

NON- CONFIDENTIAL

SAFEGUARDS ACT 2006

AND

SAFEGUARDS REGULATIONS 2007

PRELIMINARY DETERMINATION REPORT

INVESTIGATION NO: SM 01/20

**SAFEGUARD INVESTIGATION WITH REGARD TO
CERAMIC FLOOR AND WALL TILES PRODUCTS
IMPORTED INTO MALAYSIA**

7 JANUARY 2021

**TRADE PRACTICES SECTION
MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY
MALAYSIA**

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LIST OF ABBREVIATIONS

AHTN	:	ASEAN Harmonised Tariff Nomenclature
DoSM	:	Department of Statistics, Malaysia
H.S. Code	:	Harmonised System Code
m ²	:	square meters
POI	:	Period of Investigation
POID	:	Period of Injury Determination
RM	:	Ringgit Malaysia

LIST OF DEFINITIONS

- “Act” : Safeguards Act 2006 [Act 657];
- “domestic industry” : the domestic producers operating in Malaysia as referred to in paragraph 6 of this report whose collective output of like products to the product under investigation constitutes a major proportion of the total domestic production of the like products;
- “Government” : the Government of Malaysia;
- “Investigating Authority” or “IA” : the officers of the Trade Practices Section, the Ministry of International Trade and Industry (MITI);
- “like products” : products that are identical or alike in all respects to the product under investigation or, in the absence of such products, another product that although not alike in all respects have characteristics closely resembling the product under investigation;
- “Petitioner” : Federation of Malaysian Manufacturers-Malaysian Ceramic Industry Group (FMM-MCIG);
- “product under investigation” or “PUI” : the class or kind of products imported or sold for importation into Malaysia that is subject of safeguard action under the Act as specified in paragraph 1 of this report;
- “Regulations” : Safeguards Regulations 2007 [*P.U. (A) 386/2007*];
- “serious injury” : a significant overall impairment in the position of a domestic industry;

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- “threat of serious injury” : serious injury that is clearly imminent;
- “POID” : period of assessing and determining serious injury, from 1 January 2019 to 31 December 2019;
- “Year 1” : first year of POI from 1 January 2017 to 31 December 2017; and
- “Year 2” : second year of POI from 1 January 2018 to 31 December 2018.

EXECUTIVE SUMMARY

This report contains findings of the Investigating Authority (IA) on the increased imports of the product under investigation (PUI) as specified in paragraph 1 of this report.

For the purpose of making a preliminary determination under subsection 20(1) of the Act, the IA hereby submits the findings of the safeguard investigation to the Minister that:

- (i) there was no continuous increase in imports of the PUI in absolute term;
- (ii) due to the inconsistencies of the data and discrepancies between levels of information provided by the domestic industry, the IA is unable to establish the serious injury with regard to:
 - imports in relative term (import volume relative to domestic production);
 - sales;
 - market shares;
 - production and capacity utilisation;
 - profitability;
 - productivity; and
 - employment and wages.

Based on the verifiable evidence and taking into consideration of all the views from the interested parties, the IA observes that:

- there was no continuous increase in imports of the PUI in absolute term during the POI;
- the constraint on the analysis of serious injury has led to inconclusiveness of the causal link between increase in imports of the PUI and the serious injury; and
- the adjustment plan failed to demonstrate significant potential to increase the domestic industry's competitiveness and capability.

Therefore, the IA concludes that the constraint on the analysis of serious injury has led to inconclusiveness of the causal link between increase in imports of the PUI and the serious injury. Thus, the IA hereby recommends that the Government makes a negative preliminary

determination and terminates the safeguard investigation in accordance with paragraph 20(2)(b) of the Act.

A. INTRODUCTION

1. This report presents the preliminary determination findings following the safeguard investigation initiated by the IA in accordance with paragraph 10(a) and subsection 14(1) of the Act on the petition filed by the Petitioner on behalf of the domestic industry producing the like products to the PUI. The safeguard investigation on the imports of the PUI are **ceramic floor and wall tiles** classified under H.S. Codes and AHTN 6907.21.21 00, 6907.21.23 00, 6907.21.91 00, 6907.21.93 00, 6907.22.11 00, 6907.22.13 00, 6907.22.91 00, 6907.22.93 00, 6907.23.11 00, 6907.23.13 00, 6907.23.91 00 and 6907.23.93 00 into Malaysia.

2. This report addresses the issue whether the evidences submitted by the Petitioner, importers of the PUI, foreign exporters of the PUI and other interested parties prove that the increase in imports of the PUI has caused serious injury to the domestic industry.

The Petition

3. On 16 July 2020, the Petitioner, on behalf of the domestic industry, has lodged a petition for initiation of a safeguard investigation pursuant to paragraph 10(a) of the Act (Petition), requesting the Government to initiate a safeguard investigation on the imports of the PUI.

4. The Petitioner alleged that there was an increase in imports of the PUI over a three-year period beginning 1 January 2017 to 31 December 2019 which had seriously injured the domestic industry in terms of:

- import volume;
- sales;
- market shares;
- production and capacity utilisation;
- profitability;
- productivity; and
- employment and wages.

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Domestic Industry Producing the Like Products

5. The Petitioner submitted the Petition on behalf of seven (7) domestic producers of the like products, as follows:

- two (2) major domestic producers, namely Kim Hin Industry Berhad (KHIB) and White Horse Ceramic Industries Sdn. Bhd.(WHCI); and
- five (5) other domestic producers supporting the Petition, namely Guocera Sdn. Bhd., Malaysian Mosaics Sdn. Bhd., Times Ceramica Sdn. Bhd., Venus Ceramic Industry Sdn. Bhd. and Yi Lai Industry Bhd.

6. Collective output of the like products produced by KHIB and WHCI constitutes a major proportion of 40.43% of the total domestic production. Hence, hereinafter both KHIB and WHCI are referred to as the “domestic industry”.

7. The share of total domestic production of KHIB, WHCI and the rest of domestic producers is illustrated as follows:

Table 1: Total of Production

Description	Actual Production Volume (MT) during POID	% Share of Production
A. Petitioner/Domestic Industry		
a) Kim Hin Industry Berhad	***	***
b) White Horse Ceramic Industries Sdn. Bhd	***	***
Subtotal	***	40.43%
B. Companies supporting the application:	***	
a) Guocera Sdn. Bhd.	***	***
b) Malaysian Mosaics Sdn. Bhd.	***	***
c) Times Ceramica Sdn. Bhd.	***	***
d) Venus Ceramic Industry Sdn. Bhd.	***	***
e) Yi Lai Industry Bhd.	***	***
Subtotal	***	***
C. Companies opposing on the application		
None	NA	NA

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D. Companies not commenting on the application - neutral		
f) Niro Ceramic (M) Sdn. Bhd.	***	***
Subtotal	***	***
E. Total Malaysian Production (A+B+C+D)	***	100%

Source: Petition

8. Based on Table 1, the IA observed that the Petitioner represents 40.43% of the total domestic production of the like products to the PUI. Therefore, the IA is satisfied that the Petitioner constitutes a major proportion of the total domestic production of the like products.

Product Under Investigation

9. Article 2 of the Agreement sets out the conditions for application of safeguard measure as, “A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products”.

10. The Petition describes the PUI as thin slabs made from a mixture of clay, sand and other natural substances, which may be glazed or unglazed, used as paving, hearth or wall tiles categorised into five (5) groups according to water absorption coefficient by weight at $\leq 0.5\%$, $>0.5\%$ to $\leq 3\%$, $>3\%$ to $\leq 6\%$, $>6\%$ to $\leq 10\%$ and $>10\%$.

11. ISO 13006 defines terms and establishes classifications, characteristics and marking requirements for ceramic tiles. It categorises different types of ceramic tiles according to rate of water absorption. Tiles with lower water absorption are more compact and therefore stronger and more durable. Ceramic wall and floor tiles perform two functions i.e. decorative/aesthetic functions as well as technical function, that is to resist different types of environmental stress without breaking or deteriorating. These two functions are fundamental consideration when choosing ceramic tiles to suit the application. The following **Table 2** shows the types of ceramic tiles according to water absorption:

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Table 2: Types of Ceramic Tiles

Types of Ceramic Tiles

Grouping		Specifications		Types of tiles		Compactness & Durability
Extruded tiles	Dry pressed tiles	Water absorption %	Minimum breaking strength (N)	Technical terminology	Common terminology	
-	<u>BIa</u>	≤ 0.1	1300	Technical Porcelain	Porcelain / Homogeneous / Impervious	
-	<u>BIa</u>	≤ 0.5	1300	Porcelain	Porcelain / Homogeneous / Impervious	
AI	<u>BIb</u>	> 0.5 to ≤ 3	1100	<u>Gres</u> Tiles	Ceramic Floor Tiles	
<u>AIa</u>	<u>BIa</u>	> 3 to ≤ 6	1000	Semi <u>Gres</u> Tiles	Ceramic Floor Tiles	
<u>AIb</u>	<u>BIb</u>	> 6 to ≤ 10	800	Semi Porous Tiles	Ceramic Floor Tiles	
<u>AII</u>	BIII	> 10	600	Porous Tiles	Ceramic Wall Tiles / <u>Monoporosa</u>	

Source: Petition

12. The PUI is classified under H.S. Codes and AHTN 6907.21.21 00, 6907.21.23 00, 6907.21.91 00, 6907.21.93 00, 6907.22.11 00, 6907.22.13 00, 6907.22.91 00, 6907.22.93 00, 6907.23.11 00, 6907.23.13 00, 6907.23.91 00 and 6907.23.93 00. These H.S. Codes and AHTN are given only for information and have no binding effect on the classification of the PUI.

13. The tariff classification and rate of duty applied to the PUI is shown in **Table 3:**

Table 3: Tariff Classification

Heading/ Subheading	Description	MFN Rate (%)	ATIGA & ACFTA Rate (%)
69.07	Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics		
	- Flags and paving, hearth or wall tiles, other than those of subheadings 6907.30 and 6907.40:		
6907.21	- - Of a water absorption coefficient by weight not exceeding 0.5%:		
	- - - Other, having a largest surface area of which is capable of being enclosed in a square the side of which is less than 7cm:		
6907.21.21 00	- - - - Paving, hearth or wall tiles, unglazed	50%	Nil

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Heading/ Subheading	Description				MFN Rate (%)	ATIGA & ACFTA Rate (%)	
6907.21.23 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil
	-	-	-	-	Other:		
6907.21.91 00	-	-	-	-	Paving, hearth or wall tiles, unglazed	50%	Nil
6907.21.93 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil
6907.22	-	-	Of a water absorption coefficient by weight exceeding 0.5% but not exceeding 10%:				
	-	-	Having a largest surface area of which is capable of being enclosed in a square the side of which is less than 7cm:				
6907.22.11 00	-	-	-	-	Paving, hearth or wall tiles, unglazed	50%	Nil
6907.22.13 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil
	-	-	-	-	Other:		
6907.22.91 00	-	-	-	-	Paving, hearth or wall tiles, unglazed	50%	Nil
6907.22.93 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil
6907.23	-	-	Of a water absorption coefficient by weight exceeding 10%:				
	-	-	Having a largest surface area of which is capable of being enclosed in a square the side of which is less than 7cm:				
6907.23.11 00	-	-	-	-	Paving, hearth or wall tiles, unglazed	50%	Nil
6907.23.13 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil
	-	-	-	-	Other:		
6907.23.91 00	-	-	-	-	Paving, hearth or wall tiles, unglazed	50%	Nil
6907.23.93 00	-	-	-	-	Paving, hearth or wall tiles, glazed	60%	Nil

Source: Customs Duties Order 2017

Like Products

14. The Petitioner claimed that the like products produced by the

domestic industry are in accordance with ISO 13006 standard, it shares similar technical specifications in the dimensional, physical and chemical properties as the PUI. The only differences are in the type of patterns or drawings on the tiles surface.

15. Therefore, the IA is satisfied that the like products produced by the domestic industry are identical or alike in all respects to the PUI in accordance with section 2 of the Act.

Period of Investigation

16. POI is from 1 January 2017 to 31 December 2019 and the POID is from 1 January 2019 to 31 December 2019. The first year of POI is from 1 January 2017 to 31 December 2017 (Year 1) and second year of POI is from 1 January 2018 to 31 December 2018 (Year 2). The determination of the POI and POID are in accordance with paragraph 3(1)(e) of the Regulations.

B. PRELIMINARY INVESTIGATION

Initiation of the Investigation

17. The IA was satisfied that the Petition contained sufficient evidence for the IA to initiate a safeguard investigation against imports of PUI pursuant to section 14 of the Act and regulation 6 of the Regulations.

18. The IA announced the initiation of the investigation with effect from 13 September 2020, by a notice published in the Federal Government Gazette (Gazette) as P.U. (B) 462/20.

19. The IA officially notified and sent the notice of initiation, the importer's questionnaire and a copy of non-confidential version of the Petition to the interested parties.

20. Pursuant to Article 12.1(a) of the Agreement, the IA notified the WTO Committee on Safeguards regarding the initiation of the safeguard investigation. The Notice of Initiation G/SG/N/6/MYS/6 was published by the WTO Committee on Safeguards on 23 September 2020.

21. Based on the announcements made by the IA, the following parties made themselves known to the IA and requested to register as interested party to the investigation:

Foreign Government / Embassy

- i. Government of Brazil;
- ii. Government of China;
- iii. Government of Indonesia;
- iv. Government of Japan;
- v. Government of Mexico;
- vi. Government of ROK;
- vii. Government of Spain;
- viii. Government of Thailand;
- ix. Government of Turkey;
- x. The European Commission; and
- xi. Taipei Economic & Cultural Office in Malaysia.

Foreign Association / Exporter

- i. The Brazilian Association of Ceramic Tiles Manufacturers, Sanitary Ware and Related Products (ANFACER);
- ii. Spanish Ceramic Tile Manufacturers' Association (ASCER);
- iii. European Ceramic Industry Association (Cerame-Unie);
- iv. Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC);
- v. Italian Ceramic Manufacturers Association (Confindustria Ceramica);
- vi. PT. Platinum Ceramics, Indonesia;
- vii. PT. Niro Ceramic Nasional, Indonesia;
- viii. PT. MuliaKeramik IndahRaya, Indonesia;
- ix. SCG Ceramics Public Company Limited, Thailand; and
- x. JT Trading, Japan.

Local Association

- i. Building Materials Distributors Association of Malaysia (BMDAM);
- ii. Real Estate and Housing Developers' Association (REHDA); and
- iii. Master Builders Association Malaysia (MBAM).

Importer

- i. Niro Ceramic (M) Sdn. Bhd.;
- ii. NCM Worldwide Marketing Sdn. Bhd.;
- iii. CYP Venicera Ceramiche Sdn. Bhd.;
- iv. Feruni Ceramiche Sdn. Bhd.;

- v. Mydecor Marketing Sdn. Bhd; and
- vi. Jubin BMS (1990) Sdn. Bhd.

Responses to the Initiation of Investigation

22. Responses to the initiation of investigation were received in writing from:

Foreign Government / Embassy

- i. Government of Brazil;
- ii. Government of Indonesia;
- iii. Government of Japan;
- iv. Government of Mexico;
- v. Government of Spain;
- vi. Government of Thailand;
- vii. Government of Turkey; and
- viii. The European Commission.

Foreign Association / Exporter

- i. The Brazilian Association of Ceramic Tiles Manufacturers, Sanitary Ware and Related Products (ANFACER);
- ii. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC);
- iii. European Ceramic Industry Association (Ceram-Unie);
- iv. Spanish Ceramic Tile Manufacturers' Association (ASCER);
- v. Italian Ceramic Manufacturers Association (Confindustria Ceramica);
- vi. PT. Platinum Ceramics, Indonesia;
- vii. PT. Niro Ceramic Nasional, Indonesia;
- viii. PT. MuliaKeramik IndahRaya, Indonesia;
- ix. JT Trading, Japan; and
- x. SCG Ceramics Public Company Limited, Thailand.

Local Association

- i. Building Materials Distributors Association of Malaysia (BMDAM);
- ii. Master Builders Association Malaysia (MBAM); and
- iii. Real Estate and Housing Developers' Association (REHDA).

Importer

- i. CYP Venicera Ceramiche Sdn. Bhd.;
- ii. Feruni Ceramiche Sdn. Bhd.;
- iii. Jubin BMS (1990) Sdn. Bhd.;
- iv. Mydecor Marketing Sdn. Bhd.;
- v. NCM Worldwide Marketing Sdn. Bhd.; and
- vi. Niro Ceramic (M) Sdn. Bhd.

23. All interested parties were given the opportunity to submit their responses to the questionnaires and views in writing within 30 days from the date of publication of the notice of initiation in the Gazette i.e. by 11 October 2020. However, in view of the current COVID-19 pandemic, whereby the Conditional Movement Control Order (CMCO) took into effect in October 2020 and with some exceptions (based on requests), the IA has granted the extension for submission to interested parties until 23 October 2020.

Appointment of Counsel / Consultant

24. The IA took note of the appointment of counsels/consultants by the following importers/exporters:

No.	Importer/ Exporter	Counsel / Consultant
i.	Building Materials Distributors Association of Malaysia (BMDAM)	Jason Teoh & Partners
ii.	China Chamber of Commerce of Metals Minerals & Chemicals (CCCCMC)	Jason Teoh & Partners and Zhong Lun Law Firm

Notice of Extension of Period for Making Preliminary Determination

25. Pursuant to subsection 20(1) of the Act and regulation 9 of the Regulations, the Government has decided to extend the time period for making the preliminary determination for additional 30 days, i.e. from 12 December 2020 to 11 January 2021. The notice of extension was published in the Gazette as P.U. (B) 669/20 on 3 December 2020 and sent to all interested parties.

C. VERIFICATION

Verification Visit and Video Conference

26. Pursuant to subregulation 23(1) of the Regulations, the IA carried out on-site visit and video conference's verification with the domestic industry:

- | | | |
|--|--|--|
| i. On-site visit
(prior to the
CMCO) | Kim Hin Industry Berhad | 5-8 October 2020 |
| ii. Video
conference
(during CMCO) | White Horse Ceramic
Industries Sdn. Bhd | 20 October 2020,
6,13 and 16
November 2020 |

Written Submissions to Importer's Questionnaire

27. The IA sent importer's questionnaire to 18 importers:

- i. FMM-MCIG;
- ii. Apex Ceramics Gallery Sdn. Bhd.;
- iii. CeraTrade (M) Sdn. Bhd.;
- iv. Feruni Ceramiche Sdn. Bhd.;
- v. Finecera Tiles (Sabah) Sdn. Bhd.;
- vi. GNG Distributors Sdn. Bhd.;
- vii. Ideen Materials Sdn. Bhd.;
- viii. Jubin BMS (1990) Sdn. Bhd.;
- ix. Leo Ceramiko Sdn. Bhd.;
- x. Muda Seramik Sdn. Bhd.;
- xi. My Gres Tiles Gallery Sdn.Bhd.;
- xii. MyDecor Marketing Sdn. Bhd.;
- xiii. Sumber Beskaya Sdn. Bhd.;
- xiv. Topcera Sdn. Bhd.;
- xv. Vecera Tiles (KK) Sdn. Bhd.;
- xvi. VENICERA Ceramiche Sdn. Bhd.;
- xvii. W.K.Ceramic Distributor Sdn.Bhd.; and
- xviii. Zhen Hua Hung Trading Sdn. Bhd.

28. The IA received complete written responses to the importer's questionnaire from 3 importers:

- i. Feruni Ceramiche Sdn. Bhd.;

- ii. Mydecor Marketing Sdn. Bhd.; and
- iii. Jubin BMS (1990) Sdn. Bhd.

29. The IA received incomplete written responses to the importer's questionnaire from 2 importers:

- i. NCM Worldwide Marketing Sdn. Bhd.; and
- ii. CYP Venicera Ceramiche Sdn. Bhd.

D. PUBLIC HEARING

The Proceedings

30. Pursuant to regulation 21 of the Regulations, a public hearing shall be held when the Government received written application from any interested parties. Based on the request made by the interested parties, MITI conducted a public hearing on 15 December 2020 for all interested parties who had registered their interest to participate in the public hearing. In view of the prevailing COVID-19 pandemic and the enforcement of CMCO in certain states in Malaysia, the public hearing was held through video conference.

31. The public hearing was held before a panel from the Ministry of Finance, Sectoral Policy Division and Legal Office of MITI, and the Malaysian Investment Development Authority. The public hearing was chaired by the Senior Director of Multilateral Trade Policy and Negotiations Division of MITI.

32. A total of 22 interested parties participated in the public hearing comprising the Petitioner, representatives from foreign governments, representatives from foreign trade associations, representatives from local associations/importers and representatives from the foreign exporters. The Petitioner and interested parties presented their views and concerns by way of oral presentation and were given seven (7) days to submit their written submissions to the IA with supporting evidence for consideration. Below are the views expressed by the Petitioner and interested parties submitted through written submissions.

33. The IA received the following written submissions presented during the public hearing from the:

- i. Petitioner;

- ii. Government of Brazil;
- iii. Government of China;
- iv. Government of Indonesia;
- v. Government of Spain;
- vi. Government of Italy;
- vii. Government of Turkey;
- viii. The European Commission;
- xi. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCIMC);
- xii. European Ceramic Industry Association (Cerame-Unie);
- xiii. Spanish Ceramic Tile Manufacturers' Association (ASCER);
- xiv. Italian Ceramic Manufacturers Association (Confindustria Ceramica);
- xv. PT. Platinum Ceramics, Indonesia;
- xvi. PT. MuliaKeramik IndahRaya, Indonesia; and
- ix. Building Materials Distributors Association of Malaysia (BMDAM).

Views of the Petitioner and Interested Parties

a) The Petitioner

34. The Petitioner put forward arguments and evidences to support their claim for safeguard measure. Among the points raised includes:

- i. there is a relative increase in imports of the PUI;
- ii. the increased imports have caused or are threatening to cause serious injury to the domestic industry
- iii. during POID, two (2) members of the Petitioner have ceased their production locally as their injury cumulated over a long period due to the increased imports of the PUI; and
- iv. safeguard measures to revamp the domestic industry.

b) Interested Parties

35. The interested parties consist of trade associations, importers, exporters and representatives from foreign embassies in Malaysia. Among the views and concerns expressed includes:

- i. importation of the PUI by the domestic industry;
- ii. the import trend was fluctuated throughout the investigation period and does not meet the requirement under WTO Rules;

- iii. inappropriate instrument to address serious injury to the domestic industry; and
- iv. safeguard measure will increase cost of construction and property prices.

Summary of issues/views presented during the public hearing as in **Annex**.

E. RESPONSES TO THE ISSUES RAISED BY THE INTERESTED PARTIES

36. Response by the IA on the issues raised by the interested parties in their written submission and during Public Hearing is as per Section F, Section G, Section H, Section K and Section L of this report.

F. ASSESSMENT OF SERIOUS INJURY

37. The IA made an assessment of the following injury factors:

- import volume;
- sales;
- market shares;
- production and capacity utilisation;
- profitability;
- cash flow;
- productivity; and
- employment & wages.

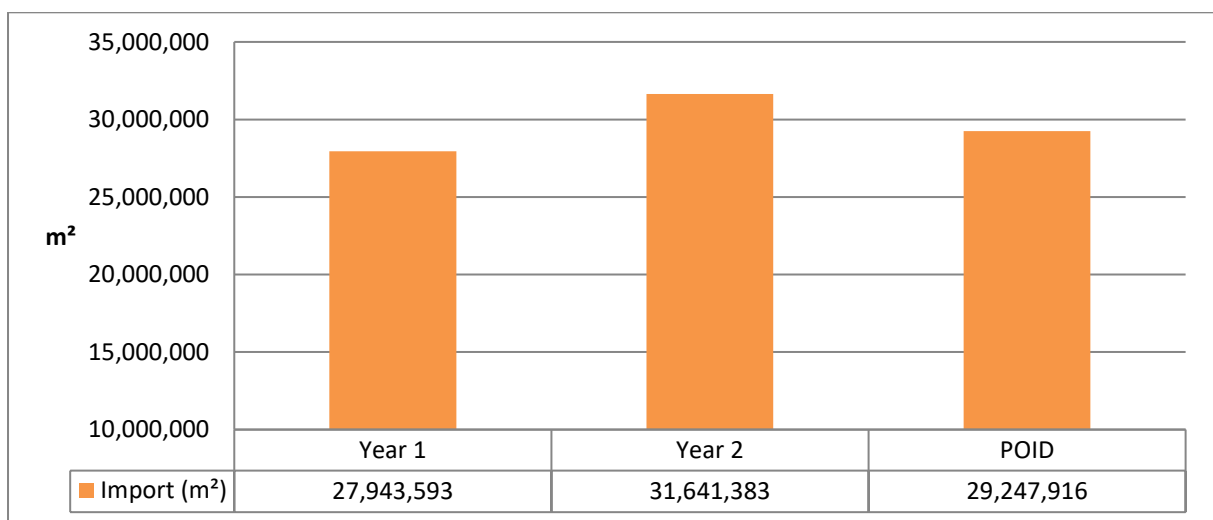
38. The IA made the assessment based on the domestic industry's financial statements for the consecutive financial years in 2017, 2018 and 2019.

Import Volume

39. The IA observed that, the import volume increased by 3,697,790m² or 13.23% from Year 1 to Year 2. However, the import reduced by 2,393,467m² or 7.56% from Year 2 to POID. Cumulatively the import increased by 1,304,323m² or 4.67% from Year 1 to POID. In this relation, the IA is of the view that from Year 1 to POID, the import volume showed a fluctuating trend and the increase is not sufficiently sudden, sharp and significant.

a) Absolute Term

Figure 1: Import volume (POI)



Source: Petition

40. Figure1 demonstrates the import volume of the PUI in absolute term throughout the POI. Based on DOSM data, the import volume of the PUI increased by 3,697,790m² or 13.23% from Year 1 to Year 2. However, the import reduced by 2,393,467m² or 7.56% from Year 2 to POID. Cumulatively the import increased by 1,304,323m² or 4.67% from Year 1 to POID.

41. From Year 1 to POID, the import volume showed a fluctuating trend and the increase is not sufficiently sudden, sharp and significant. It is observed that there was a decrease of imports of 7.56% from Year 2 to POID evidently does not constitute sharp or significant increase. As such, there is no increase in imports of the PUI in absolute term.

b) Relative Term

Table 4: Import Volume Relative to Domestic Production (POI)

Description	Year 1	Year 2	POID
Import (m ²)	27,943,593	31,641,383	29,247,916
Domestic Production (m ²)	100	95	74
% of imports relative to domestic production	100	119	142
Ratio of imports to domestic production	100	119	142

Source: Petition

42. Table 4 demonstrates the percentage of import volume relative to the domestic production volume from Year 1 to POID, i.e. the domestic production information is sourced from the Petition. The percentage of imports relative to domestic production is observed lower in Year 1 which is at ***%. However, in Year 2, imports of the PUI have overtaken domestic production where the percentage has increased to ***% and further increased to ***% during POID.

43. Based on the verification held with WHCI, the following are the IA's findings:

- WHCI explained that their actual production information for Year 1 and Year 2 are recorded in their accounting system (EEP). However, WHCI was unable to provide any evidence or document and unable to reconcile the figures during the verification;
- Information on WHCI's actual production from the EEP was also absent from the uplifted documents post-verification dated 18 November 2020; and
- Thus, the IA was unable to verify the production for Year 1 and Year 2 against supporting documents.

44. In view of the absence of verified information related to actual production of WHCI, the IA found that it was inappropriate to consolidate total domestic production by the domestic industry. Hence, the IA is unable to establish the trend analysis on the import volume relative to the domestic production during POI.

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Sales

45. KHIB and WHCI submitted the following information of their domestic sales in Table E-3.1: Sales of Product of Petitioner as follows:

Domestic Sales of Petitioner	Year 1	Year 2	POID
	Qty (m ²)	Qty (m ²)	Qty (m ²)
	***	***	***
	Value (RM)	Value (RM)	Value (RM)
	***	***	***

Source: Petition

46. The sales information consists of domestic sales made by KHIB and WHCI as follows:

(i) **KHIB**

Domestic Sales of KHIB	Year 1	Year 2	POID
	Qty (m ²)	Qty (m ²)	Qty (m ²)
	***	***	***
	Value (RM)	Value (RM)	Value (RM)
	***	***	***

Source: Petition

(ii) **WHCI**

Domestic Sales of WHCI	Year 1	Year 2	POID
	Qty (m ²)	Qty (m ²)	Qty (m ²)
	***	***	***
	Value (RM)	Value (RM)	Value (RM)
	***	***	***

Source: Petition

47. During verification on KHIB and WHCI, the IA gathered the information with regard to their domestic sales as follows:

(i) **KHIB**

Table 5: KHIB's Domestic Sales

Domestic Sales	Year 1 (RM)	Year 2 (RM)	POID (RM)
Sales Listing	***	***	***

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Domestic Credit Note	***	***	***
Interco Sales	***	***	***
Total	***	***	***
Petition	***	***	***

Source: KHIB

48. To ascertain the amount of domestic sales made during POID, the IA received a list of KHIB's domestic sales made to its 20 top customers as follows:

Table 6: KHIB's Domestic Sales by Customers During POID

No.	Customer	Quantity (m ²)	Value (RM)
1	***	***	***
2	***	***	***
3	***	***	***
4	***	***	***
5	***	***	***
6	***	***	***
7	***	***	***
8	***	***	***
9	***	***	***
10	***	***	***
11	***	***	***
12	***	***	***
13	***	***	***
14	***	***	***
15	***	***	***
16	***	***	***
17	***	***	***
18	***	***	***
19	***	***	***
20	***	***	***
	Subtotal	***	***
	Others	***	***
	Total	***	***

Source: KHIB

49. The IA observed that KHIB's top 20 customers represent ***% of all domestic sales made during POID.

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(ii) WHCI

50. WHCI provided the following sales reconciliation during verification:

Table 7: WHCI's Sales Reconciliation

	2017 (RM)	2018 (RM)	2019 (RM)
Sales as per Sales Listing	***	***	***
Add/(deduct):			
Sales Return	***	***	***
Sales Discount	***	***	***
Sales Compensation	***	***	***
Forex gain	***	***	-
Sales of MISC items	-	-	***
Indirect Sales (outside Malaysia)	***	***	***
Audit Adjustment	***	***	***
Total Adjustment	***	***	***
Sales as per Audited Financial Statement	***	***	***

Source: WHCI's accounting system

51. Based on the Petition, the sales listing provided by WHCI contained merely the customers' code number instead of their names. During verification, the IA found that WHCI's domestic sales were made to their marketing arms in Malaysia as follows:

Table 8: WHCI’s Sales Listing

Year 2017 & Year 2018		Year 2019	
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

Source: WHCI’s accounting system

52. From the sales listing, the IA consolidated the sales made by WHCI to their marketing arms throughout POI as follows:

Table 9: Consolidated WHCI’s Domestic Sales

Domestic Sales	2017		2018		POID	
	Qty (m ²)	Value (RM)	Qty (m ²)	Value (RM)	Qty (m ²)	Value (RM)
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
Total	***	***	***	***	***	***

Source: WHCI’s accounting system

53. The IA observed that:

- WHCI did not clearly indicate the involvement of its related marketing arms *** in the Petition with regard to the sales process;

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- almost all of the domestic sales made by WHCI were to ***;
- while for KHIB, the sales data provided was for their domestic sales made to its customers/ end users; and
- therefore, there was discrepancies between domestic sales information reported by WHCI during the verification.

54. Subsequent to comments made by the IA on the discrepancies related to the WHCI domestic sales, WHCI provided information on their domestic sales made by WHM as in Table 10. However, WHCI did not provide any documents or evidence to support their domestic sales to customers/ end users.

Table 10 :WHM Domestic Sales to Customs/ End users

Description	2017		2018		2019	
	Qty (m ²)	Value (RM)	Qty (m ²)	Value (RM)	Qty (m ²)	Value (RM)
Domestic Sales	***	***	***	***	***	***

Source: WHCI's accounting system

55. Based on verified information provided by KHIB and WHCI, the IA observed that:

- domestic sales data submitted by the domestic industry were based on two different markets whereby KHIB's domestic sales data are to their customers/end users while WHCI domestic sales data were only to its related marketing arms;
- there were discrepancies related to the WHCI domestic sales, whereby WHCI is supposed to provide their domestic sales up to the customer/ end users and not limited to sales to the marketing arms only; and
- consolidated domestic sales information provided in the Petition did not appropriately represent domestic sales of the domestic industry. The serious injury analysis related to domestic sales information was distorted and the IA was unable to consolidate the total domestic sales of the domestic industry. As such, the IA is unable to establish the injury analysis with regard to the domestic sales.

Market Shares

Table 11: Market Share (POI) (Index)

	Year 1	Year 2	POID
Apparent Domestic Consumption	100	98	85
Imports	100	115	124
Petitioner	100	103	95
Other Domestic Producers	100	85	84

Source: Petition

56. In determining the market share, comparison was made between domestic sales and total import volume of the PUI. Table 11 illustrates the domestic industry's and other domestic producers' market share vis-à-vis import volume of the PUI from Year 1 to POID. Based on the Petition, the IA noted that:

- i. the market share for imports showed the increasing trend ranging from ***% in Year 1 and increase to ***% in POID, whereas the domestic industry's market share from Year 1 increased from ***% to ***% in Year 2 but declined to ***% in POID; and
- ii. the apparent domestic consumption recorded a decreasing trend throughout the POI. Based on the y-o-y performance, the consumption had a slight decrease by ***% from *** m² in Year 1 to *** m² in Year 2 and continued to decrease by ***% to ***m² in POID.

57. To determine the share of domestic market, the IA is required to ascertain information related to domestic industry's domestic sales. Based on verified information, the following are the IA's observation and opinion:

- there were discrepancies related to the WHCI domestic sales, whereby WHCI is supposed to provide their domestic sales up to the customer/ end users and not only to their marketing arms;
- consolidated domestic sales information provided in the Petition did not appropriately represent domestic sales of the domestic industry. The serious injury analysis related to domestic sales

information was distorted and the IA was unable to consolidate the total domestic sales of the domestic industry;

- a conclusive serious injury determination on the market share could not be ascertain as the domestic industry failed to attest to the performance of its domestic sales; and
- Therefore, the IA is unable to establish the serious injury analysis with regard to the market share.

Production and Capacity Utilisation

Table 12: Production and Capacity Utilisation (POI) (Index)

	Year 1	Year 2	POID
Production Capacity	100	100	100
Actual Production	100	95	74
Capacity Utilisation	100	95	74

Source: Petition

58. Based on the Petition, **Table 12** shows the domestic industry’s annual installed capacity of *****m² from Year 1 to POID. Based on y-o-y performance:

- the domestic industry’s actual production reduced by ***% from ***m² in Year 1 to ***m² in Year 2. It further reduced by ***% to ***m² in POID; and
- from Year 1 to POID, the actual production reduced by ***%. Throughout POI, capacity utilisation dropped from ***% in Year 1 to ***% in POID, a drop of more than ***points.

59. During the verification with WHCI:

- WHCI explained that their actual production information for Year 1 and Year 2 are recorded in their accounting system (EEP). However, WHCI was unable to provide any evidence or documents and unable to reconcile the figures during the verification;
- Information on WHCI’s actual production from the EEP was also absent from the uplifted documents post-verification dated

18 November 2020; and

- Thus, the IA was unable to verify the production for Year 1 and Year 2 against supporting documents.

60. As such, the IA is unable to consolidate total domestic production by the domestic industry. Hence, the IA is unable to establish the trend analysis on actual production and its capacity utilisation.

Profitability

Table 13: Profit/Loss (POI) (Index)

Profit/(Loss)	Year 1	Year 2	POID
Domestic Sales	(100)	(96)	(160)

Source: Petition

61. Based on the Petition, **Table 13** demonstrates the operating profit/(loss) of the domestic industry throughout the POI. It is noted that following the decrease in sales revenue, the domestic industry recorded an increase in operating loss by ***% from RM***in Year 1 to RM*** in POID.

62. To determine the operating profit/ (loss) of the domestic industry, the IA is required to ascertain information related to domestic industry's domestic sales. Based on verified information, the following are the IA's observation and opinion:

- domestic sales data submitted by the domestic industry were based on two different markets whereby KHIB's domestic sales data are to their customers/end users while WHCI domestic sales data were only to its related marketing arms;
- there were discrepancies related to the WHCI domestic sales, whereby WHCI is supposed to provide their domestic sales up to the customer/ end users and not limited to sales to the marketing arms only;
- consolidated domestic sales information provided in the Petition do not describe a comprehensive information regarding domestic sales of the domestic industry. The serious injury analysis related to domestic sales information was distorted and the IA was unable to consolidate the total domestic sales of the

domestic industry; and

- As such, the IA is unable to establish the serious injury analysis with regard to profitability.

Cash Flow

Table 14: Cash Flow (Index)

Cash Flow	Year 1	Year 2	POID
	100	80	197

Source: Petition

63. Based on the Petition, the domestic industry claimed that there was an increase in cash flow from RM*** in Year 1 to RM*** in POID.

64. To determine the cash flow of the domestic industry, the IA is required to ascertain information related to domestic industry's domestic sales. Based on verified information, the following are the IA's observation and opinion:

- domestic sales data submitted by the domestic industry were based on two different markets whereby KHIB's domestic sales data are to their customers/end users while WHCI domestic sales data were only to its related marketing arms;
- there were discrepancies related to the WHCI domestic sales, whereby WHCI is supposed to provide their domestic sales up to the customer/ end users and not limited to sales to the marketing arms only;
- consolidated domestic sales information provided in the Petition do not describe a comprehensive information regarding domestic sales of the domestic industry. The serious injury analysis related to domestic sales information was distorted and the IA was unable to consolidate the total domestic sales of the domestic industry.

65. The IA concludes that:

- the cash flow information provided in the Petition do not describe a comprehensive information regarding domestic sales of the domestic industry;

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- WHCI generates and utilises their own cash flow only and did not produce cash flow of WHM. Hence, WHCI was unable to derive at the appropriate cash flow level;
- cash flow reported by KHIB reflected the sales made to the end users which resulted in higher selling price per m². Whereas sales made by WHCI were only destined to WHM. Hence, WHCI's sales data only captured the sales revenue and cash flow made to WHM. The internal sales of WHCI also recorded a lower selling price; and
- As such, the IA was unable to establish the serious injury analysis with regard to cash flow.

Productivity

Table 15: Productivity (Index)

Productivity	Year 1	Year 2	POID
	100	102	99

Source: Petition

Table 16: Productivity

Description	Year 1	Year 2	POID
Production of PUI (m ²)	***	***	***
Machine running hours (hr)	***	***	***
Productivity level(m ² /hr)	100	102	99

Source: Petition

66. The productivity is captured in terms of output per machine hour (m²/hour) suffered during POID compared to Year 1 and Year 2 as illustrated in **Table 15** and **Table 16**. Based on the Petition, the machine-hour productivity increased in Year 2 to ***m²/hr from ***m²/hr compared to Year 1 but decreased to ***m²/hr during POID. In maintaining the productivity level of above ***m²/h, the domestic industry had to sacrifice their machines running hours in POI, from *** hours in Year 1 to just *** hours in POID, a reduction of more than ***%. Other than that, the number of employees had also reduced by nearly ***% from *** in Year 1 to *** in POID.

67. During the verification with WHCI:

- WHCI explained that their actual production information for Year 1 and Year 2 are recorded in their accounting system (EEP). However, WHCI was unable to provide any evidence or documents and unable to reconcile the figures during the verification;
- Information on WHCI’s actual production from the EEP was also absent from the uplifted documents post-verification dated 18 November 2020; and
- Thus, the IA was unable to verify the production for Year 1 and Year 2 against supporting documents.

68. As such, the IA is unable to consolidate total domestic production by the domestic industry. Hence, the IA is unable to establish the trend analysis on productivity of the domestic industry.

Employment & Wages

Table 17: Employment and Wages (POI)(Index)

	Year 1	Year 2	POID
Wages	100	98	91
No of Personnel	100	97	84

Source: Petition

69. **Table 17** shows that the number of employees involved in the production and sales decreased throughout POI. Based on the Petition, the number of employees reduced from Year 1 and Year 2 at **%, and further reduced to **% during POID. The Petition describes that **% or ** of total employees were retrenched during POI with loss of production workers being the highest at **%.

70. During the verification, the IA found that:

- For KHIB, there was a decrease in the number of employees in POID due to employees’ resignations for better job offers and no replacement made by them. This was due to the “no replacement” policy adopted by KHIB in view of the decline in their sales orders and production. However, the KHIB did not

retrench any of its employees as claimed in the Petition but it was voluntarily made by employees; and

- For WHCI:
 - the decline of ***% during the POID in the number of personnel was due to the expiry of foreign workers' permit and resignation of employees for better job offers; and
 - the information on WHCI employees covered WHM's employees. The data for employment and wages were derived from both WHCI and WHM. The concoction of data on WHM's employment and wages resulted in distorted data pertaining to the financial information e.g. cash flow, profit and loss, cost to make and sell, and others.

71. The IA concludes that:

- the employment and wages information provided in the Petition do not describe the correct data of the domestic industry. Thus, the IA was unable to consolidate the employment and wages information of the domestic industry; and
- thus, the IA is unable to establish the serious injury analysis with regard to employment and wages.

Other Factors

Inventory

72. To determine the inventory of domestic industry, information related to domestic sales and production is required. Since there were discrepancies related to the WHCI domestic sales and actual production, the IA is unable to consolidate the inventory of the domestic industry.

Future Export Probability of Foreign Producers

73. Based on information provided in section F of the Petition, the domestic industry claimed that there is a likelihood of an increase in imports of the PUI from the PRC and elsewhere due to the excess capacity of the PUI.

74. During the verification, the domestic industry informed that:

- few of the local producers are also sourcing the PUI from the PRC through contract manufacturing. The Original Equipment Manufacturer (OEM) in foreign countries are able to produce the PUI based on the local producers' specification and range of selling price. The lower selling price quoted by the OEMs has enable the local producers to offer better and more competitive price to the domestic market; and
- although imports of the PUI from PRC is sold at cheaper price, there are no issues on its product quality as it is on par as the locally produced the PUI's grades and standards.

75. The domestic industry did not provide evidence in relation to the excess capacity of the PUI and future export capability of the PUI from PRC and elsewhere.

G. CAUSAL LINK

76. In view of the inconsistencies of the data and discrepancies between levels of information provided by the domestic industry, the IA is unable to establish the serious injury with regard to:

- imports in relative term (import volume relative to domestic production);
- sales;
- market shares;
- profitability;
- production and capacity utilisation;
- productivity; and
- employment and wages.

77. Based on the verifiable evidence and taking into consideration of all the views from the interested parties, the IA observes that the constraint on the analysis of serious injury has led to inconclusiveness of the causal link between the increase in imports of the PUI and the serious injury.

H. UNFORESEEN DEVELOPMENT

78. The IA took note of the domestic industry's claims on unforeseen circumstances as follows:

a) Ineffective WTO

- WTO is unable to fulfil its objectives in professing and advocating the principles of multilateralism trade when the organisation is seems incapable to:
 - act against/prevent unilateral actions contrary to multilateral rules; and
 - defend the interest of smaller/weaker WTO economies, particularly in resolving issues through dispute settlement body which is now rendered defunct, hence making the WTO a toothless body to resolve disputes.
- The Petitioner regarded developments related to dysfunctional multilateral trade rules were unforeseen and has affected the operations of international trade.

b) Accession of PRC to the WTO

- Following PRC's membership to the WTO, many countries decided to set up high capacity manufacturing facilities in PRC. The investors' confidence to choose PRC was based on the premises that PRC will be subjected to the WTO rules. With the surge of Foreign Direct Investment (FDI) and PRC Government's policies, PRC has become the second largest economy in the world and predicted to outrun the United States of America (US) as the largest economy. In addition, with the support from large government/state enterprises, PRC has also attained large production capacities and able to meet the domestic and global demand.
- Such developments of capacity build up by PRC were unforeseeable and have impacted the ceramic tiles sector too. Moreover, in 2018 PRC accounts for 43.4% of the global production.

c) US-PRC Trade War Effect

- These unilateral large tariff actions by the US on PRC and the equally large retaliatory tariff actions by PRC on the US was unforeseen at the time Malaysia became a

member of the WTO in 1995. The US which was once a strong advocator of multilateralism, has now resolved to unilateralism.

- The clash of the two largest global economies has indirectly affected the globally connected global value chains. What was also further unforeseen was the retaliatory action by the US on Chinese imports of ceramic tiles and the anti-Chinese sentiments that saw a significant drop in ceramic imports into the US market.
- As reported in the Ceramic World Review 136/2019 magazine, the figures for ceramic tiles imports into the US in the first quarter of this year (2020) has confirmed PRC's comprehensive exit from the market (-98% in both volume and value compared to the first quarter of 2019) following the introduction of countervailing and anti-dumping duties.
- Overall, tile imports into the US in the first quarter of 2020 fell sharply to 39mil m², about 7mil m² less than the 46mil m² of the first quarter of 2019 (-14.9%). The trade restriction imposed on PRC has led to market diversion hence adding to the unforeseen developments in the ceramic tiles sector.
- Additionally, companies in PRC were ready to shift their plant to lower-wage countries such as Vietnam, Thailand, Cambodia, Myanmar and Indonesia. Vietnam, has been one of the biggest beneficiaries of companies leaving PRC, as they offer manufacturers access to the ASEAN Free Trade Area and preferential trade pacts with countries throughout Asia and the European Union (EU), as well as the US.

I. ADJUSTMENT PLAN

79. The IA noted the following three (3) year adjustment plans by the domestic industry:

	Year 1	Year 2	Year 3
KHIB	• Expansion of Production	• Expansion of Production	• Adoption of Industry 4.0

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	Year 1	Year 2	Year 3
	Capacity <ul style="list-style-type: none"> • Trainings and Exhibition • Design Ability 	Capacity <ul style="list-style-type: none"> • Trainings and Exhibition • Design Ability 	
WHCI	<ul style="list-style-type: none"> • Upgrading of Production Line (kilns) • Design Ability • Market Expansion 	<ul style="list-style-type: none"> • Upgrading of Production Line (raw material crushing machine) • Design Ability • Market Expansion 	<ul style="list-style-type: none"> • Upgrading of Production Line (polishing machine) • Design Ability • Market Expansion

Source: Petition

80. During the verification, the following are the IA's observation and views:

- i. On the expansion progress of KHIB, the rate of expansion work and installation of machines are as scheduled and could be completed by March 2021;
- ii. The other adjustment plans by KHIB related to trainings, exhibition and designing are just routine operational plans and do not exhibit high potential in increasing the competitiveness of the PUI and its market share;
- iii. KHIB's aspiration to adopt Industry 4.0 digitalisation by the third year of the adjustment plan are still far-fetched as there is restriction to data sharing between the headquarter and the subsidiaries. The record keeping of KHIB is still partly done manually e.g. excel. Thus, the IA is of the view that KHIB does not reflect its readiness for Industry 4.0 in terms of its Management Information System;
- iv. For WHCI, the production upgrading is mediocre and would not lead to much changes to its production capability, except for *-**% cost saving on electricity; and
- v. WHCI's design development and market expansion plan do not demonstrate significant strategies which can further enhance their competitiveness.

J. PUBLIC INTEREST

81. Based on the response received from the interested parties, the IA noted that the safeguard measure may cause among others, the following consequences:

- inability of the local producers to meet the domestic consumption;
- disruption in the construction industry;
- increase in the cost of construction; and
- increase in property prices.

82. The IA acknowledged the domestic industry's contribution to the nations' income through exports. However, based on the verifiable evidence and taking into consideration of all the views from the interested parties:

- the IA has constraint on the analysis of serious injury that has led to inconclusiveness of the causal link between increase in imports of the PUI and the serious injury; and
- as the IA received very minimal response to the importer's questionnaire, the IA was not able to derive conclusive findings regarding the effect of this safeguard measure to the public interest.

K. CONCLUSION

83. For the purpose of making a preliminary determination under subsection 20(1) of the Act, the IA hereby submits the findings of the safeguard investigation to the Minister that:

- i. there was no continuous increase in imports of the PUI in absolute term;
- ii. due to the inconsistencies of the data and discrepancies between levels of information provided by the domestic industry, the IA is unable to establish the serious injury with regard to:
 - imports in relative term (import volume relative to domestic production);

- sales;
- market share;
- production and capacity utilisation;
- profitability;
- productivity; and
- employment and wages.

84. Based on the verifiable evidence and taking into consideration of all the views from the interested parties, the IA observes that:

- there was no continuous increase in imports of the PUI in absolute term during the POI;
- the constraint on the analysis of serious injury has led to inconclusiveness of the causal link between increase in imports of the PUI and the serious injury; and
- the adjustment plan failed to demonstrate significant potential to increase the domestic industry's competitiveness and capability.

85. Therefore, the IA concludes that the constraint on the analysis of serious injury has led to inconclusiveness of the causal link between increase in imports of the PUI and the serious injury.