

(NON-CONFIDENTIAL)



**Government of Pakistan
National Tariff Commission**

REPORT ON

**NEWCOMER REVIEW OF THE ANTIDUMPING DUTIES
IMPOSED ON DUMPED IMPORTS OF TILES ORIGINATING IN
AND/OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

A.D.C No. 11/2006/NTC/CT/NR/08

March 12, 2009

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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 antidumping 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. The Commission has conducted a newcomer review of definitive antidumping duties imposed on ceramic tiles, originating in and/or exported from the People's Republic of China (hereinafter referred to as "China") in accordance with provisions of the Ordinance and the Rules. This report on conclusion of newcomer review has been issued in accordance with Section 39(5) of the Ordinance.

A. PROCEDURE

3. Antidumping Duties in Force

Upon request of the domestic ceramic tiles manufacturing industry, the Commission conducted an antidumping investigation on dumped imports of tiles originating in and/or exported from China in the year 2006 (A.D.C No.11/2006/NTC/CT). The Commission made an affirmative final determination of dumping of tiles and material injury to the domestic industry on March 30, 2007 and imposed antidumping duties ranging from 14.85 percent to 23.65 percent effective from November 30, 2006 on dumped imports of tiles originated in and/or exported from China.

4. Receipt of Applications

4.1 The Commission received newcomer review applications from following two exporters on prescribed format on June 30, 2008:

- i. Tangshan Huida Ceramic Group CO., Ltd., Huida Ceramics City, Tangshan City, Hebei, China ("Huida"); and
- ii. Fujian International Trade Development Company, Ltd. 21F, World Trade Plaza No.71, Wusi Avenue, Fuzhou, China ("Fujian")

(hereinafter collectively referred to as "Applicants")

4.2 The information and evidence provided in the applications were analyzed and some vital information/evidences to conduct a review under Section 60 of the Ordinance were found missing/deficient. Deficiencies in applications were conveyed to the Applicants on July 24, 2008. The Commission received responses from the Applicants on August 16, 2008. The responses of the Applicants were analyzed and were found deficient again. Deficiencies were once again conveyed to Huida and Fujian on August 29 and 30, 2008 respectively.

4.3 Huida responded on August 30, 2008. Its response was still deficient. These deficiencies were conveyed to it on September 01, 2008. Huida responded on September 05, 2008. The response did not contain all the requisite information. However, those deficiencies were not of vital nature, therefore, the Commission decided to initiate the newcomer review and Huida was asked to remove deficiencies during the course of this review.

4.4 The Commission received response from Fujian on September 09, 2008. The response was analyzed and was found deficient. However, those deficiencies were not of vital nature, therefore, the Commission decided to initiate the newcomer review. The Commission after initiation of review asked Fujian to provide missing information.

4.5 The Applicants requested the Commission for determination of individual dumping margin for their export of ceramic tiles to Pakistan. According to the Applicants, they did not export tiles into Pakistan during the original POI (from January 1, 2005 to December 31, 2005) and that they are not related to any exporter or producer who are subject to antidumping duty.

4.6 The Applicants were liable to pay 23.65 percent anti-dumping duty on their exports of tiles to Pakistan.

5. **Evaluation and Examination of the Applications**

5.1 If a product is subject to definitive anti-dumping duties, any exporter or foreign producer who did not export the product to Pakistan during the original period of investigation can request for determination of individual dumping margin under Section 60(1) of the Ordinance. However, such exporter or producer has to show that it is not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties levied on the investigated product.

5.2 The examination of the applications showed that it *prima facie* met requirements of Section 60 of the Ordinance.

6. Applicants' Views

6.1 The Applicants claimed following in their applications that they:

- i. have not exported tiles (the product under review) to Pakistan during the original POI (from January 01, 2005 to December 31, 2005); and
- ii. are not related to any exporter or producer in China who is subject to antidumping duty imposed by the Commission on imports of tiles from China.

6.2 In support of above-mentioned claims, the Applicants submitted affidavit duly notarized by the notary public in China and attested by the Embassy of Pakistan in Beijing, China.

7. Initiation of Newcomer Review

7.1 The Commission upon examining the accuracy and adequacy of the evidence provided in applications established that there is sufficient evidence to justify initiation of a newcomer review. Consequently, the Commission decided to initiate a newcomer review on September 22, 2008 to determine the following under relevant provisions of the Ordinance:

- i. the Applicants have not exported product under review to Pakistan during the original POI;
- ii. the Applicants are not related to any of the exporters or producers who are subject to the antidumping duty imposed by the Commission following the original investigation (paragraph 3 *supra*);
- iii. the Applicants are *bona fide* exporters and have exported product under review to Pakistan in commercial quantities after imposition of definitive antidumping duty on tiles originating in and/or exported from China to Pakistan; and

iv. individual dumping margin for the Applicants.

7.2 The Commission issued a Notice of Initiation in terms of Section 27 of the Ordinance, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on September 24, 2008.

7.3 The Commission notified the Embassy of China in Pakistan of initiation of newcomer review by sending a copy of the Notice of Initiation on September 24, 2008. Copy of Notice of Initiation was also sent to exporters/producers from China (whose complete addresses were available with the Commission), known Pakistani importers, domestic producers and the Applicants on September 24, 2008, in accordance with the requirements of Section 27 of the Ordinance.

8. Interested Parties

Through Notice of Initiation, the Commission advised the interested parties to register themselves with the Commission for the purposes of this newcomer review. List of parties registered in this review as "interested parties" in terms of Section 2(j) of the Ordinance is placed at Annexure-I. The interested parties were given opportunities to make oral and written submissions.

9. Period of Review ("POR")

For determination of individual dumping margin, the Applicants submitted information/data for the period from April 1, 2007 to March 31, 2008. Thus the POR for determination of individual dumping margin is one year i.e. from April 1, 2007 to March 31, 2008.

10. Product under Review

10.1 On the basis of the information provided in the applications, the Commission determined that the product under review is ceramic tiles (excluding porcelain/vitrified/granite) of a size 20x30 cm, 25x33 cm and border (embossed/printed) of size 8x33 cm., exported by the Applicants to Pakistan during the POR and produced by Tangshan Huida Ceramic Group Huiqun Co., Ltd., Huida Ceramic City, Tangshan City, Hebei, China

¹ The official Gazette of Pakistan (Extraordinary) dated September 24, 2008.

² The 'Daily Express' and the 'Business Recorder' of September 24, 2008 issue.

("Tangshan Huida"), and Fujian Mingqing Gangcheng Ceramic Tile Company, Dianqian Village, Mingqing Town, Fuzhou, China ("Fujian Mingqing"). (hereinafter collectively referred to as "Producers"). The product under review is classified under Pakistan Customs Tariff Heading Nos. 6908.9010.

10.2 Product under review (ceramic tiles) is used for walls and (borders) for decoration in kitchens, drawing rooms, TV lounges and bathrooms 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.

11. Information/Data Gathering

11.1 On September 27, 2008, the Commission sent questionnaires to following two importers, who have imported tiles from the Applicants during the POR:

- i. Waheed Sons, 121, Ferozepur Road, Lahore; and
- ii. Al-Amin Cera, Yunus Plaza No. 4, S.C-1, Chandni Chowk, Karachi.

11.2 Both the above-mentioned importers were asked to submit requisite information within 37 days of dispatch of questionnaire. None of the importers responded to the Commission. After expiry of the time period given to importers for response, they were informed on November 8, 2008 that the Commission will be constrained to rely on best available information in terms of Section 32 of the Ordinance while making its determination.

11.3 A meeting of officers of the Commission with both the importers was held on December 18, 2008 at the offices of the Commission. The officers of the Commission explained that in a newcomer review, importers' information is very much needed to determine *bona fide* and commercial quantities of the exports of product under review. The importers were asked to provide requisite information. Both the importers were thus provided another opportunity to submit requisite information within two weeks of the meeting. However, they did not respond.

11.4 The Commission has access to 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 newcomer review the Commission has

used import data obtained from PRAL in addition to the information provided by the Applicants.

11.5 Thus the Commission has sought relevant data and information from all available sources deemed necessary for the purposes of this review.

12. Public File

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

13. Hearing

Upon request of Master Tiles and Ceramic Industries Ltd., a domestic producer of tiles, and in light of the decision of the Islamabad High Court dated November 18, 2008 in Writ Petition No. 1440/2008, a hearing was held on December 18, 2008 under Rule 14 of the Rules. The information submitted by the participants during the hearing, whether orally (oral statements were subsequently confirmed in writing as per Rules 14 of the Rules) or in writing and the record of hearing were made available to interested parties by placing in the public file.

14 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 review, 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 are 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 are available to all interested parties (paragraph 12 supra).

15. Verification of the Information

15.1 In terms of Sections 23, 32(4) and 35 of the Ordinance and Rule 12 of the Rules, during the course of an investigation, the Commission requires to satisfy itself as to the accuracy of the information and verify/examine the accuracy of the information supplied by the Applicants. For the purposes of the verification of the information, the Applicants were asked them to provide following documents/evidence:

- i. Copies of sales contract, proforma and commercial invoices, purchase invoices VAT payment and refund invoices, letters of credit, bills of lading, packing lists, freight invoices, and payment receipt from bank etc. for all export transactions of the product under review during the POR
- ii. Copies of sales contract, proforma and commercial invoices, purchase invoices, packing lists, freight invoices, payment of VAT and cash receipt from bank etc. for all domestic transactions made during the POR.
- iii. Copies of relevant ledger accounts (general ledger, purchase ledger, sales ledger etc.) of all products sold by the Applicants during the POR.
- iv. Evidence for basis of allocation of joint costs i.e. administration, operating, financial etc.
- v. Copies of relevant ledger accounts (general ledger, purchase ledger, sales ledger etc.) of all products produced and/or sold by the Producers.
- vi. Total value and documentary evidence for VAT paid and refund received on sales/export of tiles during the POR.
- vii. Details (name, address and telephone no.) of all customers who purchased tiles either from the Applicants or from Producers during the period from January 1, 2005 to December 31, 2005.

15.2 Applicants did not provide following documents despite repeated reminders:

15.2.1 Documents not Provided by Huida

- i. Copies of sales contract, proforma invoices, value and invoices of VAT refund, letters of credit, freight invoices and bank receipts of payment for export transactions of the product under review.
- ii. Copies of freight invoices, bank receipts of payment for domestic sales of tiles made during POR.
- iii. Evidence for basis of allocation of joint costs i.e. administration, operating, financial etc.
- iv. Total value and documentary evidence for VAT paid and refund received on sales/export of tiles during the POR.
- v. Details (name, address and telephone no.) of all customers who purchased Tiles either from Huida or from its producer during the period from January 1, 2005 to December 31, 2005.

15.2.2 Huida provided copies of sales invoices, purchase invoices, packing list, relevant ledger accounts, but these documents are in Chinese language, which are difficult to understand. Huida did not provide English translation of these documents.

15.2.3 **Documents not Provided by Fujian**

- i. Copies of sales contract, purchase invoices, invoices of VAT refund, and bank receipts of payment for export transactions of the product under review.
- ii. Copies of sales contract, proforma and commercial invoices, purchase invoices, packing lists, freight invoices, payment of VAT and cash receipt from the bank for all domestic transactions made by the producer during the POR from whom Fujian purchased product under review.
- iii. Copies of relevant ledger accounts (general ledger, purchase ledger, sales ledger etc.) of all products sold and/or produced during the POR by the producer from whom Fujian purchased product under review.

15.3 As the Applicants did not provide necessary documents/evidence, the Commission was unable to verify/satisfy itself to the accuracy of the information submitted by the Applicants.

16 Views/Comments of Interested Parties

16.1 The Commission received comments on the applications and initiation of newcomer review from following parties:

- i. Domestic industry (through Master Tiles and Ceramic Industries Ltd);
- ii. The Applicants (Huida and Fujian); and
- iii. Importers (Waheed Sons, Lahore; and Al-Amin Cera, Karachi).

16.2 Comments received and germane to this review under the Ordinance are reproduced in Column A and the Commission's views/determination thereto are set out in Column B in the following table:

Column-A (Views/comments of interested Parties)

Column-B (Commission's Response)

Views/Comments of the Domestic Industry (submitted on December 11, 2008)

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"3. It is noted that both Tangshan and Fujian have submitted deficient applications to the Commission and even more significantly non-confidential summaries of the confidential information *which enables reasonable understanding of the substance of the information submitted in confidence* in the two Newcomer Review Applications has not been supplied to the Commission in clear contravention of the mandatory requirements of Section 31(5) of the Ordinance."

"4. Moreover, both Tangshan and Fujian have also failed to observe the procedure prescribed in Section 31(4) of the Ordinance, pertaining to confidential information in terms of which there is a two-stage process whereby, first, the party seeking any information to be kept confidential must specifically request for the same along with reasons warranting confidentiality. In the second stage, the Commission is required to give a determination on this request. In the case under comment, however, both the parties seeking a Newcomer Review (i.e. the Applicants) under Section 60 of the Ordinance and, it is submitted with respect, the Commission, have failed to observe and apply the specific requirements of Section 31 of the Ordinance.
....."

"5. In view of the clear omission of both the applicants to cooperate and comply with the Commission, it is submitted that the initiation of a Newcomer Review by it was not justified until all such information was duly and properly disclosed by the Applicants in accordance with the mandatory requirements of the Ordinance."

"8. From the information contained in the Initiation Memorandum prepared for the Commission, it is noted that Guidelines framed by the Commission (the "**Guidelines**") provide for a determination of

Applications submitted by the Applicants were examined and analysed in the Commission and certain data deficiencies were pointed out. Those deficiencies were conveyed to the Applicants. Applications were formally accepted after receipt of requisite information, *prima facie* meeting requirements of Section 60 of the Ordinance (paragraphs 4.1 to 4.5 supra). Initially, non-confidential summaries of the confidential information submitted with applications were found deficient. However, on pointing out those deficiencies, the Applicants submitted non-confidential summaries, which enabled reasonable understanding of the substance of information submitted in confidence. Applications were formally accepted after receipt of non-confidential summaries of the confidential information

The newcomer review was initiated when the Commission was satisfied that applications *prima facie* met requirements of Section 60 of the Ordinance (paragraphs 4 and 7 supra).

Any exporter/producer who meets the requirements of Section 60 of the Ordinance is entitled to request for a newcomer review. The Commission can

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whether the Applicants have exported product under review in commercial quantities into Pakistan during the Period of Review ("POR"). It is noted that in determining whether the quantities are commercial the factors which will be considered by the Commission are:

- (i) quantity exported
- (ii) price
- (iii) timing of sale
- (iv) expenses arising from transactions
- (v) whether the product was resold at profit
- (vi) whether the transaction was made on arm's length basis"

"10. In addition to the factors mentioned in paragraph 11.3 of the Initiation Memorandum, ascertaining whether the exports of the product under review during the POR are *bona fide* or not is also an additional critical factor which must be examined and considered by the Commission in reaching its decision on the validity of the two Newcomer Review Applications."

"11It is submitted that, the domestic industry reasonably apprehends that the very small and limited shipments which form the basis of the Newcomer Review Application are not *bona fide* and, therefore, must be excluded from the export price calculations as these are unrepresentative and extremely distortive. The quantities involved also indicate that the sales are not in commercial quantities and are atypical of normal business practices."

only determine such factors like commercial quantities and *bona fide* exports/exporters after initiation of a newcomer review. In this review the Commission has examined and analysed all factors listed in Initiation Memorandum. After review, the Commission has determined that quantities of the product under review exported by the Applicants could not be considered as commercial quantities for the purposes of this newcomer review (paragraph 22 infra).

To determine whether Applicants were *bona fide* exporters and their exports of the product under review were *bona fide* exports, the Commission examined and analysed certain necessary factors. After investigation, the Commission has determined that the Applicants were not *bona fide* exporters and their exports of the product under review were not *bona fide* exports (paragraph 21 infra).

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"14 In the context of the volume of product under review and the decision whether to accept a Newcomer Review application under Section 60 of the Ordinance, the principles and criteria prescribed in Section 41(2) read with Section 41(3)(b) are also relevant and applicable through analogy..... It is submitted that effectively for the purposes of a Newcomer Review a new investigation (*de novo*) has to be conducted by the Commission in respect of the "product under review" for the Period of Review mentioned in Section 9 of the Initiation Memorandum. Moreover, it is also pertinent to mention here that the "product under review" has been very specifically delineated and identified by the Commission..... Hence, the Commission, for all intents and purposes, is to conduct a fresh investigation in accordance with the Ordinance specifically in respect of the product under review and specifically for the Period of Review. It is now apparent that each Applicant has exported no more than two (2) very small quantities of the product under review to Pakistan during the Period of Review. Moreover, from the summary in the Initiation Memorandum it also stands established that the volume of the product under review exported to Pakistan amounts to well under the threshold of three percent (3%) prescribed in the Section 41(3)(b). Accordingly, in the case of an original investigation, which the present Newcomer Review effectively amounts to, the minuscule quantity of the product under review exported to Pakistan would have required immediate termination of the investigation by the Commission as directed by Section 41(2) of the Ordinance."

The Commission is of the view that an application for newcomer review under Section 60 of Ordinance is not required to fulfill requirements of Section 41 of the Ordinance. Threshold for volume of dumped imports in Section 41.3(b) of the Ordinance is for imports of the investigated product from a particular country and not for an individual exporter from that country. Furthermore, this Section of the Ordinance refers to the volume of dumped imports and dumping can only be determined after an investigation. Thus, the Commission has accepted applications and initiated newcomer review investigation in accordance with provisions of the Ordinance.

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"15. The available information does not reveal in sufficient detail or even give an indication of the dumping margin (if any) that the Applicants themselves have claimed. This itself is a manifestation of the intent to deprive the domestic industry of a fair opportunity to comment on the contents of the Newcomer Review Applications. The lack of data is also hindering the ability of the domestic industry to conclusively establish that the subject imports are not *bona fide* and are in fact unrepresentative and extremely distorted. The non-cooperation of the Applicants is evident from evasive replies of the Applicants which are included in the public file maintained by the Commission. Moreover, the fact that the concerned customers of the two Applicants which, it is deduced and apprehended from the documents in the public file, may well be Messrs. Waheed Sons (of 121 Ferozpur Road, Lahore) and Al-Amin Sera (Yonus Plaza No. 4, SC- Chandni Chowk, University Road, Karachi), have also failed to cooperate with the Commission also establishes their intent to open a "back door channel" in circumvention of the antidumping duties imposed through the Final Determination....."

In applications, the Applicants provided information, which was necessary to calculate dumping margin. However, the Commission has not determined individual dumping margin for Applicants due to the following reasons:

- i. one of the Applicants (Huida) was related to an exporter and producer who are liable to definitive antidumping duty;
- ii. risk of circumvention of definitive antidumping duty is imminent;
- iii. the Applicants were not *bona fide* exporters;
- iv. the Applicants did not export product under review in commercial quantities; and
- v. the Commission was unable to verify information submitted by the Applicants.

(Paragraphs 19 to 23 infra)

Views/Comments of the Domestic Industry (submitted on December 22, 2008)

"3.1 Issue of jurisdiction of the Commission

"3.1.1 In the Order dated November 18, 2008 disposing of Writ Petition No. 1440/2008 the Honourable Chief Justice of the Islamabad High Court held has follows:

"Mr. Ahmed Sheraz, Legal Officer, NTC states that Commission will consider the grounds taken in the writ petition and decide after granting an opportunity of hearing to the petitioner as well as respondents No. 3 & No. 4 and will determine its jurisdiction in light of the objections raised by the petitioner." (emphasis supplied)"

Section 2(d) read with Sections 3 and 60 of the Ordinance empowers the Commission to conduct an investigation/newcomer review and impose appropriate antidumping duties on investigated product/product under review.

The Commission initiated this newcomer review after determining that the applications met requirements of Section 60 of the Ordinance (paragraphs 5 to 7 supra).

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"3.1.2 It is clear from the above that the Commission is under a duty to first decide its jurisdiction on the basis of the matters raised in the hearing and in the Writ Petition No. 1440/2008 and other written submissions before proceeding any further in the Newcomer Review."

"3.1.3 During the hearing,, the Honourable Chairman of the Commission indicated that the matters raised during the hearing would be responded to "in the Final Determination". With respect, it is submitted that in view of the aforementioned Order dated November 18, 2008 of the High Court, it is self evident that the jurisdictional aspects must first be decided by the Commission. Accordingly, it is humbly requested that it would be proper for the Commission to *first* render and issue its findings on the issues raised during the hearing *before* any further action is taken in the Newcomer Review and, in any event, well before the Final Determination stage is reached. This is all the more pertinent as MTCL is of the respectful view that the Newcomer Review *ought not to have been initiated in the first place* and that the same is subject to immediate termination for the reasons given in the hearing.

"3.2.1 The Powers of Attorney and Affidavits submitted on behalf of Tangshan Huida Ceramic Group Co. Ltd. ("**Tangshan**") and Fujian International Trade Development Company Ltd. ("**Fujian**") which appear, *inter alia*, at pages 171, 174, 179 and 184 of the public file have not been "duly stamped" in accordance with the mandatory requirements of the Stamp Act. The consequences of failure to stamp an instrument as required under the Stamp Act (which includes all affidavits and powers of attorney) are two fold. First, the authority or public body before which such instrument is submitted, is under a duty to impound the same and require that full stamp duty thereon plus ten times the amount of the full stamp duty be paid on the instrument. Second, until the stamp duty and penalty is paid, such instrument is treated as not having been "duly stamped" and, as such, there is a total and mandatory bar on the admissibility of such instrument in evidence and specific restriction on any public authority acting on such instruments."

"3.3.1 importers in question have totally failed to cooperate with the Commission and provide any data including any response to the Questionnaire for Importers sent to each of the imports by the Commission."

Essential purpose of this review investigation was to determine issues listed at paragraph 7.1 supra. Same/similar issues were raised in writ petition No. 1440/2008. The Commission's findings could only be disclosed after investigation. Thus, the Commission continued its investigation and this report pertains to the findings/conclusions and determination of the Commission.

Powers of Attorney and Affidavits submitted on behalf of Applicants have been stamped under Stamp Act 1899 by the legal representative of the Applicants.

Importers of the product under review did not cooperate with the Commission and did not provide requisite information (paragraphs 11.1 to 11.3 supra).

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“3.3.2 In view of the criteria prescribed by the Commission in its guidelines and in paragraph 11.3 of the Initiation Memorandum for determining whether the volume of exports of the product under review was in “commercial quantities”, the availability, authentication, verification, examination and application of the data from the domestic importers is absolutely critical. In the absence of such data, the Commission will not be able to correctly calculate and determine the true expenses arising from the transaction; whether the product was resold at profit and whether the transaction was made on arm's length basis. These factors, as explained during the hearing, are also directly relevant in determining the *bona fides* of the Applicants and the consignments in question which form the basis of the Newcomer Review Applications.”

“3.3.3 The domestic industry including MTCL vehemently disagrees with the submissions of the learned Consultant appearing for the Applicants who submitted that since it is usual for importers to not respond “no impairment would be caused due to such non-cooperation”. It is submitted that the failure of the importers to respond is deliberate and conscious and is part of a calculated scheme to deprive the domestic industry of the benefit of the Final Determination by opening a back door for circumventing the antidumping duties imposed by the Commission.”

Consequently, the Commission could not determine whether product under review was resold at profit. However, other factors, have been determined on the basis of information submitted by the Applicants and obtained from PRAL (paragraphs 19 to 23 infra).

The Commission provided enough time period to importers to submit requisite information. Importers were also explained importance of their information in this review investigation. But, the importers deliberately did not provide requisite information (paragraphs 11.1 to 11.3 supra). The Commission has determined that the risk of circumvention of antidumping duty is imminent (paragraph 21 infra).

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"3.4.1 it appears that the Commission has decided not to conduct on the spot verification visits to verify the data submitted by the Applicants in the Newcomer Reviews. Instead, it appears, that the Commission is seeking copies of sales documents, ledger accounts etc. The domestic industry respectfully submits that it is absolutely essential for the Commission to conduct on the spot investigations and ascertain and verify the actual correct factual position obtaining instead of accepting information and data on face value as submitted by the Applicants as there is already a history of non-cooperation and misrepresentation in the original antidumping investigation by Chinese exporters." "3.4.2 It is also relevant to note that the Commission as a matter of routine now conducts on the spot verification visits in each investigation it carries out..... It is settled law that consistent departmental practice on a certain point binds the department and it cannot then derogate from such practice in a give case. Accordingly, failure to conduct on the spot verification visits in the Newcomer Reviews of both the exporters would be totally inconsistent with the past practice of the Commission and hence illegal and discriminatory."

In terms of Sections 32(4) and 35 of the Ordinance and Rule 12 of the Rules, the Commission will satisfy itself of the accuracy of the information and will verify information supplied by interested parties during the course of an investigation. On-the-spot investigation is one way to verify the information. The Commission, in this newcomer review decided not to conduct on-the-spot investigations at premises of the Applicants. However, the Applicants were asked for necessary documents/evidences for the purposes of verification of their information. The Applicants did not supply all requested documents (paragraph 15 supra). Consequently, the Commission was not able to determine accuracy of the information supplied by the Applicants (paragraphs 23.4 and 23.5 infra)

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“3.4.3 With reference to ascertaining whether the product under review was exported in “commercial quantities”, it is submitted that a new comer must establish that it is able to export its products to Pakistan at a price higher (by at least the “all others rate” dumping margin) than that at which the original exporters during the original investigation were exporting. The volume of exports by a new comer during the period of review must show the level of penetration and market share in the domestic market acquired through its own competitive advantage, if any, other than price undercutting or some other unfair trade practice. We hereby request the Commission to kindly undertake a monthly analysis of such exports during the Period of Review with a view to ascertaining whether there is an increasing trend of exports on month to month basis by a new comer. Moreover, a substantial share in the total exports must be established by a new comer in order to be entitled to initiation of a new review. It is the domestic industry’s understanding that there is no such trend. Hence, the Newcomer Reviews are not maintainable. The export of two consignments in one or two months does not establish the commerciality of such exports. As repeatedly submitted, these quantities which are atypical, unrepresentative and un-commercial have just been exported to obtain a zero dumping margin so that in the future tiles can be dumped through the Applicants. It is submitted that the exports during the period of review must demonstrate fair trade practices that do not affect the domestic industry producing domestic like product. In order to prevent any manoeuvring or manipulation by the Applicants an on the spot verification of exporters-producers data and premises and examination of sales and other data from the importers (who have not submitted any material information) is therefore absolutely essential in this particular case.”

Views/Comments of the Applicants and the Importers

Legal representative of the Applicants and importers submitted following views/comments on initiation and conduct of this newcomer review:

“It is surprising to note that the product under investigation kept on changing continuously as would be evident from the notices published by the

To determine commercial quantities of the product under review, the Commission examined and analysed following factors:

- i. quantities of the product under review exported by the Applicants;
- ii. prices of the product under review exported by the Applicants;
- iii. timing of sales of the product under review;
- iv. expenses arising from export transactions of the product under review;
- v. whether export transactions were made on arm’s length basis; and
- vi. whether the product under review was resold at profit.

After investigation, the Commission has determined that the Applicants have not exported product under review in commercial quantities (paragraph 22 infra).

The Applicants have requested the Commission for determination of individual dumping margin based on

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NTC in newspapers on different occasions for the Ceramic Tiles antidumping investigation."

"In the notice of initiation of original investigation product under investigation was **ceramic tiles**. It is understandable that scope of the product investigated was enlarged as "**tiles**" as per notice of preliminary determination as well as per notice of final determination so as to include each type of tiles. But now limiting the scope of investigated product again to only **ceramic tiles and that also to specified sizes is not understandable**. There is no doubt that individual dumping margin of both the exporters would be calculated as per their actual exports as was done for other exporters whose individual dumping margins were determined in the original investigation. But it may not be fair to change the scope of product under review/investigation."

"..... it is better if NTC changes the product under review as per its final determination and consider "**Tiles**" as the Product under Review, rather than limiting it to only three sizes that were exported to Pakistan by the Applicants (exporters) during the Period of Review. In the Application the exporters identified the product as "**Tiles**" and not only three sizes. If NTC had some concerns on this issue they should have communicated the same to the Applicants before limiting the investigation for three specific sizes."

"the Commission has initiated this review to determine interalia that:

"The Applicants have exported product under review to Pakistan in commercial quantities **after imposition of definitive antidumping duty** on tiles originating in and/or exported from China to Pakistan."

"Here we would like to point out that the requirement of the Ordinance pursuant to Section 60(2) is to determine that the Applicants have not exported the product under review to Pakistan during the original POI So thereafter, the Applicants can export and on that basis request for Newcomer Review. As per the Ordinance there is no requirement to determine that the Newcomer Applicant has not exported after the original

their exports of ceramic tiles exported after imposition of definitive antidumping duty. All types and sizes of ceramic tiles, which were exported by the Applicants to Pakistan, have been declared as product under review. Furthermore, export price could only be determined for the product exported into Pakistan. How can export price for a product, which is never exported be determined? Section 10(1) of the Ordinance clearly states that "an export price shall be a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan." And Section 2(k) of the Ordinance defines investigated product as "a product which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation"

The Commission is of the view that the Ordinance does not restrict to change the scope of investigated product or product under review.

The Applicants assertion that the dumping margin determined for one or two types/sizes of ceramic tiles would be applicable to their exports of all types (ceramic, porcelain, polished/unpolished, borders etc.) and all sizes of tiles is leading to conclude that they intend to circumvent definitive antidumping duty through this newcomer review.

In determination of "commercial quantity" and "*bona fide*" exports of the product under review, the Commission has considered all exports of the product under review to Pakistan made by the Applicants after original POI (paragraphs 21 and 22 infra).

Furthermore, the Commission has conducted an unbiased and objective examination of a number of factors to determine "commercial quantities" and "*bona fide*" exports of the product under

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period of investigation till the imposition of definitive antidumping duty on the product under review. We therefore suggest that this determination as pointed out above may be changed as under:

"The Applicants have exported the product under review to Pakistan in commercial quantities after the original period of investigation."

"In addition to this we would like to bring the kind attention of the Commission to the fact that "Commercial Quantities" is nowhere mentioned in the Ordinance or Rules. Therefore, we hope that the Commission will fairly determined how much quantity of imports can be considered as commercial"

"Fulfilling the requirement of Section 60

"The applications filed by the exporters for Newcomer Review fully satisfied the requirement of Section 60 as well as all the requirements laid down in the questionnaire prescribed by the NTC. As far as issue of stamp duty on power of Attorney or Affidavit is concerned, had it been required by NTC, the same would have been complied with. Even now if NTC suggests its rectification our Clients are willing to cooperate."

"Intension of Exporters is to circumvent the antidumping duty levied by the NTC

"The representative of Master Tiles raised doubts about the intension of the exporters and requested for termination of this Review. He pointed out that all exports under the Newcomer Review are aimed at claiming zero percent dumping margin. It was clarified that the Newcomer Review applications are for determining individual dumping margin and not for claiming zero percent dumping margin. But as result of NTC determinations even zero percent dumping margin can be arrived at as it happened even in some original antidumping investigations earlier conducted by NTC."

review including the volume of export (paragraphs 21 and 22 infra).

The Commission initiated newcomer review after ascertaining that applications filed by the Applicants *prima facie* fulfilled requirements of Section 60 of the Ordinance. On direction of the Commission, the Applicants have fulfilled requirements of Stamp Act 1899 and power of attorneys have been stamped.

This newcomer review was initiated to determine *inter alia* individual dumping margin for the Applicants (paragraph 7.1 supra).

The Commission has conducted an unbiased and objective examination to determine whether Applicants were *bona fide* exporters and whether exports of the product under review were *bona fide* exports. After investigation, the Commission has determined that the Applicants were not *bona fide* exporters and their exports of the product under review could not be considered as *bona fide* exports. Furthermore, risk of circumvention is imminent (paragraph 21 infra)

"Cooperation by the Importers

"The representative of Master Tiles raised the question that the importers have not cooperated with the NTC in the investigation. In the connection we would like to say that the extent of cooperation of the importers was discussed with the offices of the NTC after the hearing and we shared our view that as a matter of practice mostly the importers do not provide their questionnaire which is the case even in other countries, as determination of dumping margin is not in any way dependent on their data. Even in the previous investigations conducted by the NTC whether the duties were imposed on the exporters or not, the submission of importers questionnaire did not make a difference."

Importers did not cooperate and did not provide requisite information despite repeated reminders. Officers of the Commission also explained importance of importer's information in this newcomer review (paragraphs 11.1 to 11.3 supra). However, they intentionally did not supply any information.

A newcomer review is different than the original investigation. Due to non-cooperation of the importers, the Commission was not able to determine some important facts in this review investigation (paragraphs 21.2 (v), 21.2(vi), 21.4(iv) and 21.4(v) infra).

17. Disclosure of Essential Facts

17.1 In terms of Rules 14(8) of the Rules, the Commission disclosed essential facts, through a Statement of Essential Facts (hereinafter referred to as the "SEF") on February 03, 2009 to interested parties including the Applicants, importers, the domestic producers and to the Embassy of China in Pakistan.

17.2 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. Comments received on essential facts and germane to this review under the Ordinance are reproduced in Column A and the Commission's views/determination thereto are set out in Column B in the following table:

- i. Domestic industry (through Master Tiles and Ceramic Industries Ltd);
- ii. The Applicants (Huida and Fujian); and Importers (Waheed Sons, Lahore; and Al-Amin Cera, Karachi) through their legal representative.

Column-A (Views/comments of interested Parties)

Column-B (Commission's Response)

Views/Comments of the Domestic Industry on Essential Facts

"II. Issue of jurisdiction of the Commission must be first decided

"Previously, it has been explained to the Commission that, in view of the Order dated November 18, 2008 disposing of Writ Petition No. 1440/2008, it is incumbent upon the Commission to first decide its jurisdiction on the basis of the matters raised in the hearing and in the Writ Petition No. 1440/2008 and other written submissions before proceeding any further in the Newcomer Reviews. It is submitted that the Commission has erred and failed to comply with the said Order of the Chief Justice of the Islamabad High Court by proceeding with the issuance of the SEF without addressing the jurisdictional aspects first as has been urged by MTCL. This is all the more pertinent as MTCL is of the respectful view that the Newcomer Review *ought not to have been initiated in the first place* and that the same is subject to immediate termination for the reasons given in the hearing and the two letters mentioned above."

The Commission initiated this newcomer review after determining that the applications met requirements of Section 60 of the Ordinance.

Furthermore, this review investigation was initiated to determine issues listed at paragraph 7.1 supra. Same/ similar issues were raised in writ petition No. 1440/2008. Without an investigation, how Commission could determine those issues. Thus, the Commission continued its investigation and this report contains findings/conclusions and determination of the Commission.

"III Comment on Section 9.3 of the SEF

"5.1 In the first sentence of Section 9.3, the Commission itself has noted that "Huida markets and sells different products including tiles (the product under review) produced by its related producer, Tangshan Huida Ceramic Group Huiqun Co., Ltd., Huida Ceramic City, Tangshan City, Hebi, China ("Tangshan Huida"), in its domestic market as well as in international market." In this connection, in Section 9.2 the Commission has noted that the "Applicant" (i.e. Huida) (as opposed the related

The Applicants have submitted affidavits that neither they have exported tiles into Pakistan during original POI nor they are related to any of the exporter/producer who is subject to antidumping duty (paragraph 6 supra).

The Commission has investigated whether Applicants are related to any exporter/producer who is subject to

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producer Tangshan Huida) has submitted affidavit on the matters listed in Section 9.1. Strictly without prejudice to the comment of the domestic industry that the said affidavit is *not* in accordance with law and *cannot* be acted upon (as reiterated below), the Commission has *not* obtained a similar affidavit from Tangshan Huida that it has not exported tiles (product under review) to Pakistan during the original POI. Obtaining a formal and duly executed, witnessed and stamped affidavit from Tangshan Huida is also essential as, admittedly, the latter is the *source* of the subject exports on the basis of which the newcomer review is sought. Since it is admitted that Tangshan Huida products are exported world wide by the Commission in the SEF, it has become necessary to ascertain whether Tangshan Huida manufactured tiles (product under review) have been exported to Pakistan during the original POI. If so, then the Huida is obviously disqualified from applying for a newcomer review under Section 60 of the Ordinance.

“As regards the other Applicant, Fujian, it is noted by the Commission in Section 9.3 of the SEF that the subject exports of tiles to Pakistan on the basis of which Fujian seeks a newcomer review is a one off transaction by an entity which has never sold that product in the domestic market and never exported the same to Pakistan earlier. In this context, the said findings, suggest that exports by Fujian are not bona fide. First, the quantum of exported tile itself in tiny (as noted in Section 20. 3 of the SEF) and hence cannot be classified as a commercial quantity. Second, the fact that a new entity which has allegedly never undertaken the export of the product under review and also never sold the product under review in the domestic market, has

exported a single batch of tiles in a negligible quantity when the *all others rate* would apply to it, is itself highly suspect and indicates that the shipment in question was made simply to establish a back door for circumventing and defeating the effect of the Final Determination. Again, these serious issues can only be verified upon an on the spot investigation which is essential for determining the bona fides of the shipment made in the name of Fujian. Additionally, it is requested that the Commission also ascertain and verify whether product under review manufactured by Fujian Huida has ever entered Pakistan during the original POI.”

definitive antidumping duty. Investigation of the Commission has revealed that Huida is related to an exporter and producer, who are subject to definitive antidumping duty (paragraph 20.3 infra).

The Commission has investigated whether the Applicants were *bona fide* exporters and whether their exports of the product under review were *bona fide* exports.

After investigation, the Commission has determined that the Applicants were not *bona fide* exporters and their exports of the product under review could not be considered as *bona fide* exports (paragraph 21 infra).

"IV Period of Review for newcomer review fixed in contravention of requirements of Section 36(2) of the Ordinance

"In Section 6 of the SEF, the Commission has disclosed that the written applications of the Applicants (Huida and Fujian) for *initiation* of new comer reviews pursuant to Section 60 of the Ordinance were *received* by the Commission on September 4, 2008 and September 9, 2008 respectively. The Commission issued Notice of Initiation in terms of Section 27 of the Ordinance on September 24, 2008. However, in Section 12 of the SEF, the Commission has held that the period of review (POR) for the newcomer reviews shall be from April 1, 2007 to March 31, 2008. The POR appears to have been fixed on the basis of the request of the Applicants without due and proper application of the mandatory requirements of Section 36(2) of the Ordinance which require the period to cover "*twelve months preceding the month of initiation of the investigation*". The period of review determined by the Commission appears to have no nexus with the period of one year prior to the date of initiation i.e. September 24, 2008. This requirement, as the Commission will recall, was applied strictly when the domestic industry filed its original application with the Commission and additional data for the original period of review had to be collected and submitted to the Commission at considerable cost. No reasons for deviating from the requirements of Section 30(6) have been furnished by the Commission. It would, therefore, not only be *discriminatory* but also inconsistent with the provisions of Section 36(2) of the Ordinance to apply a different bench mark to the Applicants who are simply attempting to dilute and or circumvent the effect of the Final Determination. The domestic industry, therefore, requests that without prejudice to its other comments on the invalidity of the entire process, the period of review be revised and determined in accordance with

The Commission is of the view that Section 36(2) of the Ordinance does not require that the period of investigation for dumping should end up with immediate preceding month of initiation of an investigation. Section 36(2) of the Ordinance states that " an investigation period shall normally cover twelve months preceding the month of initiation of the investigation". Thus this Section required that, preferably, the period of investigation should be upto preceding month of initiation. However, it is not a binding, the Commission can fix period of investigation for which data is available in accordance with Section 36(2) of the Ordinance.

Furthermore, the Commission received applications on June 30, 2008 (paragraph 4.1 supra). There were data deficiencies in applications, which were conveyed to the Applicants. The Commission received responses from the Applicants in September 2008 (paragraphs 4.3 and 4.4 supra). Thus, the Commission initiated this newcomer review on September 24, 2008 (paragraph 7 supra). This is also a consistent practice of the Commission that period of investigation ends on the last date of the last quarter from date of receipt of an application.

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Section 30(6) of the Ordinance. According to the domestic industry, the period of review ought to have been between August, 2007 to July, 2008. It appears to the domestic industry that the Applicants have sought application of an incorrect period of review in order to have all of the negligible quantity of tiles allegedly exported by the two Applicants to be included in the investigation and related analysis under the Ordinance. If the correct period of review is determined (as suggested above) then the a substantial portion of the shipments (exports) forming the basis of the newcomer review may not fall within such period of review, thereby further substantiating the assertion of the domestic industry that the subject imports are neither *bona fide* nor in commercial quantities.”

“V The provisions of Sections 23 and 35 of the Ordinance read with Rule 12(1) of the Rules have not been observed and applied in letter and spirit by the Commission

“It is respectfully submitted that the accuracy and adequacy of the information and data supplied by the Applicant (which the Commission itself has noted in the SEF in incomplete and or deficient) has not been examined and verified in accordance with the requirements of Section 23(1) of the Ordinance read with Section 35 and Rule 12 of the Rules. As submitted in further detail below the obligation on the Commission is to “satisfy” itself as to the accuracy of information supplied upon which its findings are based. The obligation to “satisfy” itself is a mandatory statutory duty and not a mere discretion. The duty under the aforementioned provisions of the Ordinance and the Rules is essential to undertaking a fair, transparent and accurate investigation and to avoid erroneous findings or findings based on concocted, fake or fabricated information, documents or data by the Commission. In the present case, the exporters have filed numerous frivolous and vexatious legal proceedings with the sole object of delaying and defeating the antidumping application of the domestic industry. Moreover, the importers in question have avoided providing any information whatsoever and the exporters have provided largely misleading and otherwise deficient information. It is, therefore, all the more necessary that the requirements of the aforementioned provisions of the Ordinance and the Rules be observed and strictly applied so as to protect and preserve the rights and interests of the domestic industry.”

In terms of Sections 23(1), 32(4) and 35 of the Ordinance and Rule 12 of the Rules, the Commission has to satisfy itself to the accuracy of the information and shall verify the information submitted by interested parties during an investigation.

In this review, the Commission decided to verify information submitted by the Applicants at its offices instead of conducting on-the-spot investigations at Applicants’ premises. For this purpose, the Applicants were requested to submit certain documents/evidences. The Applicants did not provide all the requisite documents/evidences. Thus the Commission was unable to verify information submitted by the Applicants (paragraph 15 supra).

"VIII On the spot investigation of exporters and importers not being conducted in contravention of the Commission's own consistent past practice to the prejudice of the domestic industry

"The apprehension of the domestic industry that, for reasons best known to it, the Commission is not conducting an on the spot investigation of both the Applicants (exporters) and the Importers stands confirmed from the SEF in which an on the spot verification visit finds no mention. Without prejudice to all of its submissions herein, this is perhaps the single most far reaching adverse decision taken by the Commission in the entire Newcomer Review process as effectively, if the Commission continues to determine individual dumping margin for the Applicant and granting relief under the Newcomer Review on the basis of its current very limited and misleading information as submitted by the Applicants, then it would be taking a decision without the real and actual figures available with it."

In terms of Rule 12(2) of the Rules, the Commission may carry out on-the-spot investigations. However, it is not mandatory under the Ordinance to conduct on-the spot investigations. In this review investigation, the Commission decided to verify information through other means, as stated in above paragraph and not by conducting on-the-spot investigations at premises of the Applicants.

**“VII The importers in question have not cooperated
with the Commission**

“In Section 13.5 of the SEF, the Commission has indicated that in view of the Importers' abject failure to cooperate and join the investigation process, it will have to resort to Section 32 of the Ordinance and rely on “best available information”. It is submitted with utmost respect that, given the specific nature of a Newcomer Reviews and the fact that: (a) the Commission itself has now accepted and agreed that it will have to ascertain both the *bona fides* of the imports as well as whether these were in commercial quantities; and (b) all the factors listed in Section 20.2 of the SEF have to be considered and examined by the Commission; the availability, authentication, verification, examination and application of the data from the Importers is absolutely critical.”

“In the absence of such data, the Commission will not be able to correctly calculate and determine the true expenses arising from the transaction; whether the product was resold at profit and whether the transaction was made on arm's length basis. These factors, as explained during the hearing, are also directly relevant in determining the *bona fides* of the Applicants and the consignments in question which form the basis of the Newcomer Review Applications. Moreover, these very factors are also critical to the consideration of the maintainability of the Newcomer Review Applications. Accordingly, if all or any part of the necessary information is not made available to the Commission, it is doubtful whether it will possible to accurately determine the dumping margin and other parameters. In view of the foregoing, it is submitted that even relying on Section 32 of the Ordinance will not be particularly helpful (and in fact be only illusory) in reaching a just and accurate conclusion on the factors listed in Section 20.2 of the SEF as there is no other reliable and accurate source of information which could truly be terms as “best available information” for this particular purpose.”

Views/Comments of the Applicants and the Importers

Legal representative of the Applicants and importers submitted following views/comments on essential facts:

The importers of the product under review have not cooperated with the Commission and did not provide requisite information, despite repeated efforts of the Commission (paragraphs 11.1 to 11.3 supra).

Due to non-cooperation of the importers, the Commission was unable to establish some factors in determination of *bona fide* exporters/imports and commercial quantities (paragraphs 21.2(v & vi) and 21.4(iv & v) infra). However, the Commission has examined and analysed other factors to determine *bona fide* exporters/exports and commercial quantities of the product under review. After investigation, the Commission has determined that neither the Applicants were *bona fide* exporters nor their exports of the product under review could be considered as *bona fide* exports (paragraph 21 infra). Furthermore, quantities of the product under review exported by the Applicants could also not be considered as commercial quantities for the purposes of this newcomer review (paragraph 22 infra).

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"Para 10 Initiation of Review

"In para10.1 it has been stated that the Commission decided to initiate the newcomer review to determine in accordance with the relevant provisions of the Ordinance amongst other things that "the Applicants are bona fide exporters and have exported product under review to Pakistan in commercial quantities after imposition of definitive antidumping duty on tiles originating in and/or exported from China to Pakistan"

"As per our understanding of the Ordinance there is no provision relevant to the determination of bona fide exporter and there is no mention of the words "commercial quantity". If it is so we would request the Commission to highlight these relevant provisions in its determination, and if not, then there is no need to make determination on this account. Even in the notice of initiation there was no mention of determining bona fide exporters. We have already submitted our comments on commercial quantity against notice of initiation. This issue was again discussed in the hearing held on December 18, 2008."

"Para 13 Information/Data gathering

"Para 13.6 states that both the importers did not respond to the Commission as per its prescribed questionnaire. Here we would like to add that in most of the antidumping investigations conducted so far, the importers have not responded to the Commission and their no-response in any way have ever affected the Commission's investigation and the merit of the case under investigation. In a few cases where some importers had given scanty information that was not meaningfully utilized in any investigation. So we

In terms of Section 63 of the Ordinance, if there is evidence that the remedial effects of an antidumping duty levied on a product are being undermined in terms of the prices or quantities of the like goods, then the Commission may take action to prevent circumvention of the application of antidumping duty.

To prevent circumvention of anti-dumping duty, the Commission has to determine whether the Applicants were *bona fide* exporter and whether their exports were *bona fide* exports. For similar reasons, the Commission has to determine whether the Applicants exported product under review in commercial quantities.

It is worth mentioning here that most of the antidumping investigating authorities determine *bona fide* exports/exporters and commercial/significant quantities of the product under review for the purposes of a newcomer review.

Requirements of an original antidumping investigation and a newcomer review are altogether different. In an original investigation, the domestic industry makes an effort for imposition of an antidumping duty, whereas, an exporter requests a newcomer review to waive off or to reduce applicable antidumping duty. Thus a newcomer review imposes additional obligations on an investigating

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would request that for non-cooperation on the part of importers, the exporters/Applicants in this case should not be penalized.”

“We would like to add that Importer’s questionnaire is in no way important in the new-comer review; as it does not affect any antidumping investigation ranging from the calculation of dumping margin or injury analysis or their causal relationship to be established. However, the importance of importer’s questionnaire is not denied, in case, the exporters and importers are related parties. In the current investigation as the importers and exporters are not related, the submission or non-submission of duly filled-in questionnaire by the importers will not make any difference. Therefore, the Commission may not un-necessarily stress on this point and continue the investigation in an unbiased manner.”

authority to investigate carefully the risk of circumvention of antidumping duty. For this purpose, the Commission has to determine *bona fide* exports/exporters and commercial quantities of the product under review. Essentially, some vital information to determine these factors could only be obtained from importers of the product under review. This is the reason that the importer’s information is much more important in a newcomer review than in an original investigation. The Commission tried its level best to obtain necessary information from importers of the product under review, but they did not supply requisite information (paragraphs 11.1 to 11.3 supra). Due to which, the Commission was not able to determine some important factors (paragraphs 21.2(v & vi) and 21.4(iv & v) infra). However, the Commission has conducted an unbiased and objective examination in this review investigation and the Applicants are not penalized due to non-cooperation of the importers.

"Para 14 the Product under Review

"Para 14.1 states that the product under review is ceramic tiles (excluding porcelain/vitrified/granite) of a size 20x30 cm, 25x33 cm and border (embossed/printed) of size 8x33 cm exported during the POI by the exporters as per PCT No 6908.9010. We have already given our comments on the product under review against notice of initiation. This issue was again discussed in the hearing held on December 18, 2008. We reiterate that the product under review should be as per original investigation. However sizes exported by the exporters should be used only to determine the dumping margin of both the exporters as done in the original investigation."

"According to our views it is not understandable on the part of the Commission to change the definition/description of the investigated product. EC Regulations are very clear on this point. One can easily find from these documents that "product concerned" is the same as that in the investigation that led to the imposition of measures. Actually, the new-comer review is basically an extension of the original investigation; hence, the new-comer review may only be carried out with the original investigated product."

"Para 15 Hearing

"No essential fact has been disclosed in the para about hearing in this Statement of Essential Facts. The Commission is requested to consider the essential facts brought to its notice during the hearing by the interested parties."

This newcomer review has been carried out under relevant provisions of the Ordinance. Section 10(1) of the Ordinance clearly states that "an export price shall be a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan." And Section 2(k) of the Ordinance defines investigated product as "a product which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation" All types and sizes of ceramic tiles, which were exported by the Applicants to Pakistan, have been declared as product under review.

The Commission is of the view that the Ordinance does not restrict to change the scope of investigated product or product under review.

The Applicants assertion that the dumping margin determined for one or two types/sizes of ceramic tiles would be applicable to their exports of all types

(ceramic, porcelain, polished/unpolished, borders etc.) and all sizes of tiles is leading to conclude that they intend to circumvent definitive antidumping duty through this newcomer review.

It is clearly stated at paragraph 15 of SEF that information submitted by the interested parties and record of hearing have been placed in public file. Furthermore, all information/facts presented by interested parties in hearing were disclosed in SEF.

The Commission has considered each and every piece of information submitted by interested parties or obtained from other sources in this newcomer review.

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"Para 20 Determination of Export Price

"If the exports can be located either from the Customs record or exporter's record and the Commission can find that export/commercial invoice is made available including other import documents like L/C, as well as payment proof, the export transaction is bona fide in all respects. Furthermore, the bona fide exports are not something to be seen only in the new-comer review investigation, this has to be seen in every antidumping investigation. That is why it is normal practice of the European Commission to carry out an onsite verification in all cases. It is only by verifying the accounting records of the exporter that one can discover abnormal transaction. The question here arises whether the Commission has ever tested/checked the bona fide element of exports in any other previous investigation undertaken by it. If yes, how they analyzed the bona fide element of exports may kindly be shared with us."

"Section 60 of the Antidumping Duties Ordinance 2000 also requires only two qualification criteria for an exporter to qualify as new-comer, and it does not mention commercial quantity and bona fide exports/exporter."

Requirements to conduct an original investigation and a newcomer review are different. Original investigation is conducted for a period in which no antidumping duty was in place and exporters exported product under investigation in an ordinary way without any consideration to avoid antidumping duty. When an antidumping duty is in place, a new exporter can manage to export in such a way which results in nil dumping margin for him. Thus, risk of circumvention of antidumping duty in a newcomer review could not be ruled out. For these reasons determination of *bona fide* exports/exporters and commercial quantity of the product under review is more important in a newcomer review than in an original investigation.

The Commission has determined *bona fide* exports/exporters and commercial quantities of the product under review on the basis of a number of factors. Furthermore, *bona fide* and commercial quantity is determined for entire exports of the product under review and not for a particular transaction (paragraphs 21 and 22 infra).

Section 60(1) of the Ordinance narrates conditions mandatory for request of a newcomer review. However, newcomer review is conducted under other relevant provisions of the Ordinance.

"issues highlighted under para 20.2 of the SEF"

"(i)- Quantity Exported

"As mentioned earlier as well, the quantity exported is reasonable/commercial/significant having regard to the nature of the product so it must be considered as bona fide. Henceforth, we expect that Commission would not have any confusion on this aspect."

"(ii)-Price

"The price paid by the importer to the exporter is the same which can be seen from the import data, commercial invoice, bank documents etc. As the importers and exporters are not related to each other, the price paid is bona fide in all respects."

"(iii)-Timing of sale

Sales are made (exports) after the Period of Investigation of the original investigation. There should n't be any issue on this account."

"(iv)-Expenses arising from transactions

"All expenses arising from export transactions were provided to the Commission by the Applicants. We would again like to emphasize here that the expenses arising from export transactions are not only to be considered in the new-comer review. Rather, it has to be taken into account in any form of antidumping investigation. Un-necessary mentioning of this point is creating more doubts on the intention of the Commission not to calculate individual dumping margins for the Applicants."

The Commission has determined commercial quantity and *bona fide* on the basis of a number of factors including quantity, price, timing of sale etc. listed in initiation memorandum for the Commission (available at public file) and disclosed at paragraph 20.2 of SEF. After investigation, the Commission has concluded that the Applicants were not *bona fide* exporters and quantities of the product under review exported by the Applicants could not be considered as *bona fide* exports and in commercial quantities for the purposes of this newcomer review (paragraphs 21 and 22 *infra*).

The Commission considered expenses arising from export transactions in each and every investigation including the newcomer review. Expenses arising from export transactions has no link with determination of individual dumping margin for the Applicants. The Commission is of the view that consideration of expenses arising from export transactions is much more important in a newcomer review to determine *bona fide* exports/exporters and commercial quantities. In considering expenses arising from export transactions in this newcomer review, the Commission has examined whether these expenses were same/similar as incurred by both the exporters (paragraph 22.5 *infra*).

The Commission considered this information necessary for the purposes of a newcomer review.

“(v)- Whether the product was resold at profits
“We have mentioned earlier as well, if the importers and exporters are not related to each other, it is not important/justifiable to verify at what price the product is re-sold in Pakistan. Un-necessary mentioning of this point is creating more doubts on the intention of the Commission not to calculate individual dumping margins for the Applicants.”

“(vi)-Whether each transaction was made on arm’s length basis

“As mentioned earlier as well, if the importers and exporters are not related and the importer has made payment of actual amount of the invoice against tiles imported in Pakistan and the import quantity and value is verifiable from the customs data, then in all respects the transaction is at arm’s length basis.”

“If the Commission has different views to our submissions, we would request the Commission to share with us what criteria is being followed to see the aforesaid issues from (i) to (vi) and provide us an opportunity to clarify our position.”

“Para 20.3 Quantification of Commercial Quantity

“In para 20.3 it has been conveyed that the quantity exported by both the exporters was not so significant in terms of percentage if compared with total imports of tiles during the POI. Can the Commission point out any investigation where export in commercial quantity was determined in such a way for any exporter whose individual dumping margin was determined. Surely it can not be identified as there is not such example. Even worldwide commercial quantity is not assessed in such a manner. This also shows biasness of the Commission that it may thus consider that the exports were not in commercial quantity.”

For an unbiased and objective examination, the Commission has to investigate each and every aspect. The Commission considers this information relevant and necessary to determine *bona fide* and commercial quantities of the product under review.

The Commission considered this information necessary for the purposes of a newcomer review. Furthermore, Section 35 of the Ordinance and Rule 8 of the Rules empower the Commission to solicit, gather, obtain, accept and reject any information for the purposes of an investigation from any interested party.

The Commission has determined whether export transactions were made at arms length basis by conducting an unbiased and objective examination of the information available with the Commission (paragraph 21.2(v) *infra*).

A transaction can be considered not at arms length even if exporter and importer are unrelated.

The Commission is obliged to conduct an unbiased and objective investigation under the Ordinance. The Ordinance does not require that the Commission must agree with views of any interested party.

Determination of the Commission on all issues raised by the Applicants and importers is at Section B of this report.

No determination of commercial quantity has been given at paragraph 20.3 of SEF. This paragraph only states facts on imports of tiles into Pakistan during POR.

In this newcomer review commercial quantity of the product under review has been determined on a number of factors and not only on the basis of volume of exports (paragraph 22 *infra*). On the basis of unbiased and objective examination, the Commission has determined that quantities of the product under review exported by the Applicants could not be considered as commercial quantity for the purposes of this review.

"Para 21. Verification of the Information

"As per para 21.1, for the purposes of verification unnecessary burden was shifted on the shoulders of the exporters. In our letters to the Commission we had continuously been offering the Commission for on the spot investigation. If for some reasons the Commission has opted not to perform on the spot investigation, then this should not be made the basis to score any point against the exporters who have already provided all vital information as admitted by the Commission in paras 13.2 & 13.3 of this SEF for the determination of individual dumping margin. Further more, if the Commission has decided not to undertake on-the-spot verification we consider that the Commission is accepting our clients data."

In terms of Sections 23(1), 32(4) and 35 of the Ordinance and Rule 12 of the Rules, the Commission has to satisfy itself to the accuracy of the information and shall verify the information submitted by interested parties during an investigation. In terms of Rule 12(2) of the Rules, the Commission may carry out on-the-spot investigation. However, it is not mandatory under the Ordinance to conduct on-the-spot investigations.

In this review investigation, the Commission decided to verify information submitted by the Applicants at its offices instead of conducting on-the-spot investigations at Applicants' premises. For this purpose, the Applicants were requested to submit certain documents/evidences. The Applicants did not provide all the requisite documents/evidences. Thus the Commission was unable to verify information submitted by the Applicants (paragraph 15 supra).

B. COMMISSION'S DETERMINATION

18. Issues to be Determined in Newcomer Review

18.1 Section 60 of the Ordinance requires the Commission to determine that the Applicants have not exported product under review to Pakistan during POI of the original investigation and they are not related to any of the exporters or producers who are subject to the antidumping duty imposed on investigated product. However, Section 63 of the Ordinance empowers the Commission to prevent circumvention of antidumping duty imposed on an investigated product.

18.2 Keeping in view above provisions of the Ordinance, purpose of this newcomer review investigation was to determine the following under relevant provisions of the Ordinance and Rules (paragraph 7.1 supra):

- i. the Applicants have not exported product under review to Pakistan during the original POI;

- ii. the Applicants are not related to any of the exporters or producers who are subject to the antidumping duty imposed by the Commission following the original investigation (paragraph 3 supra);
- iii. the Applicants are *bona fide* exporters and have exported product under review to Pakistan in commercial quantities after imposition of definitive antidumping duty on tiles originating in and/or exported from China to Pakistan; and
- iv. individual dumping margin for the Applicants.

18.2 The Commission's determination on these issues is given in following paragraphs

19. Exports of the Product Under Review by the Applicants

19.1 Investigation of the Commission has revealed that Huida markets and sells different products including tiles (the product under review) produced by its related producer, Tangshan Huida in its domestic market as well as in international market. Fujian deals in only export and import of different products. It does not sell tiles in its domestic market. However, it has exported tiles only to Pakistan, which it bought from an unrelated producer of tiles, Fujian Minqing.

19.2 The Commission's investigation has revealed that the Applicants did not export product under review during original POI. The Applicants started exporting product under review to Pakistan in the year 2007. As per information submitted by the Applicants and obtained from PRAL, Huida and Fujian exported 12273.69 square metres ("SQM") and 18325.92 SQM respectively of the product under review to Pakistan during the POR.

19.3 On the basis of the above, the Commission has concluded that the Applicants have not exported product under review to Pakistan during the original POI.

20. Relationship of the Applicants with Exporters or Producers

The Applicants claimed that they are not related to any of the exporters or producers of the product under review, who are subject to antidumping duties. In support of this claim, the Applicants submitted affidavit duly notarized by the notary public in China, attested by the Embassy of Pakistan in Beijing, China and stamped in Pakistan in accordance with Stamp Act, 1899.

For the purposes of determining relationship with Chinese producers and exporters of tiles (who are subject to definitive antidumping duties), the Applicants were asked to provide information on their related companies and details (name, address and telephone no. etc.) of all customers who purchased tiles either from the Applicants or from the Producers during POI of original investigation.

20.3 Relationship of Huida with other Chinese Producers/Exporters

20.3.1 As per information submitted by Huida, it markets and sells different products including the product under review produced by its related producer Tangshan Huida in its domestic as well as in international market including Pakistan. Huida claimed neither it exported product under review during POI of original investigation nor it is related to any of the exporter and producer who is subject to definitive antidumping duty.

20.3.2 Investigation of the Commission has revealed that Huida itself did not export product under review during POI of original investigation, however, it exported sanitary products to Pakistan in the year 2003. Information obtained from PRAL has showed that its related company, Tangshan Huida Ceramic Group Import & Export Co., Ltd. exported product under review to Pakistan in the year 2003. Investigation of the Commission has also revealed that Huida's related company exported ceramic tiles to the same importer in Pakistan, which is the only importer of product under review from Huida in this newcomer review.

20.3.3 Huida is not a producer, rather, it has exported product under review produced by its related producer (paragraph 19.1 supra). Huida's other related company who exported product under review in the year 2003 (paragraph 20.3.2 supra) is also not a producer of the product under review. That company also exported/exports the product under review produced by Huida's related producer (Tangshan Huida).

20.3.4 Huida was requested to provide details of customers to whom it sold ceramic tiles or who purchased ceramic tiles from its related companies/producer during POI of original investigation or during POR. Huida did not provide such information. Thus, no evidence was available showing that all sales made by Huida's related producer/companies in its domestic market, especially to traders, during POI of the original investigation, were not exported to Pakistan.

20.3.5 In terms of Section 60(1) of the Ordinance, an exporter has to show that it is not related to any of the exporters or producers in the exporting country who are subject to the

antidumping duties levied on an investigated product. Huida's related company exported investigated product to Pakistan in the year 2003 (paragraph 20.3.2 supra). Furthermore, the Commission was not in a position to determine whether all sales made by Huida's related producer/companies in its domestic market, especially to traders, during POI of the original investigation, were not exported to Pakistan. In view of the above facts, the Commission has concluded that Huida's related company and producer are subject to definitive antidumping duties imposed on ceramic tiles originating in and/or exported from China into Pakistan. Thus it did not qualify to request for an individual dumping margin under Section 60 of the Ordinance.

20.4 **Relationship of Fujian with other Chinese Producers/Exporters**

20.4.1 As per information submitted by Fujian, it is a trading company, established on March 15, 2005, which deals in export of different products including the product under review. It does not sell any product in its domestic market. It exported different products to different countries including product under review. However, investigation of the Commission has revealed that it did not export any product to Pakistan except the product under review and it did not export ceramic tiles to any other country. Fujian has claimed neither it exported product under review to Pakistan during POI of original investigation nor it is related to any of the exporter and producer who is subject to definitive antidumping duty.

20.4.2 Fujian is not a producer, rather, it has exported product under review, which it purchased from an un-related producer (Fujian Minqing). As per information submitted by Fujian, the producer from whom it purchased product under review (Fujian Minqing) was established in the year 2007. However, Fujian did not provide any documentary evidence in support of this claim.

20.4.3 On the basis of above facts, it is determined that Fujian is not related to any of the exporter and producer who are subject to definitive antidumping duty. However, the risk of circumvention is imminent as Fujian is a trading company and exports different products produced by different producers. This is quite possible that after getting individual dumping margin, it may export product under review produced by those producers who are subject to definitive antidumping duty. Fujian has not submitted any information/document, which showed that such risk of circumvention could be ruled out.

Furthermore, the date of establishment of the producer from whom Fujian purchased product under review could not be established as well (paragraph 20.4.2 supra).

21 **Whether Applicants were *Bona fide* Exporters and/or their Exports were *Bona fide* Exports**

21.1 To determine whether Applicants were *bona fide* exporters of the product under review and whether exports made by the Applicants were *bona fide* exports, the Commission has examined and analysed pattern of exports of the Applicants in following paragraphs.

21.2 **Huida's Pattern of Exports:** Investigation of the Commission has indicated that:

- i. Huida has exported only three transactions of the product under review to an importer (Waheed Sons, Lahore) in the months of March, 2007, July 2007 and January 2008 after imposition of definitive antidumping duties with effect from November 30, 2006 on product under review.
- ii. Huida did not export ceramic tiles to Pakistan after January 2008 till finalization of this report, including the period in which no antidumping duty was applicable on its exports of the product under review (after initiation of this newcomer review).
- iii. Huida was present in Pakistani market before original investigation. It exported sanitary products to the same importer who is the only importer of the product under review from Huida in this case. Furthermore, that importer was a major importer of the investigated product in the original investigation and was registered as an interested party.
- iv. One of the Huida's related parties (paragraph 20.3.2 supra) exported product under review before original investigation to the same importer who is its importer in this case. Probably, this was the reason Huida did not export product under review before original investigation.

- v. In order to determine whether Huida's export transactions were made at an arm's length and were resold at profit, the Commission asked for necessary information from its importer (Waheed Sons, Lahore). The importer did not cooperate with the Commission and did not supply requisite information (paragraphs 11.1 to 11.3 supra). However, the information obtained from PRAL revealed that Huida's exports of the product under review to Waheed Sons were not at an arm's length. Waheed Sons also imported similar types of tiles from other Chinese exporters during POR. Analysis of the information showed that import price of similar types of tiles imported from other Chinese exporters was significantly lower than the import price of the product under review imported from Huida. Following table shows prices of different types of tiles, including the product under review, imported by Waheed Sons during POR from Huida and other Chinese exporters:

Prices of Tiles Imported by Waheed Sons from China During POR

Type/Size	Exporter Name	C&F Price*
Ceramic Wall Tiles 25x33	Huida (Applicant)	184.92
Boarder	Huida (Applicant)	2030. 56
Ceramic Wall Tiles 30x30	Foshan Junging	88.89
Ceramic Wall Tiles 20x30	Foshan Junging and Xiamen Haisheng	69.84
Boarder	Ceramica Cleopatra group	619.44
Ceramic Wall Tiles 15x15	Foshan Junging	77.78
Ceramic Wall Tiles 30x45	Foshan Junging	126.59
Ceramic Floor Tiles (different sizes)	Foshan Junging and Ceramica Cleopatra	111.11
Matt Porcelin (unpolished) (different sizes)	Foshan Junging	125.40
Total Excluding Huida		100.00

Source: PRAL

* NOTE: Actual prices have been indexed with respect to total price (excluding Huida's exports) by taking it equal to 100 to keep confidentiality

- vi. It is evident from the above facts that Huida and its importer have an understanding between themselves and would circumvent definitive antidumping duty.

- vii. As stated above, the importer did not cooperate with the Commission and did not submit necessary information. Thus the Commission could not determine whether the product under review was resold at profit.

21.3 On the basis of the fore-going facts and analysis, the Commission has concluded that Huida was not a *bona fide* exporter of the product under review and its exports can not be considered as *bona fide* exports for the purposes of this review.

21.4 **Fujian's Pattern of Exports:** Investigation of the Commission has indicated that:

- i. Fujian has exported only two transactions of the product under review to a single importer (Al-Amin Cera, Karachi) in the months of July 2007 and January 2008 after imposition of definitive antidumping duties with effect from November 30, 2006 on product under review.
- ii. Fujian did not export ceramic tiles to Pakistan after January 2008 till finalization of this report, including the period in which no antidumping duty was applicable on its exports of the product under review (after initiation of this newcomer review).
- iii. Fujian is a trading company. It exports different products to different countries. It did not export any product to Pakistan except the product under review. However, it never exported ceramic tiles to any other country. This fact is very much astonishing that Fujian first time selected a market for export of ceramic tiles in which it was at disadvantageous position vis-à-vis some other exporters, who are subject to an individual antidumping duty, which is lower than the residual rate of antidumping duty applicable to its exports of ceramic tiles.
- iv. To determine whether Fujian's export transactions were made at an arm's length and were resold at profit, the Commission asked for necessary information from its importer. But the importer did not cooperate with the Commission and did not supply requisite information (paragraphs 11.1 to 11.3 supra). Analysis of the information obtained from PRAL also showed that the same importer did not import same/similar types of tiles from any other Chinese exporter during the POR. Thus the Commission was not able to determine these facts.

- v. It is evident from the above that Fujian and its importer have an understanding between themselves and would circumvent definitive antidumping duty.

21.5 On the basis of the fore-going facts, the Commission has concluded that Fujian was not a *bona fide* exporter of the product under review and its exports could not be considered as *bona fide* exports for the purposes of this review.

22. Whether Applicants' Exports were in Commercial Quantities

22.1 In determination of commercial quantities, the Commission *inter alia*, considered following factors:

- i. quantities of the product under review exported by the Applicants;
- ii. prices of the product under review exported by the Applicants;
- iii. timing of sales of the product under review;
- iv. expenses arising from export transactions of the product under review;
- v. whether export transactions were made on arm's length basis; and
- vi. whether the product under review was resold at profit.

22.2 Quantities of the Product Under Review Exported by the Applicants

22.2.1 Following table shows total imports of tiles into Pakistan and exports of product under review by the Applicants during POR:

Imports of Tiles During POR

Imports from:	Quantity (SQM)
China	9957086.57
Other sources	7250656.12
Total	17207742.69
The Applicants:	
Huida	12273.69
Fujian	18325.92

Source: PRAL

22.2.2 The above table shows that Huida and Fujian exported 0.12 percent and 0.18 percent respectively of imports of tiles from China and 0.07 percent and 0.11 percent respectively of total imports during the POR.

22.3 Prices of the Product Under Review

22.3.1 Investigation of the Commission has revealed that prices of the product under review exported by the Applicants were not in the same range, which was charged by other Chinese exporters on their exports of same/similar types of ceramic tiles to Pakistan during the POR. Following table shows import prices of the product under review and similar types of ceramic tiles imported into Pakistan from China during POR:

Prices of Imports During POR

Exporter Name	Weighted average C&F Price*		
	Ceramic Tile (200x300)	Ceramic Tile (250x330)	Borders
Huida	Did not export	174.53	339.32
Fujian	99.50	95.13	Did not export
Others	100.00	100.00	100.00

Source: PRAL * NOTE: Actual prices have been indexed with respect to prices of others by taking it equal to 100 to keep confidentiality

22.3.2 The above table shows that prices of the product under review exported by Huida were 74.53 percent higher in case of ceramic tiles and 239.32 percent higher in case of borders than the prices of similar products exported by other Chinese exporters during POR. However, prices of the product under review exported by Fujian were in the same range of prices of similar products exported by other Chinese exporters.

22.4 Timing of Sales of the Product Under Review

Investigation of the Commission has revealed that the Applicants did not export product under review on regular basis. Both the Applicants have exported only two consignments each of the product under review in the months of July 2007 and January 2008. They did not export product under review after January 2008 till finalization of this report, including the period in which no antidumping duty was applicable on their exports after initiation of this newcomer review.

22.5 Expenses Arising from Export Transactions of the Product Under Review

22.5.1 The Applicants have reported expenses arising on their exports to Pakistan for ocean freight, inland freight and bank charges. Following table shows weighted average

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Dumped Imports of Tiles Originating in and/or Exported from People's Republic of China

expenses incurred by the Applicants on these accounts for export of the product under review during POR:

(US\$/SQM)

Expense	Huida	Fujian
Ocean Freight	Actual figures omitted to keep confidentiality	
Inland freight		
Bank Charges		

22.5.2 The above table shows that there is a significant difference between per unit expense reported by the Applicants. The Commission was not able to determine authenticity of this information, because the Applicants did not provide necessary documents for this purpose (paragraph 15.2 supra).

22.5.3 As Applicants and their producers are separate entities (paragraphs 20.3.1 and 20.4.2 supra), the Commission was of the view that the Applicants have incurred following further expenses/earned profit on export sales of the product under review during the POR:

- i. administrative expenses;
- ii. financial expenses;
- iii. other operating expenses; and
- iv. profit earned on export sales of the product under review

22.5.4 As per information and evidences provided by the Applicants, Value Added Tax ("VAT") at the rate of 17 percent was applicable on production and sales of tiles in China during POR. However, the Government of China on export sales of tiles refunded 5 percent of VAT. The Commission, therefore, is of the view that an adjustment for remaining 12 percent on account of VAT to reach at ex-factory level should also be made in export price.

22.5.5 The above mentioned facts (adjustments) were disclosed to the Applicants through Statement of Essential Facts. The Applicants did not comment on these issues.

22.6 Whether Export Transactions were made on Arm's Length Basis

Investigation of the Commission has revealed that Applicants' exports of the product under review were not made on arm's length basis (paragraphs 21.2(v) and 21.4(iv) supra).

22.7 Whether the Product Under Review was Resold at Profit

The Commission was unable to determine whether product under review was resold at a profit, because importers of the product under review did not cooperate with the Commission and did not provide necessary information (paragraphs 11.1 to 11.3 supra).

22.8 On the basis of fore-going facts and analysis, the Commission has concluded that the Applicants exports of the product under review were not in commercial quantities for the purposes of this newcomer review.

23. Determination of Individual Dumping Margin for the Applicants

23.1 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”.

23.2 Normal Value

23.2.1 Section 5 of the Ordinance defines normal value 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”.

23.2.2 Section 6 of the Ordinance states that:

“(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".

23.2.3 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.”

23.3 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”.

23.4 Determination of Normal Value for the Applicants

23.4.1 The Applicants have submitted information on cost to make & sell and domestic sales of tiles made by the Producers during the POR, from whom they purchased product under review. However, in terms of Sections 23, 32(4) and 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/evidences supplied by the Applicants. For the purposes of the verification of the information submitted by the Applicants, the Commission asked them to provide necessary documents/evidences, but the Applicants failed to provide requisite documents (paragraph 15 supra). Thus the Commission was not in a position to determine accuracy of the information supplied by the Applicants or their producers.

23.4.2 As determined at paragraphs 20 to 23 supra, the Applicants were not *bona fide* exporters and their exports of the product under review could not be considered as *bona fide* exports and in commercial quantities, they are not eligible for an individual dumping margin.

23.4.3 On the basis of fore-going facts normal value for the product under review sold in the domestic market of the Applicants could not be established.

23.5 Determination of Export Price for the Applicants

23.5.1 The Applicants have submitted information on their exports of the product under review during POR. The Commission was not in a position to determine accuracy of the information supplied by the Applicants, as they failed to supply necessary documents for the purposes of verification of the information (paragraph 15 supra). Furthermore, investigation of the Commission has revealed that neither the Applicants were *bone fide*

exporters (paragraph 21 supra) nor they exported product under review in commercial quantities for the purposes of this review (paragraph 22 supra).

23.5.2 On the basis of the above facts, the Commission has not determined export price for product under review exported by the Applicant during POR.

23.6 Thus, on the basis of fore-going facts and analysis, the Commission has decided not to determine individual dumping margin for the Applicants.

C. CONCLUSIONS

24. On the basis of fore-going facts and analysis, the Commission has concluded as follows:

- i. Written applications were filed by the Applicants for determination of individual dumping margin under Section 60 of the Ordinance.
- ii. The Commission determined as product under review only those types and sizes of ceramic tiles and borders, which were exported by the Applicants into Pakistan.
- iii. Applicants did not export product under review during original POI.
- iv. Huida is related to the producer and another exporter who are subject to definitive antidumping duty imposed on product under review. Thus it did not qualify to request for an individual dumping margin under Section 60 of the Ordinance.
- v. Fujian is not related to any of the exporter and producer who are subject to definitive antidumping duty. However, the risk of circumvention in its case is imminent. Fujian has not submitted any information/document, which showed that such risk of circumvention could be ruled out.
- vi. Applicants were not *bona fide* exporters of the product under review.
- vii. Applicants did not export product under review in commercial quantities.

- viii. Importers of the product under review did not cooperate with the Commission and did not supply requisite information necessary for this review investigation.
- ix. The Commission was not in a position to verify information submitted by the Applicants, as they did not supply documents/evidences asked for this purposes.
- x. Individual dumping margin for Applicants could not be determined.

D. TERMINATION OF NEWCOMER REVIEW

25. The Commission initiated this newcomer review to determine individual dumping margin for the Applicants, which according to them, was to be different from the current residual dumping margin/antidumping duty applicable to the imports of the product under review. However, after this review investigation, the Commission has concluded that Applicants' individual dumping margin could not be determined. This newcomer review thus stands terminated.

E. ANTIDUMPING DUTY APPLICABLE TO APPLICANTS

26. As the Commission has not determined individual dumping margin for the Applicants, residual antidumping duty at the rate of 23.65 percent *ad valorem*, established in the original investigation, is maintained and would be applicable on exports of the product under review into Pakistan by the Applicants.

F. RETROACTIVE APPLICATION OF ANTIDUMPING DUTY

27. In terms of Notice of Initiation of this newcomer review and in accordance with Section 60(3) of the Ordinance, no anti-dumping was imposed on imports of the product under review exported by the Applicants whilst this newcomer review was being carried out. However, importers of the product under review were required to make a cash deposit equal to the residual antidumping duty rate to ensure that, should the determination of review results in an affirmative dumping margin with respect to the Applicants, antidumping duty can be levied retroactively from the date of initiation of the review.

28. The Commission has terminated this newcomer review (paragraph 25 supra) and individual dumping margin has not been determined for the Applicants. Thus, residual antidumping duty at the rate of 23.65 percent *ad valorem* on Applicants' exports is levied retroactively with effect from September 24, 2008 under Section 60(3) of the Ordinance on imports of the product under review, which were made (if any) after payment of cash deposit.

29. In accordance with Section 51 of the Ordinance, the residual antidumping duty shall be held in a non-lapsable personal ledger account established and maintained by the Commission for the purpose. Release of the product under review for free circulation in Pakistan shall be subject to imposition of such residual antidumping duty.

30. Residual antidumping duty levied would be in addition to other taxes and duties leviable on import of the product under review under any other law.

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

(Ms. Batool Iqbal Qureshi)
Member
March 12, 2009

(Muhammad Ikram Arif)
Chairman
March 12, 2009

List of Interested Parties

(i) Government of People's Republic of China	Government
(ii) Tangshan Huida Ceramic Group Co. Ltd.	Exporter/ Applicant
(iii) Fujian International Trade Development Company	Exporter/ Applicant
(iv) Master Tiles & Ceramics Industries Limited	Domestic Producer
(v) Awami Sanitary Mart	Importer
(vi) Waheed Sons	Importer
(vii) Al-Amin Cera	Importer