec. 05	91.37	105.86	13.33	8.85	4.33

\*Actual figures of weighted average cost to make & sell and weighted average ex-factory price of domestic like product have been indexed with respect to of weighted average cost to make & sell for FY 2003 as base.

**Analysis**

61.4.2 The above table shows that the weighted average cost to make and sell of domestic like product decreased by 4.21 in FY 2004, increased by 3.10 in FY 2005 and by 13.33 during the period from July to December 2005. Weighted average ex-factory price of the domestic like product decreased by 14.72 in FY 2004, by 4.12 in FY 2005 and increased by 8.85 during the period from July to December 2005. The increase in cost to make and sell was more than the increase in price of the domestic like product in FY 2005 and in July to December 2005.

**Conclusion**

61.4.3 On the basis of the above analysis, the Commission has concluded that the domestic industry suffered material injury on account of price suppression during the POI.

**62. Market Share****Facts**

62.1 The total domestic demand for Ceramic Tiles in Pakistan is met through local production and imports. To establish the size of Pakistan market, the production of domestic like product in Pakistan, imports of the investigated product and imports from other countries have been used and the figures for the POI are as follows:

**Table-XI**

(SQM)

Period	Production by domestic producers		Imports from		Total Domestic Market
	Domestic Industry*	Other domestic units**	Dumped Source (China)	Other Sources	
FY 2003	32%	44%	13%	11%	100%
FY 2004	33%	36%	25%	06%	100%
FY 2005	28%	27%	33%	12%	100%
Jul-Dec 2005	24%	23%	43%	10%	100%

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\* Applicant plus Karam Ceramics Ltd.

\*\* The units who are themselves importers of the investigated product and have been excluded from the definition of domestic industry, information provided by the Applicant.

**Analysis**

62.2 The above table shows that the total domestic market of Ceramic Tiles has grown more than doubled during the POI. The market share of the domestic industry was 32 percent in FY 2003, it decreased from 32 percent in FY 2004 to 28 percent in FY 2005 and to 23 percent during the period from July to December 2005. Whereas the market share of dumped imports increased from 13 percent in FY2003 to 25 percent in FY 2004, and further increased to 33 percent in FY 2005. During the period from July to December 2005 the market share of dumped imports increased to 43 percent. Market share of imports from other sources remained in the range of 6 to 12 percent during the POI.

**Conclusion**

62.3 On the basis of the above analysis, the Commission has concluded that the domestic industry suffered a significant loss of market share during the POI due to increased imports of investigated product from China. The market share of imports from non-dumped sources remained in the range of 6 to 12 percent during the POI. It is therefore, concluded that the domestic industry suffered loss in market share mainly due to imports from dumped sources.

63. **Production and Capacity Utilization**

**Applicant**

63.1 The Applicant set up its first plant with installed capacity of \*\*\* SQM ceramic wall and floor tiles per annum and started production of Tiles in the year 1995. It started setting up another plant to manufacture ceramic, porcelain and granite tiles in 2000 of installed capacity of \*\*\* SQM Tiles and the new plant started production in October 2003. The Applicant increased the installed capacity of its first plant to \*\*\* SQM Tiles from January 2004. Three fourth of new plant's capacity (i.e. \*\*\* SQM, for the period from October 2003 to June 2004) was allocated to year FY 2004 and fifty percent out of new installed capacity of \*\*\* SQM Tiles, (i.e. \*\*\* SQM), of first plant was allocated to FY 2004. In FY 2005 the total installed capacity of the Applicant was \*\*\* SQM Tiles per annum. Details of production and the capacity utilized during the POI are given in the table below:

**Table-XII**

(SQM)

Period	Installed Capacity	Capacity Utilization
FY 2003	100	67.51%
FY 2004	100	54.12%
FY 2005	100	47.47%
Jul-Dec 2005	50	45.60%

\* Actual figures of installed capacity have been indexed taking FY 2003 as base.

**Analysis**

63.2 It may be noted from the table above that the production of the Applicant increased throughout the POI, (as its new plant with installed capacity of producing \*\*\* SQM Tiles started production in October 2003). However, with increase in installed capacity, the production did not increase with the same pace and the capacity utilization level decreased from 67.5 percent in FY 2003 to 54.89 percent in FY 2004. The capacity utilization decreased further from 54.12 percent to 47.47 percent in FY 2005 and during the period from July to December 2005 capacity utilization was 45.60 percent.

**Karam Ceramics**

63.3 Data of installed capacity and production of Karam Ceramics during the POI is given in the table below:

**Table-XIII**

(SQM)

<b>Period</b>	<b>Installed Capacity</b>	<b>Capacity Utilization</b>
FY 2003	100	114.16%
FY 2004	100	127.34%
FY 2005	100	156.96%
Jul-Dec 2005	50	157.17%

\* Actual figures of installed capacity have been indexed taking FY 2003 as base.

**Analysis**

63.4 The above table shows that installed capacity of Karam Ceramics remained the same during the POI, however, due to increase in its production every financial year, its capacity utilization increased from 114.6 percent in FY 2003 to 127.34 percent in FY 2004 and further increased to 156.96 percent in FY 2005.

63.5 The table below shows consolidated installed capacity and its capacity utilization of the domestic industry.

**Table-XIV**

<b>Period</b>	<b>Installed Capacity</b>	<b>Capacity Utilization</b>
FY 2003	100	92.70%
FY 2004	218	72.19%
FY 2005	284	68.28%
Jul-Dec 2005	284	66.77%

**Conclusion**

63.6 On the basis of the above analysis, the Commission has concluded that the domestic industry has suffered injury on account of capacity utilization mainly due to dumped imports through out the POI.

**64. Effect on Sales**

**Facts**

64.1 The Applicant's sales made during the POI are given in table below:

**Table-XV**

<b>Period</b>	<b>Sales (SQM)</b>
FY 2003	100.00
FY 2004	196.91
FY 2005	323.80
Jul-Dec 2005	143.58

\* Actual figures of sales have been indexed taking FY 2003 as base.

**Analysis**

64.2 The above table shows that the Applicant's sales increased during the POI. However, keeping in view the fact that Applicant increased its installed production capacity from \*\*\* SQM Tiles to \*\*\* SQM Tiles (by \*\*\* SQM) in FY 2004, its sales did not increased correspondingly. Had there been no dumped imports of the investigated product, the sales volume of the Applicant would have been much higher, as it is operating at less than fifty percent of installed capacity for the latest one and half year of the POI.

**Conclusions**

64.3 On the basis of above analysis the Commission has concluded that the Applicant has not been able to achieve the desired level of sales due to dumped imports.

**65. Effects on Inventories**

**Facts**

65.1 The data relating to accumulation of inventories of the domestic like product during the POI is given in the table below:

**Table-XVI**

<b>Period</b>	<b>Opening Inventory</b>	<b>Change in Inventory</b>
FY 2003	100	67
FY 2004	67	180
FY 2005	180	128
Jul-Dec 2005	128	130



\* Actual figures of opening inventory and closing inventory have been indexed taking FY 2003 figure of opening inventory as base.

### **Analysis**

65.2 The Applicant enhanced installed capacity in FY 2004 and consequently increased production. The sales of the Applicant also increased but not at a corresponding rate. The inventory level of the domestic like product increased by 169.66 Tiles in FY 2004 it decreased by 28.88 Tiles in FY 2005 and again increased by 1.73 Tiles during the period from July to December 2005.

### **Conclusion**

65.3 The Commission has concluded that the domestic industry suffered material injury on account of increase in inventories during the POI except for FY 2005, mainly owing to increase in the volume of dumped imports.

## **66. Profit and Loss**

### **Facts**

66.1 The Applicant provided Profit and Loss Statement of its unit, whereas the overall profit and loss figures for Karam Ceramics have been taken from its annual reports for FY 2004 and FY 2005 containing consolidated for Tiles and sanitary ware. The table below shows the profit and loss figures of the Applicant and Karam Ceramics for POI:

**Table-XVII**

(Rupees.)

	<b>Net Profit/(Loss) Applicant</b>	<b>Net Profit of Karam Ceramics</b>
FY 2003	100.00	100.00
FY 2004	91.09	85.39
FY 2005	(17.17)	170.86
Jul-Dec 2005	(48.99)	N.A

### **Analysis**

66.2 The Applicant earned net profit of Rs. \*\*\* in FY 2003 and Rs. \*\*\* in FY 2004 from Tiles. However, it suffered loss of Rs. \*\*\* in FY 2005 and the loss during the period from July to December 2005 increased to Rs. \*\*\*. The Applicant enhanced its plant capacity keeping in view the growing demand for Tiles, however, due to dumped imports from China the Applicant was not able to increase its production and sales. Since the cost of raw material is substantially low in the production of Tiles and value addition is very high, the Applicant would have earned profit by increasing its production and sales up to the planned level, had there been no dumped imports of Tiles from China.

66.3 Karam Ceramics earned an overall profit of Rs. \*\*\* in FY 2003, its profit decreased to Rs. \*\*\* in FY 2004. However, in FY 2005 the profit of Karam Ceramics increased to Rs. \*\*\*. Profit/Loss figures for the period from July to December 2005 are not available with the Commission.

66.4 The table below shows consolidated profit position of the domestic industry:

**Table-XVIII**

	<b>Net Profit/(Loss)</b>
FY 2003	100
FY 2004	88.54
FY 2005	66.80
Jul-Dec 2005	(27.11)

\* Actual figures of values have been indexed taking FY 2003 as base.

**Conclusion:**

66.5 On the basis of available facts, the Commission has concluded that the domestic industry suffered material injury on account of decline in profit in FY 2004 and in FY 2005 and during the period from July to December 2005.

66.6 Karam Ceramics profit decreased by 15.61 percent in FY 2004 and then increased by 100 percent in FY 2005, thus Karam Ceramics did not suffer material injury during the POI, except for decrease in profit during FY 2004.

67. **Cash Flow Facts**

67.1 The Applicant has submitted the following information regarding its cash flow positions during POI and overall cash flow of Karam Ceramics taken from annual reports for FY 2004 and FY 2005:

Year	<b>Table-XIX (Rupees)</b>	
	Cash Flow from operations of Applicant	Overall Cash Flow from operations of Karam Ceramics
FY 2003	(100)	100
FY 2004	39.38	(10.84)
FY 2005	71.05	98.86
Jul-Dec 2005	17.71	N.A

\* Actual figures of values have been indexed taking FY 2003 as base.

**Analysis**

67.2 The above table shows that cash generated from operations by the Applicant was negative in FY 2003, however, in FY 2004 the cash flow from operations was Rs. \*\*\* and in FY

2005 the cash flow position of the Applicant further improved to Rs. \*\*\*. The cash flow from operations decreased during the period from July to December 2005.

67.3 The above table also shows that cash generated from operations of Karam Ceramics was Rs \*\*\* in FY2003, which fell to negative in FY 2005. However, in FY2005 cash generated from operations increased to Rs. \*\*\* Cash flow from operations for the period from July to December 2005 is not available with the Commission.

**Conclusion**

67.4 On the basis of the above, the Commission has concluded that the Applicant has suffered material injury on account of cash flow during the period from July to December 2005 only.

67.5 Karam Ceramics suffered material injury on account of cash flow during FY 2004 only.

68. **Employment, Productivity and Wages**

68.1 Following is the information regarding employment, productivity and wages as given below in the table:

**Table-XX**

	<b>No. of Employees</b>	<b>Wages in Rs.</b>	<b>Production SQM</b>	<b>Productivity SQM</b>
FY 2003	100.00	100.00	100.00	100.00
FY 2004	188.37	136.29	287.27	152.51
FY 2005	199.67	199.89	351.56	176.04
Jul-Dec 2005	209.36	114.73	168.71	161.08

\* Actual figures of values have been indexed taking FY 2003 as base.

**Analysis**

68.2 The above table shows that the number of employees increased from \*\*\* in FY 2003 to \*\*\* during the period from July to December 2005. During the same period wages decreased from Rs. \*\*\*/SQM in FY 2003 to Rs. \*\*\*/SQM in FY 2005, but again increased to Rs. \*\*\*/SQM during the period from July to December 2005 on annualized basis. The productivity per worker increased during the period from FY 2003 to FY 2005, however, it decreased during the period from July to December 2005.

**Conclusion**

68.3 The domestic industry suffered injury on account of productivity during the period from July to December 2005 only.

69. **Return on Investment**

**Facts**

69.1 The Applicant has stated that during the FY 2004 new investment was made in this industry to cater to the needs of expanding domestic market.

**Table-XXI**

Year	Return on Investment
FY 2003	14.51%
FY 2004	7.58%
FY 2005	6.29%
FY 2006 (1 <sup>st</sup> Half)	1.72%

**Analysis**

69.2 The return on investment decreased through out the POI due to decrease in profits in FY 2004 and losses in FY 2005 and during the period from July to December 2005. Nonetheless, the Applicant was able to pay the annual financial charges on its loans.

**Conclusion**

69.3 On the basis of the above, the Commission has concluded that the Applicant suffered material injury on account of the reduction in return on investment, which affected its ability to invest.

70. **Ability to raise capital or investments**

**Facts/analysis**

70.1 The Applicant earned profit during FY 2003 and FY 2004 however, it incurred losses in FY 2005 and during the period from July to December 2005 its losses increased. Thus the financial position of the Applicant deteriorated during the POI but it did not face difficulty in raising capital during FY 2003 and FY 2004 for setting up its new plant. The Applicant invested in setting up of new plant with a significantly higher capacity than its old plant due to the growing demand for Tiles, however, it could not fully profit from this investment on account of sharp increase in the volume of dumped imports.

**Conclusions**

70.2 The Commission has concluded that the Applicant did not suffer material injury in respect of its ability to raise capital or investment.

71. **Growth**

**Facts/Analysis**

71.1 The total demand for Tiles grew during the POI, as the total domestic market for Tiles grew by 50.66% in FY 2004, 43.63% in FY 2005. However, it decreased by 15.94% during the period from July to December 2005. The Applicant increased its installed production capacity from 1.50 million SQM Tiles to 7.50 million SQM Tiles in FY 2004.

**Conclusion**

71.2 On the basis of above facts, it is concluded that the Applicant did not suffer material injury on account of growth, however, this growth is not being utilized fully as major portion of domestic market is taken by dumped imports.

72. **Summing up of Material Injury**

72.1 Over the POI, the domestic demand for Tiles increased from \*\*\* SQM in FY 2003 to \*\*\* SQM in FY 2005, an increase of over \*\*\* SQM. The domestic demand on the basis of half yearly data is expected to reach a higher level in FY 2006. Even though the Applicant increased the volume and the total value of its sales, it was unable to fully profit from this increased demand as by far the bulk of this increase in demand was taken by the dumped imports. The market share of dumped imports increased from 13 percent in FY 2003 to 43 percent during the period from July to December 2005 and the market share of the domestic industry decreased from 32 percent in FY 2003 to 24 percent during the period from July to December 2005.

72.2 The Applicant, foreseeing the growth in the domestic market for Tiles, had installed a new plant with a significantly higher capacity than the old one. However, the Applicant could not utilize the larger production capacity on account of the sharp increase in the volume of dumped imports. Capacity utilization of the Applicant suffered and fell from 67.51 percent in FY 2003 to 45.60 percent during the period from July to December 2005. Additional employees had also been put in place to operate the new larger production facility. But as the plant operated well below full capacity for the POI, productivity suffered, hence raising the cost of production.

72.3 Importantly, on account of price undercutting, the Applicant could not increase its prices to accommodate the rising cost of production in FY 2005 and during the period from July to December 2005, and, therefore, the Applicant's profitability suffered. The Applicant's profits decreased in FY 2004, and it suffered losses in FY 2005 as well as during the period from July to December 2005. This fall in profitability directly affected the return on investment, which fell from 14.51 percent in FY 2003 to 6.29 percent in FY 2005.

72.4 The landed cost of investigated product undercut the ex-factory sales price of domestic industry through out the POI except for FY 2005. The Applicant also reduced its ex-factory sales price during FY 2003, FY 2004 and FY 2005 in an unsuccessful effort to maintain market share. During FY 2005 and the period from July to December 2005 the percentage of price undercutting fell and the Applicant increased its ex-factory price by Rs. \*\*\*/SQM to partially offset the increase in its cost of production during that part of POI.

72.5 Change in inventories presents a mixed picture. Inventories built-up as imports from dumped sources increased. However, as domestic prices were adjusted downwards in FY 2004 and FY 2005 due to price depression, inventories fell to a more reasonable level.

72.6 It may, therefore, be concluded that the domestic industry suffered material injury due to dumped imports as evident, *inter alia*, in the reduced market share, low capacity utilization, falling productivity, reduced profit and subsequent losses and a fall in return on investment.

73. **Other Factors**

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73.1 In accordance with Section 18(2) of the Ordinance, the Commission also examined factors, other than dumped imports, which could at the same time cause injury to the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the injury caused by dumped imports.

73.2 The investigation of the Commission revealed that there were imports from sources other than dumped source during the POI that may also have caused injury to the domestic industry. However, injury caused by imports from other sources cannot be considered as significant as its volume was far less than the volume of dumped imports. Following table shows the volume of imports from other sources and from dumped sources:

**Table-XXII** (SQM)

Period	Imports from		Total Imports
	China	Other Sources	
<b>FY 2003</b>	52%	48%	100%
<b>FY 2004</b>	81%	19%	100%
<b>FY 2005</b>	74%	26%	100%
<b>Jul-Dec 2005</b>	81%	19%	100%

73.3 Other factors mentioned in Section 18(3) of the Ordinance were also analyzed and it was found that:

- i. There is no contraction in demand for Tiles in Pakistan during the POI;
- ii. There was no change in trade restrictive practices and competition between foreign producers, and domestic producers; and
- iii. There has been no considerable change in technology.

**E. CONCLUSIONS**

74. The conclusions, after taking into account all considerations for this preliminary determination, are as follows:

- i. The Commission has made this preliminary determination in compliance of the short of the Supreme Court dated October 29, 2010, final determination would be made after the detailed judgment of the Supreme Court of Pakistan.
- ii. All procedural requirements under the Ordinance have been met in fresh proceedings.

- iii. The Commission has taken into account all information and evidence collected in original investigation and views/comments of interested parties received in these proceedings.
- iv. The Commission has taken into account all issues raised by the petitioners in various writ petitions in Superior Courts (paragraphs 5 and 17 supra).
- v. Application was filed on behalf of domestic industry under Section 20 of the Ordinance.
- vi. The Applicant represents major proportion of the production of domestic like product during POI and fulfills requirements of Section 24 of the Ordinance;
- vii. Investigated product and the domestic like product are alike products;
- viii. During POI, the investigated product was exported to Pakistan by the exporters/producers from China, at prices below its normal value;
- ix. The Commission has made fresh determination of dumping of the investigated product from China and material injury to domestic industry in accordance with provisions of Sections 5, 10, 11, 32 and Part VI of the Ordinance.
- x. In these proceedings individual dumping margins have been determined for four Chinese exporters who provided necessary verifiable information. Residual antidumping duty rate for all other exporters, who did not cooperate, has been determined in accordance Section 32 of the Ordinance
- xi. Volume of dumped imports of the investigated product and the dumping margins established are above the negligible and *de minimis* levels respectively;
- xii. Domestic industry suffered material injury during POI on account of, volume of dumped imports, price undercutting, price depression, price suppression, loss in market share, decline in profit, negative effects on production and capacity utilization, and increase in inventories (in terms of Sections 15 and 17 of the Ordinance); and
- xiii. There was a causal relationship between dumped imports and the material injury suffered by the domestic industry during POI.

**F. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY**

75. In view of the analysis and conclusions with regard to dumping, material injury, and causation, imposition of provisional antidumping duty on the investigated product is essential to offset injury to the domestic industry by dumped imports.

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76. The Commission has investigated all exporters who cooperated and responded to the Commission's questionnaire. However, individual dumping margins have been determined for those exporters who supplied necessary verifiable information and the provisional antidumping duty for those exporters has been established on the basis of individual dumping margins. A residual dumping margin and antidumping duty rate for all other exporters, who did not cooperate or whose information was either deficient or not verifiable, is determined in terms of Section 32 of the Ordinance.

77. In terms of Section 43 of the Ordinance provisional antidumping duties as given in the following table are hereby imposed on the investigated product importable from China into Pakistan up till final determination of the Commission.

**Table-XXIII  
Provisional Antidumping Duty Rates**

<b>Exporter Name</b>	<b>Dumping margin (% of C&amp;F Price)</b>	<b>Anti-dumping duty Rate (% in <i>ad val</i>)</b>
Junging	14.85	14.85
Nanghai	21.08	21.08
J&M	16.46	16.46
Guangzhou	23.65	23.65
All Others	23.65	23.65

78. Tiles imported from sources, other than those as specified above shall not be subject to provisional antidumping duties. The antidumping duty rates are determined on C&F value in *ad val* terms. The investigated product is classified under PCT heading No. 6907.1000, 6907.9000, 6908.1000 and 6908.9000.

79. In accordance with Section 51 of the Ordinance, the provisional antidumping duty shall take the form of *ad valorm* duty and be held in a non-lapsable personal ledger account established and maintained by the Commission for the purpose. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such antidumping duty.

80. Provisional antidumping duty levied shall be in addition to other taxes and duties leviable on import of the investigated product under any other law.

81. The provisional antidumping duty shall be collected in the same manner as customs duty is collected under the Customs Act, 1969 (IV of 1969) and shall be deposited in Commission's Non-lapsable PLD account No. 187 with Federal Treasury Office, Islamabad.



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(Zamir Ahmed)  
Member  
February 20, 2010

(Bilal Khan)  
Member  
February 20, 2010

(Batool Iqbal Qureshi)  
Chairperson  
February 20, 2010