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**F.NO. 7/7/2017-DGAD**

Government of India

MINISTRY OF COMMERCE & INDUSTRY

DEPARTMENT OF COMMERCE

**DIRECTORATE GENERAL OF TRADE REMEDIES**

4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi-110001

Dated 11 th June, 2018

**Notifications**

**(Final Findings)**

**Subject: Sunset review investigation concerning imports of ‘Grinding Media Balls’ (excluding Forged Grinding Media Balls) originating in or exported from China PR and Thailand.**

**BACKGROUND OF THE CASE**

1. F. No. 7/7/2017-DGAD–Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Designated Authority (herein after referred to as Authority) recommended imposition of Anti-Dumping Duty on imports of " ‘Grinding Media Balls’ (excluding Forged Grinding Media Balls)", (hereinafter referred to as subject goods) originating in or exported from China PR and Thailand (hereinafter referred to as subject Countries). The Authority vide its final findings No 14/34/2010-DGAD dated, 22nd May 2012 recommended imposition of anti-dumping duties against dumped imports of the subject goods from the Subject countries. Duties were imposed by the Central Government vide custom notification No. 36/2012-Customs (ADD) dated the 16th July, 2012.
2. Whereas, in terms of Section 9 A (5) the Customs Tariff Act, 1995, read with Rule 23 of the Rules, the antidumping duty imposed under the said Act shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, unless in a review, initiated before the expiry of the duty, the Designated Authority concludes that

the cessation of the duties is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the date of the expiry of the measure, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.

3. And Whereas a petition has been filed by the major domestic producer of Grinding Media Balls i.e., M/s AIA Engineering Ltd and M/s Welcast Steels Ltd, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the above goods, originating in or exported from the countries/territories named above and consequent injury to the domestic industry and requesting for initiating sunset review investigation for continuation of anti-dumping duties in force on imports of Grinding media balls originating in or exported from China PR and Thailand.
4. In view of the duly substantiated application with prima facie evidence of likelihood of dumping and injury filed on behalf of the Domestic Industry and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority issued a Notification No. 7/7/2017-DGAD dated 4<sup>th</sup> July, 2017, published in the Gazette of India, initiating a sunset review investigation in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, to review the need for continued imposition of the duties in respect of the subject goods, originating in or exported from the subject country, and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the Domestic Industry. The validity of the anti-dumping duty on the imports of the subject goods from the subject country was extended by the Central Government up to 15th July, 2018 vide Notification No. 34/2017-Customs (ADD) dated 13th July, 2017.
5. The scope of the present review covers all aspects of the original investigation concerning imports of the above goods, originating in or exported from China PR and Thailand.

### **GENERAL PROCEDURE**

6. Procedure described below has been followed with regard to this investigation, after issuance of the public notice notifying the initiation of the above investigation by the Authority:
  - i. The Authority notified the Embassy/Representatives of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.

- ii. The Authority sent a copy of the initiation notification to the Embassy of the subject countries in India, known producers/exporters in the subject countries, known importers/users in India, and the Domestic Industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.
- iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters in subject countries and to the Embassy of the subject countries in India in accordance with Rule 6(3) of the Rules supra.
- iv. The Embassy of the subject countries in India were also requested to advise the exporters/producers from China and Thailand to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from China PR and Thailand.
- v. The Authority sent Exporter's Questionnaire to elicit relevant information to the following known producers/exporters in accordance with Rule 6(4) of the Rules:
  - a. M/s Magotteaux Co. Ltd, Thailand
  - b. M/s Magotteaux Alloyed Material (Suzhou) Co.Ltd, China
- vi. In response to the above notification, only M/s Magotteaux Co. Ltd, Thailand responded to the questionnaire issued by the Authority.
- vii. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
  - a. ACC Limited
  - b. Century Cement
  - c. Grasim Industries
  - d. Chariot Steel and Power (P) Ltd.
  - e. Alcon Cement Company
  - f. Chowgule and Co.
  - g. Ambuja Cement Co.
  - h. Chunar Churk Cement Ltd.
  - i. Andhra Cement Co Ltd
  - j. Cement Manufacturing Co.Ltd
  - k. Durga Cement Works
  - l. Shree Digvijay Cement
  - m. Anjani Portland Cement Ltd.
  - n. Deccan Cement Ltd.(002)
  - o. Asian Cement and Concrete
  - p. Diamond Cements
  - q. Bharat Heavy Electricals Ltd
  - r. Eco Cement India Ltd
  - s. Binani Cement Ltd.

- t. Green Valliey Industries Pvt. Ltd.
- u. Birla Corporation Ltd
- v. Gujarat State Electricity Corp.
- w. Gujarat Sidhee Cement Ltd.
- x. Panipath Thermal Power Station
- y. Hindalco Industries Ltd (Dahej)
- z. Humboldt Wedag India Pvt Ltd. (Cement Division)
- aa. Hindustan Zinc Ltd.
- bb. India Resources Ltd
- cc. The India Cement Ltd
- dd. J K Cement Works
- ee. Jaiprakash Associates Ltd
- ff. Jindal Steel Power Ltd
- gg. Jaypee Rewa Plant
- hh. JK Laxmi Cement Ltd.
- ii. J K White Cement Works
- jj. Jaiprakash Associates Ltd-Chunar
- kk. Kakatiya Cement Sugar & Industries
- ll. Keerthi Industries Ltd- Mellac
- mm. Khyber Industries (P) Ltd – Kashmir
- nn. Kesoram Cements - Basantnagar
- oo. Lafarge India Pvt Ltd - Arasmeta
- pp. Madras Cements Ltd - Jayathipuram
- qq. Maihar Cement
- rr. Mahi Cement (A Unit of Indo Zinc Limited)
- ss. Manikgarh Cement (A Divn of Century Textiles & Inds Ltd)
- tt. Mandovi Pellets (A Divn. Of Chowgule & Company Ltd.),
- uu. Meghalaya Cements Limited
- vv. Megha Technical & Engineers Pvt Ltd
- ww. MSP Steel & Power Ltd. (Pellet Plant)
- xx. Murli Industries Limited
- yy. Maharashtra State Power Generation
- zz. My Home Cement Industries Ltd-Mella
- aaa. Ocl India Limited - Rajgangpur
- bbb. Heidelberg Cement India Ltd
- ccc. Orient Cement - Devapur
- ddd. NCL Industries Limited - Mattapally
- eee. NGS White Cement Company
- fff. Panyam Cements & Mineral Industries
- ggg. Penna Cement Industries Ltd
- hhh. Parasakti Cement Industries Limited
- iii. Sagar Cements Limited - Mattampally
- jjj. Prism Cement Limited
- kkk. Saurashtra Cement Limited

III. Rain Commodities Ltd - Kurnool  
mmm. Shiva Cement Limited  
nnn. Rashmi Cement Limited (Cement Division)  
ooo. Shree Cement Ltd - RAS (SCR)  
ppp. Reliance Infrastructure Ltd  
qqq. Trinayani Cement (P) Ltd  
rrr. Shriram Cement Works (A Division of DCM Shriram Consolidated Ltd.)  
sss. Trumboo Industries Private Limited  
ttt. Ultratech Cement Limited - AP  
uuu. Tata Chemicals Ltd – Mithapur  
vvv. U.P. Rajya Vidyut Utpadan Nigam Ltd  
www. Zuari Cement Ltd - Yerraguntla  
xxx. Vasavadatta Cement - Sedam  
yyy. Penna Cement Industries Limited  
zzz. Prism Cement Ltd. - Unit - Ii  
aaaa. Sarda Energy & Minerals Limited  
bbbb. Suday Minerals & Chemicals (P) Ltd  
cccc. Saloni Industries  
dddd. Samruddhi Cement Limited

- viii. In response to the questionnaire issued by the Authority, only following responded to the importer's questionnaire response:
- a. Birla Shakti Cement
- ix. Further, the following interested party had filed response to the initiation of the investigation:
- a. My Home Industries Pvt. Ltd- Maha Cement
- x. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.
- xii. The Non-Injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to

ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- xiii. The Authority held an oral hearing on 16<sup>th</sup> March, 2018 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6), which was attended by the representatives of Domestic Industry, the responding exporter, importers and importers' association. The representatives who presented their views orally at the time of oral hearing were advised to file written submissions of the views expressed orally. The interested parties were provided opportunity to offer rejoinder submissions to the views expressed by opposing interested parties.
- xiv. Table verification of the data of the Domestic Industry and exporter questionnaire response was carried out to the extent considered necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this finding.
- xv. The period of investigation for the purpose of the present review is April 2016-March 2017 as the Period of investigation. The injury investigation period has however, been considered as the period 2013-14, 2014-15, 2015-16 and the period of investigation.
- xvi. A Disclosure Statement was issued on 30<sup>th</sup> May, 2018 containing essential facts under consideration of the Designated Authority, giving time up to 6<sup>th</sup> June, 2018 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xvii. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this document.
- xviii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.
- xix. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has

significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.

- xx. ‘\*\*\*’ in this findings represent information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxi. The exchange rate for the POI has been taken by the Authority as Rs.67.95= 1 US\$.

## **PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **Views of the Domestic Industry**

7. The following are the submissions made by the domestic industry with regard to product under consideration and like article:
  - i. The product under consideration in the present petition is the same as the original investigations, which can be defined as “The product under consideration is ‘Grinding Media Balls’ (excluding Forged Grinding Media Balls). ‘Grinding Media Balls’ (in short, ‘GM Balls’) are produced in different sizes, shapes and compositions for use in diverse applications. Further, it is available in different hardness depending upon varying requirements of the customers.”
  - ii. Grinding Media Balls are available in different sizes, shapes and compositions for use in diverse applications. They are available in different hardness as per customer specific requirement. Grinding media balls are used in ball mill for crushing and grinding heavy and hard materials.
  - iii. Grinding media balls (also known as Casting balls) are extensively used in grinding mills for grinding and crushing of limestone and clinker in Cement plants, mineral ore in mines and coal in thermal power plants.
  - iv. Grinding media are cast in high chrome metallurgy which offers a longer wear life without risk of failure/breakage. High chrome cast balls have uniform wear profile which ensures consistent output for the grinding mills in which they are used.
  - v. Grinding Media balls are produced in different sizes starting from 12 MM to 110 MM. It is also produced in different chrome content such as G12, G14, G15, G18, G21, G22 etc. In G12, ‘G’ stands for Grinding Media and ‘12’ shows the quantity of Chrome content. Different sizes of balls are used for different purposes; for example, G12 is used in cement grinding with ball size of 50 to 90 MM.
  - vi. For the purpose of fair comparison between the imported product and domestic product and for normal value and export price, petitioners suggest differentiation of different

product types. Accordingly, the petitioners have segregated the information on product types.

- vii. The product under consideration is extensively used in cement build materials, metal mine, coal slurry, thermal power plant, chemical engineering, ceramic industry, dope industry, light industry such as papermaking and magnetic material etc. for powder preparation. The subject goods are classified under Customs sub-heading 7325 9100 of Chapter 73 of the Customs Tariff Act, 1975. However, the Customs classification is indicative only and in no way binding on the scope of this investigation.
- viii. There is no difference in the technology employed and the quality of the domestic and imported product and are technically and commercially substitutable. The consumers are using the two interchangeably. Present investigation is a review investigation. The Designated Authority has examined the issue of product under consideration and like article in the original investigation, which is relied upon.
- ix. Each of the subject grinding media ball produced by the Domestic Industry is individually comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods with each of the subject grinding media balls imported from respective subject countries.
- x. Present investigation is a review investigation. The Designated Authority has examined the issue of product under consideration and like article in the original investigation, which is relied upon.

#### **Views of the Interested Parties**

- 8. None of the producers/exporters/importers/other interested parties has made any submissions in this regard.

#### **Examination of the Authority**

- 9. The products on which the duties are in force are Grinding Media Balls (excluding Forged Grinding Media Balls). This review covers the entire product and hereinafter they have been referred to as subject goods.
- 10. The present investigation being a sunset review investigation and anti-dumping duties, as earlier recommended by the Authority, being in force on the imports of the subject goods from the subject countries, the Authority considers that the scope of the PUC in the present investigation remains the same as that in the original and subsequent review investigations. The product under consideration defined in the previous investigations is as follows

- ‘Grinding Media Balls’ (in short, ‘GM Balls’) are produced in different sizes, shapes and compositions for use in diverse applications. Further, it is available in different hardness depending upon varying requirements of the customers.”
  - The product under consideration is extensively used in cement build materials, metal mine, coal slurry, thermal power plant, chemical engineering, ceramic industry, dope industry, light industry such as papermaking and magnetic material etc. for powder preparation. The subject goods are classified under Customs sub-heading 7325 9100 of Chapter 73 of the Customs Tariff Act, 1975. However, the Customs classification is indicative only and in no way binding on the scope of this investigation.
11. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject countries and the product produced by the Indian industry. The subject product produced by the domestic industry is comparable to the Product under consideration in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.
12. Thus, the Authority holds that the subject product produced by the applicant domestic industry is like article to the Product under consideration, in accordance with the Anti Dumping Rules.

### **SCOPE OF DOMESTIC INDUSTRY & STANDING**

#### **Views of the Domestic Industry**

13. Following submissions have been made by the Domestic Industry with regard to scope and standing of the Domestic Industry:
- i. The present petition is being filed by AIA Engineering Ltd and Welcast Steels Ltd, who produce the subject goods in India for review and continuation of the quantum of anti-dumping duty in force on imports of Grinding Media Balls originating from Thailand and China PR.
  - ii. The petitioner alone commands majority proportion in Indian production. It has neither imported the subject goods nor is related either to any exporter of the subject product in subject countries or an importer in India.
  - iii. No published information is available with regard to the production of the other Indian producers. The petitioner has determined the production of other Indian producers based on their imports of raw materials, domestic sales, imports and exports made by individual Companies.

## Views of the other Interested Parties

14. Following submissions have been made by the other interested parties with regard to scope and standing of the Domestic Industry:
- None of the producers/exporters/importers/other interested parties has made any submissions in this regard.

## Examination of the Authority

15. Rule 2 (b) of the AD rules defines domestic industry as under:

*“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”*

16. The application has been filed by AIA Engineering Ltd and Welcast Steels Ltd. The statement of Indian production is as follows:

SN	Name of unit	UOM	Particulars			
			2013-14	2014-15	2015-16	POI
1	Petitioner Companies					
a	AIA Engineering Ltd.,	MT	***	***	***	***
b	Welcast Steels Ltd.	MT	***	***	***	***
c	Total of Petitioner companies	MT	***	***	***	***
2	Other Indian Producers	MT	***	***	***	***
a	Total Indian Production	MT	1,66,618	1,90,021	1,74,349	2,13,292
SN	Name of unit	UOM	Share ( %)			
			2013-14	2014-15	2015-16	POI
1	Petitioner Companies					
a	AIA Engineering Ltd.,	%	61%	69%	73%	70%
b	Welcast Steels Ltd.	%	23%	17%	12%	17%
c	Total of Petitioner companies	%	84%	86%	85%	88%
2	Other Indian Producers	%	16%	14%	15%	12%

a	Total Indian Production	%	100%	100%	100%	100%
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17. The Authority notes, on the basis of information on record the petitioner accounts for 88% for total Indian production and accounts for major proportion of the total Indian production. Further, the petitioner has not imported the subject goods during the period of investigation, and, is not related to any exporter or producer of the subject goods in the respective subject countries or any importer or user of the product under consideration in India within the meaning of Rule 2(b).
18. In view of the above and after due examination, the Authority holds that the applicant satisfies the standing requirements for the subject goods and constitute domestic industry under Rule 2(b) and Rule 5(3) of the AD Rules.

### **CONFIDENTIALITY**

#### **Views of the Domestic Industry**

19. The following submissions have been made by the Domestic Industry with regard to confidentiality:
- i. The responding exporter has resorted to excessive confidentiality in the questionnaire response file. Exporter questionnaire response filed by M/s Magotteaux Co Ltd needs to be rejected owing to the excessive confidentiality claimed by them. The exporter has claimed confidentiality on the information which the exporter is obliged to disclose publicly.
  - ii. The exporter has abused the provisions of confidentiality, this has curtailed the right of domestic industry to defend their interest and such claims should not be accepted by the Authority.
  - iii. Very basic information product name, grades, website information, channel of distribution, details of its offices has also been kept confidential, among others. No proper non confidential summary has been provided by the exporters.
  - iv. Exporter has not given any information on factories involved in the production and the product produced, name of the documents, information regarding exports to India, sales of goods of the company, sales price structure, statement showing installed capacity, information related to cost of production, information related to subsidiary etc.
  - v. The exporter is required to give information with regard to surplus capacities with them, availability of alternate markets other than India, inventories of the article under investigation with the exporter, prices at which subject goods are being exported to third countries and local demand for the product, ascertain the price at which the subject exporters are likely to export the product and how the same compares with the domestic industry prices and non-injurious price. In the present case, the exporter had claimed confidentiality on all the information for above

- vi. The exporter has not provided any non-confidential summary of the information filed by them and this has seriously curtailed the right of domestic industry to defend their interest and the exporter has abused the provisions of confidentiality. Such claims should not be accepted by the Authority and the exporters should be directed to disclose such information or provide sufficient non confidential summary of the information.
- vii. Even when a party has participated in the investigation but has not provided the available information sought by the Authority, the party could be treated as non-cooperative by the Authority.

### **Views of the other Interested Parties**

20. The following submissions have been made by the other interested parties with regard to confidentiality:
  - i. M/s Magotteaux has sought confidentiality of the very same information which complainants themselves have sought confidentiality.
  - ii. M/s Magotteaux has sought confidentiality of only that information which is business sensitive and revelation thereof to the competitor's may gravely harm business interest of Magotteaux.

### **Examination of the Authority**

21. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:-

*“Confidential information:*

*(1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule(2),(3)(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”*

22. Submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

### **MISCELLANEOUS ISSUES**

#### **Views of the Domestic Industry**

23. The following miscellaneous submissions have been made by the Domestic Industry:
- i. The Brazilian Authority has initiated anti-dumping as well as anti-subsidy investigation against India for the same product. The anti-dumping duty imposed is 12.2% and CVD investigation is going on.
  - ii. The same is being done with an intention to curtail Indian Exports. Anti-dumping duty is imposed on Indian products despite export price being significantly higher than cost.
  - iii. The exporter has exported the goods under Chapter 84 instead of Chapter 73 to avoid anti-dumping duty. Attempt to evade Anti-dumping duty can be noticed from the practice of the exporter by exporting 186 MT of product under consideration under incorrect HS code.
  - iv. The domestic industry has already filed transaction wise import data which shows that in total 186 tonnes of import has been made imported under Chapter 84 along with relevant documents to establish that the product under consideration has been imported under the wrong classification.
  - v. It would be seen that since past two years, the exports of the product under consideration has significantly declined and the export price of the product under consideration has dramatically increased. The exporters of the subject countries have intentionally doctored the prices and quantities of their export to influence the sunset review investigation.
  - vi. An intentional action was taken by the exporters in order to influence the sunset review investigation and seek withdrawal of ADD.
  - vii. Besides the support from the parent companies, the Government of Thailand also provides protection to the company by keeping high customs duty on imports from India. Meanwhile, Govt. of India has given customs duty concession to the Thai producers.

- viii. The FTA by India and Thailand provides special concessions to the producers/exporters in Thailand vis-a-vis other countries. While Govt. of India gave tariff concessions to Thailand for the product under consideration, the Thai Govt. did not reciprocate the grant of concessions to the Indian exporters.
- ix. The intention behind ASEAN agreement was to encourage free trade between countries and to remove trade barriers and also to provide a good competitive market to the exporting countries. The exporters have taken undue advantage of the benefit offered to them under the ASEAN agreement.
- x. With regard to considering 10% of customs duty for the product under consideration instead of NIL duty, the Hon'ble Supreme Court judgment of Haldor Topse may be referred and relied upon where the Hon'ble court confirmed the calculation of two differing dumping and injury margin for the same product owing to two different customs duties.

### **Views of the other Interested Parties**

24. The following miscellaneous submissions have been made by the other interested parties:
- i. The scope of review under Rule 23 of Anti- Dumping Rules is questioned, the DA is requested to look into a certain factors such as change in patterns of production, demand and requirement of the dumped product in the import countries since the imposition of duty, the change in prices in the exporting countries and in international market, to see whether the domestic industry is exploiting by raising the prices above international level.
  - ii. The Authorities is also required to address the factor s mentioned under Article 11.3 of the Anti-Dumping Agreement or else the determination of duty wouldn't be justifiable.
  - iii. The basic custom duty the DA should take the basic custom duty of 10% while computing landing value of GM Balls from Thailand instead of the preferential rate of customs dusty as enjoyed under the ASEAN Agreement.
  - iv. The ASEAN Agreement does not envisage product by product reciprocal reduction of import duty. Such reciprocity is ensured at national level. Thus the argument that Thailand has not provided preferential rate of import duty on GM balls from India shouldn't be considered.
  - v. The domestic industry has been granted excessive protection under the anti-dumping measures which lead to elimination of the competition.
  - vi. The complainant is "virtually enjoying monopoly."
  - vii. The Domestic Industry is exploiting the situation by raising the prices above the International level.

### **Examination of the Authority**

25. With regard to the submission that customs duty should be considered at 10% as against 0% because the exporter enjoys the same under the ASEAN Agreement, the Authority notes that the law is very clear in this regard that the custom duty will be taken as it is.

26. The Authority notes that the law clearly envisages that the anti dumping duty can be extended further from time to time, if it is found that dumping and consequent injury to the domestic industry is likely in the event of cessation of anti-dumping duty. Anti-dumping law is for removing unfair trade practice and providing a level playing field to the domestic industry. The Authority recommends anti-dumping duty only after following the requirements prescribed under the laws.
27. On the issue of monopolistic behaviour of the domestic industry, it is noted that the purpose of antidumping duty, in general, is to eliminate dumping which is causing or likely to (in case of SSR) cause injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in general interest of the country. From the antidumping rules, it is not borne out that a company, even if monopolistic, is prohibited from requesting to the Authority actions against the unfair imports.

### **NORMAL VALUE, EXPORT PRICE AND DETERMINATION OF DUMPING MARGIN**

28. According to Section 9A (1) (c) of the Customs Tariff Act, 1975 'Normal Value' in relation to an article means: -

*“comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

*when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*

*(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

*the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

### **Views of the Domestic Industry**

29. The Domestic Industry, inter alia, submitted as follows:
- i. China needs to be treated as non-market economy for the reason that the costs and prices in China do not reasonably reflect the market forces. Para 8 to Annexure-I specifies the parameters which should be considered for grant of market economy status. This also implies that unless these conditions are not fulfilled/ satisfied, the Chinese costs and prices cannot be adopted.
  - ii. Chinese producers are required to be treated as companies operating under nonmarket economy environment and the Authority may proceed to determine the normal value on the basis of Para 7 of Annexure-I.
  - iii. The only known imports from Thailand have not yet been reported in the customs data, and it appears that these consignments have been cleared in March, 2017. However, the petitioners are well aware of the volume and the price at which the Thai exporter has taken the order in the proposed POI and have adopted the same for the purpose of determination of normal value, export price and dumping margin.

#### **Views of the interested parties**

30. The other interested parties submitted as follows:
- i. Imports will certainly increase after duty is revoked but there is no parameter to show that the complainant will suffer.

#### **Examination by the Authority**

##### **Normal Value in China**

31. Article 15 of China's Accession Protocol provides as follows:

*“Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*

*(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*

*(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

*(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*

*(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*

*Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”*

32. Article 15 implies that provisions of one of the subparagraph shall expire 15 years from date of China's Accession. The provisions of this paragraph expired in 11th Dec., 2016. Since the factum of dumping causing injury to the Domestic Industry is established based on investigation period, the conditions prevalent during the investigation period alone is relevant, appropriate and necessary for the purpose of present investigation. The Period of Investigation (POI) for the purpose of the present review is April 2016-March 2017. Since the subparagraph of Article 15 was in existence during the period of investigation, the Authority may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

33. The Authority notes that in the past three years, China PR has been treated as non-market economy countries in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.
34. None of the exporter/producers have filed market economy questionnaire response. In view of the above position and in the absence of rebuttal of non-market economy presumption by any Chinese exporting company, the Authority considers it appropriate to treat China PR as a non-market economy country in the present investigation and proposes to proceed with para-7 of Annexure-I to the Rules for determination of normal value in case of China PR.

#### **All producers/exporters from China PR**

35. As no producer of from China PR has co-operated in this investigation and provided any information for rebutting the non-market treatment as per para 8(2) of Annexure 1 of the AD Rules. Therefore, the presumption of non-market economy as per para 8(2) of Annexure 1 of the AD Rules remains un-rebutted. The Authority, therefore, has determined the Normal value in accordance with para 7 Annexure I of the AD Rules. In absence of sufficient information on record regarding the other methods as are enshrined in para 7 of Annexure I of the AD Rules, the Authority has determined the Normal value by adopting the method “any other reasonable basis”.
36. The Authority has therefore constructed the Normal value for China PR, for the purpose considering the best available information on record.

#### **Normal value determination for M/s Magotteaux Co. Ltd, Exporter/producer from Thailand**

37. It was first seen, whether the domestic sales of the subject goods by the responding exporter/producer in their domestic market were representative and viable for permitting determination of Normal value on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents. The respondents have provided transaction-wise details of the sales of the like article in their home markets, the information so provided has been relied upon to determine the Normal value for the subject goods after carrying out the ordinary course of trade test and sufficiency test. The adjustments as claimed in respect of inland freight and credit costs and verified during the verification have been made to arrive at ex factory normal value.

### **Normal Value of all other exporters/producers from Thailand**

The Authority notes that no other exporter/producer from Thailand has responded to the exporter's questionnaire. Therefore, the normal value in their cases has been determined on the basis of best facts available on record.

### **Determination of export price of China PR**

38. None of the exporters from China PR have provided any information giving details of export price. Therefore, the Authority has determined the export price for producers/exporters of China PR on the basis of the DGCI&S transaction wise data. Accordingly, the weighted average net export price at ex-factory level, in respect of all exporters from China PR has been determined after making due adjustments for Ocean Freight, Marine Insurance, Port Expenses, Bank charges, Commission and Inland freight on the basis of best available information as mentioned in the Dumping Margin table

### **Determination of Export Price of Thailand**

#### **Export price for the responding exporters M/s Magotteaux Co Ltd, Thailand.**

39. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments have been claimed on account of inland freight, port handling charges, ocean freight and overseas insurance, as verified during the verification have been accepted for the determination of the net export price.

### **Determination of Export Price in respect of Non-Cooperative Exporters/Producers**

40. Since no other response has been received from any other producer/exporter of the subject goods from the subject countries; the Authority has determined the Export price as per 'facts available' in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information available on record. Accordingly, the net export price in respect of the other producers/exporters from China PR and in respect of the producers/exporters from Thailand can be seen in the table below.

### **Determination of Dumping Margin**

41. The dumping margin during the POI for all exporters/producers from the respective subject countries have been determined as provided in the table below:

S.No	Exporter/producer	Normal Value USD/MT	Export Price USD/MT	Dumping Margin USD/MT	Dumping Margin (%)	Range
1.	M/s Magotteaux Co Ltd, Thailand	***	***	***	***	30-40
2.	All exporters/ producers from Thailand	***	***	***	***	30-40
3.	All exporters/ producers from China	***	***	***	***	0-10

### **Injury Determination**

#### **Views of Domestic Industry**

42. The Domestic Industry has submitted as follows with regard to injury and causal link in case of all of the subject grinding media balls:
- i. The products continue to enter Indian markets at dumped prices; the withdrawal of the existing Anti-dumping measure shall lead to continued dumping and consequential injury to the domestic industry.
  - ii. The domestic industry has not claimed injury in the present case and the fact that the domestic industry is earning profit in present has no relevance in case of SSR investigation as well as examination of likelihood.
  - iii. The petitioners have already established that the exporter is exporting the product in India at dumped prices despite anti-dumping duty in existence. 44% EBDTA of AIA for the F.Y. 2015-16 (33% for 2016-17) as claimed by the exporter is baseless as it includes other non-operational income and margin on other NPUC products which is quite higher than G M Ball.
  - iv. There are various kinds of castings and performance of other companies producing casting and comparing the same with the petitioners' performance is not relevant in this investigation.

- v. It is contended that cessation of anti-dumping duty would lead to likelihood of dumping and injury and therefore duty should be continued is within the provisions as prescribed by law.
- vi. Performance of the domestic industry has improved over the present injury period after imposition of antidumping duty. In the event of cessation of existing dumping duty, domestic industry will be forced to reduce its prices to match the landed price of subject imports from subject countries.
- vii. In such an event, considering that the landed price of imports shall be below selling price and NIP of domestic industry, performance of the domestic industry shall deteriorate to a level where the domestic industry would be earning less than adequate profits.

### **Views of other Interested Parties**

43. The following submissions were made by producers/exporters/importers/other interested parties with regard to injury to the domestic industry
- i. The Domestic industry has been making superlative and abnormal profits.
  - ii. The return on capital employed by AIA is beyond 22% which is the benchmark return.
  - iii. The complainant are “well beyond recovery”
  - iv. The export turnover of the AIA has increased consistently and thus, is in no need of protection.
  - v. Domestic industry is now globally competitive and there is no threat of material injury which likely exists.
  - vi. Referring to the profits earned by domestic industry, it claimed that no material injury is being caused to the domestic Industry

### **Examination by the Authority**

44. The injury analysis made by the Authority here under addresses the various submissions made by the interested parties.
45. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of

the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

46. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
47. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.
48. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.
49. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.
  - (i) **Assessment of Demand/ Apparent Consumption**
50. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers and imports from all sources.

51. The demand for the product under consideration is given below:

Particulars	Unit	2013-14	2014-15	2015-16	2016-17
Demand					
Sales of Domestic Industry	MT	***	***	***	***
Trend		100	96	103	106
Sales of Other Indian Producers	MT	***	***	***	***
Trend		100	100	100	100
China	MT	***	***	***	***
Thailand	MT	***	***	***	***
Subject Countries as a whole	MT	***	***	***	***
Trend		100	550	299	241
Other Countries-Imports	MT	-	-	-	-
Total demand/consumption	MT	54,032	53,346	55,067	55,937

52. The Authority notes that the demand has shown increase over the injury period.

**(ii) Volume Effect of Dumped Imports and Impact on Domestic Industry**

**Import volume and Market Share**

53. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India.

54. The table below summarizes the factual position with regard to import volumes and market share -:

Particulars	Unit	2013-14	2014-15	2015-16	2016-17
Imports - Volume					
Subject Countries as a whole	MT	***	***	***	***
Trend		100	550	299	241
Other Countries	MT	-	-	-	-

Total Imports	MT	***	***	***	***
Trend		100	550	299	241
Subject country Imports in relation to					
Consumption	%	0.19%	1.03%	0.54%	0.43%
Total imports	%	100%	100%	100%	100%
Indian production	%	0.06%	0.29%	0.17%	0.11%

55. On the basis of above, the Authority notes as follows:

- (a) The imports have increased since the base year.
- (b) It is also noted that imports have remained low in relation to Indian demand and consumption.

**(iii) Price Effect of the Dumped Imports on the Domestic Industry**

**(a) Price Undercutting**

56. With regard to the effect of dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports when compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree.

57. In this regard, a comparison has been made between the landed value of the product and the selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The price of the domestic industry was determined at the ex-factory level. The Authority has compared landed price of imports with the selling price of the domestic industry for the subject goods.

Particulars	Unit	2013-14	2014-15	2015-16	2016-17
Net Sales Realisation	Rs/KG	***	***	***	***
Trend	Indexed	100	104	105	96
CHINA (G12)					
Landed Price without ADD	Rs/KG	***	***	***	***
Trend	Indexed	-	-	100	99
Price undercutting	Rs/KG	***	***	***	***
Price undercutting %	%	***	***	***	***
Price undercutting %	range	0-10	0-10	10-20	0-10
THAILAND					
Landed Price without ADD	Rs/KG	***	***	***	***

Trend	Indexed	100	93	109	92
Price undercutting	Rs/KG	***	***	***	***
Price undercutting %	%	***	***	***	***
Price undercutting %	range	(0-10)	10-20	(0-10)	0-10

58. From the above, the Authority notes that the landed price of imports of subject goods from subject countries is below the net selling price of the domestic industry. The imports from subject countries are undercutting the selling prices of domestic industry.

**(b) Price Suppression/ Depression**

59. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period. The position is shown as per the table below:

Particular	Unit	2013-14	2014-15	2015-16	2016-17
Cost of sales	Rs/KG	***	***	***	***
Trend	Indexed	100	106	97	86
Net sales realization	Rs/KG	***	***	***	***
Trend	Indexed	100	104	105	96
Landed price	Rs/Kg	***	***	***	***
Trend	Indexed	100	93	102	90

60. The Authority notes that the import price from subject countries is lower than the selling price of the domestic industry in the injury period.

**(iv) Economic Parameters relating to the Domestic Industry**

61. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the AD Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased

evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

62. Accordingly, various economic parameters of the Domestic Industry are analyzed herein below:

**(a) Production, Capacity, Capacity Utilization and Sales Volume**

63. Production, sales, capacity & capacity utilization of the domestic industry moved as shown below:

Particulars	Unit	2013-14	2014-15	2015-16	2016-17
Capacity	MT	***	***	***	***
Trend	Indexed	100	132	142	173
Plant Production	MT	***	***	***	***
Trend	Indexed	100	116	107	134
Production-PUC	MT	***	***	***	***
Trend	Indexed	100	117	106	133
Capacity Utilisation	%	***	***	***	***
Trend	Indexed	100	88	75	78

64. It is noted from above that the capacity, production and sales of the domestic industry have improved in absolute term as compared to base year. However, the capacity utilization of the plant has declined significantly.

**(b) Market Share in Demand**

65. The market share of the domestic industry moved as shown below:

Market Share in Demand	Unit	2013-14	2014-15	2015-16	2016-17
Share of Domestic Industry	%	50.77%	49.29%	51.33%	52.19%
Share of other producers	%	49.04%	49.68%	48.12%	47.37%
Share of Imports of Subject Countries	%	0.19%	1.03%	0.54%	0.43%

Share of Imports of Other Countries	%	0%	0%	0%	0%
Total Demand	%	100%	100%	100%	100%

66. It would be seen from the above that the market share of the domestic industry and other Indian producers have remained more or less similar throughout the injury period. Market share of the imports have remained in the same range.

**(c) Profitability, return on investment and cash profits**

67. Performance of the domestic industry with regard to profits, return on investment and cash flow is as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
Cash Profit	Rs.Lacs	***	***	***	***
Trend	Indexed	100	122	745	813
Interest	Rs.Lacs	***	***	***	***
Trend	Indexed	100	55	85	67
Profit before Interest	Rs.Lacs	***	***	***	***
Trend	Indexed	-100	-219	685	811
Return on Capital Employed-NFA	%	***	***	***	***
Trend	Indexed	-100	-232	471	541

68. It is noted that the profits, cash Profits and Return on capital employed of the domestic industry have improved throughout the injury period due to anti-dumping duty in existence.

**(d) Inventories**

69. Inventories with the domestic industry is as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
Average Stock	MT	***	***	***	***
Trend	Indexed	100	105	126	228
Inventory Per Day	MT/Days	10	11	13	23
Trend	Indexed	100	105	126	228

70. The inventory level of the domestic industry has consistently increased throughout the period. The inventory per day has also increased.

(e) **Employment and Wages**

71. Performance of the domestic industry with regard to employment, productivity and wages is as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
No of Employees	Nos	***	***	***	***
Trend	Indexed	100	111	117	146
Wages	Rs.Lacs	***	***	***	***
Trend	Indexed	100	120	124	144
Productivity Per Employee	MT/Nos	***	***	***	***
Trend	Indexed	100	105	90	91
Productivity Per Day	MT/Days	***	***	***	***
Trend	Indexed	100	117	106	133

72. On the basis of above, the Authority notes that the levels of employment and wages have increased throughout the injury period.

**Magnitude of Dumping**

73. Magnitude of dumping is an indicator of the extent to which the dumped imports can cause injury to the domestic industry. The analysis shows that the dumping margin determined against the subject country is positive.

**Ability to raise Capital Investment**

74. There is no verifiable information presented by the Domestic Industry and neither available on records that can imply that future investment in the sector can be marred by the presence of dumped imports from subject country.

**Magnitude of Injury and injury margin**

75. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject countries for determination of injury margin during the POI and the injury margin so worked out is as under:

**Table of Injury Margin**

S.No	Exporter/producer	NIP USD/MT	Landed Value USD/MT	Injury Margin USD/MT	Injury Margin (%)	Range
1.	M/s Magotteaux Co Ltd, Thailand	***	***	***	***	0-10
2.	All exporters/ producers from Thailand	***	***	***	***	0-10
3.	All exporters/ producers from China	***	***	***	***	0 -10

**LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**

76. The Authority observed that this is a sunset review investigation and the focus of this investigation is to examine the likely scenario of continued dumping and consequent injury if the anti-dumping duties were to be allowed to expire even if there is no current injury.

**Submissions by the Domestic Industry**

77. Following are the submissions made by the Domestic Industry with regard to likelihood of continuation of dumping and consequent recurrence of injury –
- i. Though the domestic industry's situation has stabilized after imposition of anti-dumping duty but looking at the surplus capacities in the subject countries, there is a clear likelihood of recurring of dumping and consequent injury to the domestic industry.
  - ii. Cessation of anti-dumping duty in force is bound to result in intensified dumping of product from subject countries. Injury to the domestic industry is likely to recur in the event of cessation of anti-dumping duty.
  - iii. There is a low volume of import due to ADD in force but the imports are at dumped price.
  - iv. The exporter has sufficient freely disposable capacities and their capacities have been further expanded. As per public statements of the company they have the ability to produce 140,000 tons of grinding media balls per year.
  - v. Demand for the subject goods in the subject countries is only 2900 MT per year. Earlier the capacity of the exporter was 80,000 MT per ton, which was already much beyond the demand of the subject goods in the subject countries. Further in last 2-3 year they have made further expansion and have declared their capacity as 140,000 MT per year.

- vi. The domestic industry has not claimed that the dumped imports have caused injury to the domestic industry. Various economic parameters have shown improvement under the protection umbrella of antidumping duty.
- vii. Production and sales of the domestic industry has improved, the same is due to the protection granted by the Designated Authority and establishes that injury earlier suffered by the domestic industry was due to dumping and the same got addressed with imposition of antidumping duty.
- viii. The profits, cash profits and return on capital employed of the domestic industry have increased since the base year. The growth of the domestic industry improved with respect to various economic factors.
- ix. Dumping margin has been significant in the previous cases.
- x. The domestic industry's situation has improved because of antidumping duty being in force. Looking at the surplus capacities and limited demand of the subject goods in the subject countries, resumption of dumping and consequent injury to the domestic industry is not ruled out.
- xi. Availability of low priced imports from subject countries in the market would cause an adverse impact on the Domestic Industry as the Indian Market for the product under consideration is highly price sensitive.
- xii. The import from subject countries has drastically declined but future imports cannot be completely ruled out as is established by the current imports and offers given by them.
- xiii. The price undercutting without anti-dumping duty is positive, which clearly goes on to indicate that the dumped imports will undercut the domestic prices in case of cessation of existing anti-dumping duty.
- xiv. The issue to be examined is not whether there is current dumping or the domestic industry is suffering injury, but to examine, whether on the cessation of duties, if there is a likelihood of recurrence of dumping and injury.
- xv. The Authority need to examine, parameters such as whether there are sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports
- xvi. Absence of current dumping does not mean that, there is no likelihood of dumping in the event of cessation of anti-dumping duty. The absence of injury is entirely insufficient to conclude that the ADD need not be extended.
- xvii. Producers in subject countries have significant capacity indicating the future intensification of exports in the case of cessation of ADD.
- xviii. The dumping margin determined by the Petitioners is also positive and significant. In the event of cessation of Anti-dumping duty, the exporters will get a greater opportunity to dump the product under consideration into India, taking away the market share of the domestic industry.
- xix. Producers in subject countries maintain huge capacities to produce subject goods. M/s Magotteaux Co Ltd is world's largest producer of the product under consideration, has a market footprint of above 500,000 tons of grinding media and castings.

- xx. The price undercutting by the subject countries may force the Domestic Industry to reduce its prices further, resulting in the intensification of the exports to India in case of cessation of ADD, by the subject countries.
- xxi. The Indian market for the product under consideration is highly price sensitive; availability of such low priced imports from subject countries in the market would definitely cause an adverse impact over the Domestic Industry.
- xxii. Likelihood of future dumping can also be ascertained based on the fact that, exports from subject countries have drastically declined while the same is at a price significantly below normal value.
- xxiii. The factors relevant to likelihood of dumping are relevant to the likelihood of injury as well in the present case. Despite imposition of Dumping duties, imports have been made at dumped prices.
- xxiv. The dumping margin in the current POI is positive and significant with respect to China PR. As regards Thailand, there is dumping in low volume.
- xxv. Price undercutting without prevailing anti-dumping duties is positive.
- xxvi. Import prices are below selling price of the domestic industry, consumers will prefer the imported products resulting in the rise of imports.
- xxvii. The domestic industry shall have to reduce their selling price to compete with dumped imports, driving it even below the cost of sales; leading to severe price injury.
- xxviii. The Changed behavior of the exporters can be seen as a result of the imposition of the anti-dumping duties, exporting of products at dumped prices on the cessation of ADD is reasonably anticipated.
- xxix. The Designated Authority has in the past recommended extension of anti-dumping duties in similarly placed situations.
- xxx. There is no requirement for the Authority to examine or establish a causal link between dumping and injury. The only factor to be considered is the recurrence of the injury in case of cessation of ADD.

### **Views of the other Interested Parties**

78. Following are the submissions made by the other interested parties with regard to likelihood of continuation of dumping and consequent recurrence of injury:
- i. The Authority should also note that if they rely on dumping margins while determining the likelihood of continuation of duty; the same should be done under the ambits of Article 2.4. and injury determination should be based on “positive evidence” and an “objective examination”
  - ii. There is absence of positive evidence which can lead to reasonable conclusion that there is a chance of injury in the event anti-dumping duty is revoked..
  - iii. The complainant has failed to provide with cogent evidence in relation to establishing of likelihood of injury.
  - iv. The capacity of the domestic industry mainly M/s. AIA Engineering Ltd. has increased after the POI of the final investigation highlighting that the industry doesn't have any

injurious effect and thus absence of likelihood of injury. The complainant has made capacity expansion in all three years.

- v. The complainants have themselves confirmed that after expansion to a rated capacity of 4,40,000 MT, they would be the largest producer of grinding media globally, not just in India.
- vi. The import of GM Balls from Thailand during the POI is 186 Mts which is less than 0.05% of the installed capacity of the complainant; laying down that such amount of import can never cause injury to the domestic industry.
- vii. The Domestic industry has been making superlative and abnormal profits (Tables provided)
- viii. Following facts have been laid wrongly in the petition:
  - a. Magotteaux Co. Ltd., Thailand through its entities and associates is suppressing the cost of production. In this regard the exporter claimed that this is a false accusation and the complainant is trying to influence the Hon'ble Authority
  - b. The facts regarding the installed capacity of Magotteaux and the domestic demand are wrong. Whole capacity installed is used to address demand of the Asia-pacific market and not just India.

### **Examination of the Authority**

79. The Authority examined the likelihood of continuation or recurrence of injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules. Clause (vii) of Annexure II to the rules provides for the following:

**(a) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation**

Particulars	Unit	2013-14	2014-15	2015-16	2016-17
Imports - Volume					
Subject Countries as a whole	MT	***	***	***	***
Other Countries	MT	-	-	-	-
Total Imports	MT	***	***	***	***
Total Imports	trend	100	550	299	241

80. The Authority notes that with the imposition of anti-dumping duty, the imports from subject countries have increased compared to base year. It is likely that in the event of cessation of anti-dumping duty, the volume of imports will further increase considering the unutilized capacities with the foreign producers.

**b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to**

**Indian markets, taking into account the availability of other export markets to absorb any additional exports**

81. This parameter for ascertaining the threat of material injury requires evaluation of existing surplus capacities and capacity addition, if any, to explore the possibility of diversion of disposable quantity to Indian market. Domestic industry has claimed that the producers in subject countries are already faced with significant surplus capacities. Further, these producers have accepted that they are exporting the product to a large number of countries, currently a very small proportion is being exported to India which is being exported at a price below the prices in respect of India, thus showing likelihood of diversion of these exports to India in the event of withdrawal of Anti-Dumping duty. The domestic industry has furnished copies of a web articles showing recent expansion made by the exporters and information with regard to present demand in Thailand. The same has been taken on record.
82. On the basis of the questionnaire response filed by M/s Magotteaux Co. Ltd, Thailand and information made available by the Domestic Industry from the websites of the exporters as also the exporter questionnaire response filed by the exporter it can be seen that M/s Magotteaux have ample production capacities with them. They are also exporting Grinding media balls around the world. No other interested party has either controverted the information or provided any counter-factual information. Analysis of questionnaire response of the responding exporter shows that the exporter has not provided all relevant information in the form and manner prescribed with regard to transaction wise details of its exports to third countries, as prescribed in the questionnaire and therefore the Designated Authority has carried out analysis on the basis of available information. These capacities are in themselves more than the total demand and third country exports and can be considered as freely disposable capacities. The importance of such huge production capacities and exports by the producers/exporters cannot be ignored. The Thailand exporter has also expanded the capacities despite the fact that the existing capacities were much more than the total demand of the exporting country.

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

83. At the current landed price in India, there is positive price undercutting during POI without Anti-Dumping Duty in force. However, the imports do not have any suppressing or depressing effect on the domestic prices.

**d) inventories of the article being investigated**

84. As per the details given in the exporter questionnaire by the exporter from Thailand, the inventories have increased in POI as compared to base year as well as the previous year. It is noted that Inventories have been increasing despite the nature of the product, which is highly demand driven.

### **Causal Link**

85. Under Section 9A (5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. It was examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted as follows:

#### **a) Volume and value of imports not sold at dumping prices:**

86. Statement of imports from various countries shows that there are no imports of product under consideration from other countries. It cannot, therefore, be said that the imports from other countries have also caused injury to the domestic industry

#### **b) Contraction in Demand and / or Change in Pattern of Consumption:**

87. The demand of the subject goods has increased over the injury period. The pattern of consumption with regard to grinding media balls has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.

#### **c) Trade restrictive practices of and competition between the foreign and domestic producers:**

88. The Authority notes that there is no trade restrictive practice in grinding media balls which could have contributed to the injury to the domestic industry.

#### **d) Developments in technology:**

89. The Authority also notes that the technology for production of grinding media balls has not undergone any change. Developments in technology are, therefore, not a factor of injury.

#### **e) Export performance:**

90. Petitioners have exported the subject goods. However, they have not claimed injury in the domestic operations. Petitioners have provided costing and injury information for domestic sales separately. Hence, injury to domestic sales cannot be attributed to exports.

#### **f) Performance of other products produced and sold by the domestic industry:**

91. The performance of the domestic industry has improved over the period and has been attributed to the effect of anti-dumping duty.

92. The essential facts of the investigation, as gathered, analyzed and established by the Designated Authority during the course of the investigations on the basis of information received from various sources are hereby disclosed to the interested parties in order to enable them to offer their comments on these facts as stated by the Designated Authority.

### **Post Disclosure Comments**

93. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below

### **Views the Domestic Industry**

- i. Disclose communications sent to exporter and the replies filed by them post filing of initial questionnaire response. If there is anything confidential in the same, we request disclosure of NCV of the same .
- ii. Petitioner requests disclosure of [a] exporter verification reports (NCV), [b] communications exchanged with exporters (NCV), [c] the NCV version of information filed by the exporter post filing of initial questionnaire response.
- iii. The Authority has found that the domestic industry has not suffered injury in the present investigation. Such being the case, the present case is required to be decided on the basis of likelihood/threat examination. Such being the case, the likelihood analysis may not kindly be based on injury margin, as the purpose of injury margin is only to determine quantum of Anti dumping duty. It is also the practice of the Designated Authority wherein the Designated Authority has not modified the quantum of ADD when the Designated Authority found that the need for continuation/extension is based on likelihood of injury.
- iv. Since past two years, the exports of the product under consideration have significantly declined and the export price of the product under consideration has dramatically increased. This clearly shows that the exporters of the subject countries have intentionally doctored the prices and quantities of their export to seek withdrawal of antidumping duty and if the same does not work, influence the sunset review investigation.
- v. The imports entering in the Indian market at present is only 2% of the previous levels. Therefore, in case, the dumping margin and injury margin determined on the basis of these imports are highly unrepresentative of the likely behaviour of the exporter.
- vi. Producers have accepted that they are exporting the product to a large number of countries, currently a very small proportion is being exported to India which is being exported at a price below the prices in respect of India. This clearly shows that the producer is selling the product in other countries at a price lower than in India.
- vii. In the event of cessation of anti-dumping duty, the producer will divert its third countries exports to India since they will be able to fetch better prices in the Indian

market and still be able to dump the product. As rightly pointed by the Authority that there is a likelihood of diversion of these exports to India in the event of withdrawal of Anti-Dumping duty.

- viii. Exporter has substantial production capacities. These capacities are in themselves more than the total demand and third country exports and can be considered as freely disposable capacities. This clearly shows that the capacities with the exporters not only more than the demand and exports to third countries. These excess capacities are likely to be utilized for exporting the product under consideration to India at dumped price in the event of cessation of anti-dumping duty and likely to cause injury to the domestic industry.
- ix. The Thailand exporter has also expanded the capacities despite the fact that the existing capacities were much more than the total demand of the exporting country. This clearly shows that despite having freely disposable capacities, the exporter is expanding its capacities, which clearly proves that in the event of cessation of anti-dumping duty, the exports to India is likely to increase at dumped prices causing injury to the domestic industry.
- x. Price undercutting is positive. This clearly shows that these imports despite anti-dumping duty in existence were at a price below the selling price of the domestic industry, as noted by the Authority at Para 82 of the disclosure statement.
- xi. Inventories with the exporters at Para 83 of the disclosure statement shows that the Authority has noted that the inventories of the exporter has increased throughout. This is despite the product being demand driven.
- xii. The increasing inventories with the exporters, freely disposable capacities and expansion plans of the exporters are their own admissions and show that the volume of dumped imports will increase and cause injury to the domestic industry in the event of cessation of anti-dumping duty.
- xiii. While the petitioner requests extension of existing antidumping duty, the petitioner submits that anti-dumping duty may be imposed as fixed quantum of anti-dumping duty (fixed form of duty), expressed in US\$/kg.
- xiv. Determination of non injurious price is inappropriate;

#### **Views of the other Interested Parties**

- i. Authority must consider customs duty applicable to non-preferential rules of origin and not preferential duty under ASEAN Agreement. In the case of Phosphoric Acid from Korea, the Designated Authority ignored the preferential duty and adopted standard rate of duty.
- ii. It is submitted that the complainants as well as the exporter, both are exporting products in the same market (Asia Pacific, Africa and America). Both the complainants and the exporter has provided transaction wise data for export, and therefore, the Designated Authority have requisite information on the prevailing international prices. In view of the above, it is submitted that the Designated Authority must consider cost of production and international price to determine injury margin and not rely on the realized sales price of the complainants.
- iii. Several invoices have been submitted to show that the domestic industry is selling the product at a price below the landed value.
- iv. Appears that the DA has computed price undercutting of 0-10% on comparative analysis of landed price of import with the selling price of the domestic industry.
- v. Cash profit of the domestic industry has increased by 8 folds in the POI as compared to the base year. Profitability has increased by 40% whereas the profitability of casting industry is only 17-18%.
- vi. The Designated Authority has computed dumping margin, injury margin, price undercutting, price suppression/ depression etc. on an aggregate basis. In this regard, it is submitted that there are differing grades of the PUC basis the chrome content and the size. Further, differing grades have varying cost of production, composition of raw materials as also end-users. It is submitted that parties have provided grade wise data. Accordingly, it is submitted that the comparison or determination of injury margin, dumping margin and the like should be on the basis of individual grades and not on an aggregate level. Aggregate level vitiates the entire sunset review proceedings.

### **Examination by Authority**

94. Regarding, the impact of the agreement between India and Thailand, the Authority has evaluated the Landed Value as per the applicable custom duties. The Authority notes that on the one hand the preferential trade agreements provisions might lower the landed value, but at the same time the exporters could leverage this to increase their export realization by factoring the zero import duty advantage in export price as compared to other competitors which would though increase the landed value to some extent on the one hand and also decrease the dumping margin due to increase in export price. Therefore, these

aspects may also warrant an adjustment. Therefore, the Authority has adopted its consistent practice of evaluating the landed value with applicable custom duties.

95. The Authority observes that the exporter has contended that the exports have been made at a price higher than the DI price and at the same time it has contended that the domestic industry has earned high profit and the profitability thereof, has improved. It is clarified that, the petitioner itself has not claimed that the imports are causing continued injury to the DI. The Authority observes that there exists a strong likelihood of continued dumping and consequently, the dumping of the product is likely to cause injury to the domestic industry. Since the present determination is based on threat to likelihood/ recurrence of dumping, the actual parameters relevant to actual injury are not substantially relevant.
96. Regarding the contention that the cost of production should be compared with international price to determine the injury margin and not rely on realized prices of the DI, the Authority has considered net sales realization and compared the same with landed price of imports. Further, the Authority has compared NIP with landed price of imports. The contention that the petitioner is also exporting at comparable prices to several countries is beyond the scope of the present likelihood of injury determination.
97. It is noted that the exporter has not sufficiently identified the product type involved either in domestic sales or exports to third countries. It is noted in this regard that cost and price of the product varies with a chrome content and size of the balls. The exporter however, has not identified size of the ball as a relevant consideration for identifying and segregating the imports. It is also noted that the exporter has not provided cost of production for all the grades which has been sold by the exporter in the domestic market or exported to third countries. It is thus noted that exporter has itself decided not to provide all relevant information to the Authority and has partially segregated the product into different types. Such being the situation, the only option with the Authority is to proceed on the basis of weighted averages.
98. Regarding, determination of grade-wise dumping and injury margin, it is noted that the responding exporter has not provided the requisite data for the same in the Exporter Questionnaire response. Neither, they have sought any clarification with the Authority with regard to the separate information that is required to be provided for different product types even during the oral hearing and have raised the issue only at the stage of post-disclosure comments. This is despite the fact that the questionnaire prescribed by the Authority clearly requires the exporters to provide separate information for different product types. Further, even during the table verification, such information was not provided readily and the same had to be called for through reminder. It is thus noted that exporter had made a conscious choice to not provide all relevant information to the Authority for grade wise determination. In the event of grossly inadequate exporter questionnaire response, the best available information has led the Authority to proceed on the basis of weighted averages.

99. As regards the contention that the volume of import is quite low in absolute terms or in relation to production and consumption, the Authority notes that in the present investigation petitioner itself has not claimed that imports are causing material injury. Nor has authority examined the case on the ground of continuation of injury. The present investigation has been conducted to determine whether dumping of the PUC is likely to cause injury to the domestic industry. Since the Authority is required to determine recurrence of injury in the present case, the actual volume of import in any case is not the sole relevant information for analysis of likelihood of injury. It is noted in this regard that the exporter has very significant exports of the product to a large number of countries as examined from the details of the questionnaire response filed by the exporter.

### **INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

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

### **CONCLUSIONS**

101. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of recurrence of dumping and consequent injury, the Authority concludes that:

- a) The subject goods are likely to enter the Indian market at dumped prices if the anti-dumping duties in force ceases to operate.
- b) The situation of domestic industry is likely to deteriorate if the existing anti dumping duties are allowed to cease.
- c) The deterioration in the performance of the domestic industry is likely to be because of dumped imports from the subject countries. Thus the anti-dumping duties are required to be extended.

## **RECOMMENDATIONS:**

102. Having concluded that there is likelihood of recurrence of dumping and injury, if the existing anti-dumping duties are allowed to cease, the Authority is of the opinion that the measure is required to be extended in respect of imports from subject countries.
  
103. Having examined the likelihood of dumping and injury to be imminent in case of expiry of the current measure in place, the Authority recommends continued imposition of Anti-Dumping Duty in place as recommended by the Authority vide Final Findings Notification No 14/34/2010-DGAD dated, 22nd May 2012 published in the Gazette of India, Extraordinary, Part-I, Section-I and notified by the Central Government vide Notification No. 36/2012-Customs (ADD) dated the 16th July, 2012 for a period of five years.
  
104. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(Sunil Kumar)

Additional Secretary & Designated Authority