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**File No.15/13/2011-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**(Directorate General of Anti-Dumping & Allied Duties)**  
**Udyog Bhawan, New Delhi**

**NOTIFICATION**

**(Final Findings)**

Dated 6th June, 2013

**Subject:-Final Findings in the Sunset Review Anti-dumping investigation concerning imports of White Cement originating in or exported from Iran and UAE -reg**

**A. BACKGROUND**

**No.15/13/2011--DGAD:** – Whereas, having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (herein after referred to as the Rules or the AD Rules), the definitive anti-dumping duty was originally recommended by the Designated Authority vide Notification No. 64/1/2000-DGAD dated 30th August, 2001 on import of ‘White Cement’ (hereinafter referred to as the subject goods) originating in or exported from United Arab Emirates (UAE) and Iran (hereinafter referred to as the subject countries).

2. Whereas, upon a Sunset Review undertaken by the Designated Authority (hereinafter referred to as the Authority), the Authority recommended continuation of definitive anti-dumping duty on the imports of White Cement originating in or exported from the subject countries vide Notification No.15/6/2005-DGAD dated 27th February, 2007 and whereas the Central Government issued Notification No. 56/2007 – Customs dated 12<sup>th</sup> April, 2007 levying the anti dumping duty.

3. Whereas, M/s J. K. White Cement Works (a unit of J. K. Cement Ltd.) and Birla White (a unit of Ultra tech Cement Ltd.), have filed a duly substantiated application before the Authority in accordance with the Act and the AD Rules alleging continued dumping of White Cement originating in or exported from UAE and Iran and requested for review, continuation and modification of the anti-dumping duties. The Applicants have claimed that

their production of the subject goods in India constitute a major proportion in Indian production.

4. And, whereupon in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules, the Authority issued a public notice dated 9<sup>th</sup> April, 2012, published in the Gazette of India, Extraordinary, initiating the sunset review investigation to review the need for continued imposition of duties in force and to examine as to whether the cessation of such duties is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

5. And, whereas the antidumping duty as notified vide Notification No. 56/2007 – Customs dated 12<sup>th</sup> April, 2007 was extended up to 11<sup>th</sup> April, 2013 vide Notification No.28/2012-Customs (ADD) dated 21<sup>st</sup> May, 2012 in terms of Section 9(A)(5) of the Act.

## **B. PROCEDURE**

6. In this investigation, the procedure described herein-below has been followed:

- i. The embassies of the subject countries in India were informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.
- ii. The Authority sent copies of initiation notification dated 9<sup>th</sup> April, 2012, to the embassies of the subject countries, known exporters/ producers from the subject countries, known importers and other interested parties, as per the available information. Parties to this investigation were requested to file the questionnaire responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters/producers were also sent to the embassies of the subject countries along with a list of known exporters/producers with a request to advise other exporters/producers, if any, from the subject countries to respond to the questionnaires within the prescribed time.
- iii. Questionnaires were sent to the following known exporters/producers from the subject countries in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

S.N.	Company's Name
1.	Seveh White Cement Co (SWCC), Iran
2.	Urmia White Cement, Iran
3.	Shomal White Cement Co, Iran
4.	Benvid White Cement, Iran
5.	Neyriz White Cement, Iran

6.	Ras Al Khaimah Co for White Cement and Construction Material, UAE
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- iv. In response thereto, M/s Ras Al Khaimah for White Cement and Construction Materials, UAE, an exporter/producer from the UAE has filed questionnaire response.
- v. Questionnaires were also sent to the following known importers, users and associations of the subject goods in India seeking necessary information:

S.N.	Company's Name	S.N.	Company's Name
1.	Vengara Marketing Agency	2.	Tista Decocem Pvt.Ltd
3.	Gardwel Industries	4.	Pravin Tiles Co.
5.	Sonalac Paints & Coatings Ltd	6.	Triveni Colour Industry
7.	Golden Paints & Chemicals	8.	Sun Coats
9.	Super Chem Paint Pvt.Ltd	10.	U.K.Paints India Pvt Ltd
11.	Marvel Paint Co.	12.	Choice Mosaic Tiles
13.	Crete Industries,	14.	Unistone Products(India) Pvt. Ltd
15.	Rainbow Colours India	16.	Santosh Tiles
17.	Oriental Colour & Paint P.Ltd	18.	Valli Paints
19.	Aquolac Paints	20.	Creamcem Coating India Pvt.Ltd.
21.	Pegasus Indian Textilaties	22.	Vigneshwara Industries
23.	Acro Paints Ltd.	24.	Gem Chemicals,
25.	Poona Paints & Varnishes Pvt.Ltd.	26.	S.K.Tiles
27.	Evershine Paints & Chemical Ind	28.	Laticrete India Pvt.Ltd
29.	Power Paint (I) P.Ltd.	30.	Konark Flooring
31.	Super Aquacem (India) Pvt.Ltd.	32.	Anugraha Tiles And Marbles

33.	Rainbow Concretes (P) Ltd.	34.	Rainbow Colour Chems
35.	Brite Paint & Chemical Co.	36.	Rainbow Colour Chems
37.	Snowcem India.Ltd.	38.	Gemini Paints
39.	Nitco Coating Industries	40.	Madras Cement Ltd
41.	Super Coats Paints (P) Ltd	42.	Comtrust Super Designer Tiles (P)Ltd
43.	U.P.R. N. N.(Allahabad Unit	44.	Crimson Paints Pvt. Ltd
45.	Supermix Const.Chem.(I) P.Ltd	46.	Grindchem Unit Ii
47.	Jay Industries	48.	Unicem Paints (I) Pvt.Ltd
49.	FICCI	50.	CII
51.	Assochem		

- vi. In response thereto, Vengara Marketing Agencies, an importer and Asian Paints filed questionnaire response. Indian Paint Association and Federation of Andhra Pradesh Chambers of Commerce & Industry on behalf of M/s East Coast Paints Ltd., Vishakhapatnam have also made submissions with regard to the present investigations.
- vii. The Period of Investigation (POI) for the purpose of the present review is from 1<sup>st</sup> January 2011 to 31<sup>st</sup> December 2011 (12 months). However, injury analysis covers the years Apr'08-Mar'09, Apr'09-Mar'10, Apr'10-Mar'11 & the POI. The data beyond POI has also been examined to determine the likelihood of dumping and injury.
- viii. The imports data for the period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).
- ix. The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- x. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xi. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public

hearing held on 18<sup>th</sup> February, 2013. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions received from the interested parties have been considered, wherever found relevant, in the Final Findings.

- xii. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic producers and the co-operative exporter/producer from UAE.
- xiii. Information provided by 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.
- xiv. 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 examined the issue on the basis of the 'facts available'.
- xv. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation were disclosed to the known interested parties. The comments received on the disclosure statement, to the extent considered relevant, have been considered in the Final Findings.
- xvi. \*\*\* marked in the Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

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

### **Submissions made by the opposing interested parties (Producer/Exporter from UAE/importer and Indian Paint Association)**

7. They have contended as follows:

Clinker cannot be included in the product scope as the claim was rejected in the original investigation and new product cannot be included in the review investigation. Further, there have been no imports of Clinker since 2008-09 from Iran and UAE. Clinker and white cement are not like article to each other.

### **Submissions made on behalf of the domestic industry**

8. The domestic industry, in brief, has contended as follows:

Clinker should be included within the scope of the product under consideration. Clinker is nothing but semi finished white cement. The only additional production process required to obtain white cement from clinker is grinding which is an incremental activity. Clinker has no use other than further processing into white cement.

### **Examination of Authority**

9. The product involved in the original investigation was 'White Cement'. This being a sunset review, the investigation covers the product covered in the original investigation and the previous Sunset Review investigation. The product under consideration is white portland cement, commonly known as White Cement. White Cement is a construction material and it is primarily used for non-structural purposes, such as architectural purposes, flooring tiles, cement based exterior paints, cement wash (white wash) and the like. White Cement is a low content of soluble alkalis and does not cause stain. White Cement is classified in Chapter 25 of the Custom Tariff Act (Section 5 of the Act, which pertains to Mineral Products) under the sub-heading 2523.21. The Customs classification is, however, indicative only and no way binding on the scope of the present investigation.

10. With regard to inclusion of Clinker within the product scope of the investigation, the Authority notes that present investigation is sunset review investigation and, hence, the scope of the product under consideration should be the same as has been in the original investigation. Clinker is, therefore, not included in the scope of the product under consideration.

11. The domestic industry produces White Cement having similar characteristics and specifications. No argument has been extended, by any interested party on the issue of like article. The Authority considers that the product being manufactured by the domestic industry is 'like article' to the product under consideration as per the AD Rules.

## **D. SCOPE OF THE DOMESTIC INDUSTRY**

### **Submissions by the opposing interested parties**

12. None of the interested parties has raised any issue disputing the claim of the petitioners in this regard.

### **Submissions by the domestic industry**

13. Production of the petitioners constitutes a major proportion in Indian production. Domestic producers expressly supporting the application account for more than 50 percent of the production of the like product produced by the domestic industry (almost 99.10% of the total Indian production). The application has been made by or on behalf of the domestic

industry. The petition, therefore, satisfies the requirement of standing of the domestic industry under the Rules. Further, petitioners constitute domestic industry within the meaning of the Anti Dumping Rules.

### **Examination by the Authority**

14. Rule 2(b) under the AD Rules provides as follows:-

*“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.*

15. The petition has been filed by J. K. White Cement Works and Birla White (referred to as petitioners or Petitioner Companies) who have provided relevant financial information to file the application. The Petitioners’ production accounts for 99.10% production of the subject goods in India, and hence, constituting a major proportion in Indian production. In view of the foregoing, it is noted that the petitioner companies constitute ‘Domestic Industry’ under the Anti Dumping Rules. Further, present investigation being a sunset review investigation, the issue of standing of the petitioners is not relevant.

### **E. OTHER ISSUES**

#### **Submissions made by the opposing interested parties**

16. They have, in brief, contended as follows:

- i. In spite of largest user industry of white cement, IPA was not listed as user industry by the domestic industry.
- ii. IPA members manufacture wall putty wherein white cement is the most important material. Thus, IPA members who manufacture wall putty constitute the user industry for white cement and hence should be heard in these investigations.
- iii. A user industry can be included as an interested party in anti dumping investigation and cannot be dismissed on frivolous grounds. Moreover in the 1<sup>st</sup> SSR investigation, the interest of the paint manufacturers was heard by DGAD as Indian Small Scale Paint Association participated in the investigation as an interested party. Thus if in the 1<sup>st</sup> SSR investigation paint manufacturers participated in the investigation, the same should also be allowed in the present investigation.

- iv. Conflict of interest in the wall putty market segment – Domestic industry competes with the same user industry, i.e., the paint manufacturers in the wall putty segment where the domestic industry companies are the top two large manufacturers of wall putty.
- v. Domestic Industry produces white cement and in this segment they don't face any competition. The domestic industry companies then sell white cement to the user industry like paint manufacturers and then compete with the paint companies in the wall putty segment. Therefore, Birla White and JK White Cement which produce white cement and wall putty are conflicted with the paint manufacturers who produce wall putty from white cement bought from Birla White and JK White Cement. This position of conflict has resulted in increase of domestic prices by 21% since 2011 whereas in the same period the export price has been 20-30% less than the prevailing domestic price.
- vi. Domestic Industry in their annual report has stated that the Middle East region constitutes 16% of the global demand and in order to take advantage of this demand, JK White Cement is setting up a white cement plant in UAE. On the other hand, the total demand in India in 2010-11 was around 3% of the global demand. Thus the domestic industry is trying to argue that the moment the AD duty would be revoked, the manufacturers in the Middle East region would divert their production to India having 3% of the global demand instead of catering to a high demand region like Middle East having 16% of the global demand.
- vii. Excessive confidentiality claimed by domestic industry with respect to sales invoice in UAE. When domestic industry has disclosed price of third country exports, why is it claiming confidentiality in respect of third party invoices.
- viii. Domestic industry has created monopoly on prices behind the anti-dumping duty. This is further proved by recent decision by the Competition Commission of India wherein the Commission levied a hefty fine on the domestic cement producers for adopting monopolistic and unfair trade practices. Though it was grey cement business, but can be true for white cement as grey and white cement businesses are done under the same roofs by these companies. There is enough reason to believe and it is evident that the anti dumping duties are now misused by these producers to operate a cartel in the country and as a result their net sales realization (NSR) is much higher than their fair price (NIP).
- ix. The non-confidential version of the petition is wholly deficient and inadequate to enable the other parties to render their comments.

### **Submissions made on behalf domestic industry**

17. The domestic industry, in brief, has contended as follows:

- i. Indian Paint Association (IPA) does not constitute interested party for the purpose of the present investigation. The Association is not an association of importers, nor the Association represents representative consumer organizations. The fact that IPA members manufacture wall putty wherein white cement is an important raw material does not grant IPA the status of a “representative consumer association”. It only grants the status of an interested party to wall putty manufacturers. Also, IPA cannot claim the status of an Association of wall putty manufacturers as wall putty is not an item of paint. Wall putty falls under the category of chemicals.
- ii. IPA themselves claimed that petitioners are largest producers of wall putty. The petitioners constitute 80-85% of total wall putty production in India and petitioners are not members of Indian Paint Association. Further, out of the wall putty manufacturers’ list provided by IPA, only two manufacturers, namely, Asian Paints and Jai Kamal Paints are members of IPA. Thus, if IPA has to take up the case of wall putty manufacturers, IPA cannot express any opinion without seeking opinion from JK White and Birla White who undisputedly command majority production of wall putty.
- iii. Designated Authority is required to seek comments from consumer association only in a situation where the product is sold at a retail level. In the present case, IPA cannot claim the status of an association, as their members do not constitute the consumers at retail level.
- iv. With regard to disclosure of information in non confidential version, the petitioners have given all that information which is available in public domain. On the contrary, the exporter has claimed such information as confidential information which is in public domain. Transaction wise detail of imports into India is an information which is in public domain, particularly in the facts of the present case where only one producer in UAE is involved. Such being the case, there is no basis for claiming confidentiality on transaction wise exports to India. Despite this position, the exporter has claimed this information as confidential information without any basis.
- v. With regard to decision of Competition Commission of India (CCI) concerning cement, the decision of CCI was clearly in respect of grey cement which has nothing to do with white cement. The two companies carry out the grey cement and white cement as two different businesses. Merely because CCI has issued some orders, it does not mean that these companies are operating in a cartel in respect of all the products. It is also pointed out that the said decision of the CCI has not been implemented as of now as the same has been appealed to the Appellate Authority.
- vi. The increase in price over the injury period and increase in cost is shown below:

Year	Cost		Selling Price	
	Actual	Indexed	Actual	Indexed
2002-03	***	100	***	100

2003-04	***	102	***	95
2004-05	***	111	***	98
2005-06	***	108	***	120
2006-07	***	112	***	125
2007-08	***	127	***	120
2008-09	***	143	***	138
2009-10	***	131	***	143
2010-11	***	150	***	151
POI	***	163	***	161

- vii. The Project Report of JK White Cement for setting up white cement plant in UAE is enclosed with the submissions. It would be seen that the proposed plant is not a dedicated white cement plant. The project is a swing plant which can produce both white cement and grey cement. JK White Cement envisaged production of white cement in UAE for sale in markets outside UAE. The table below shows potential sales from this plant.

*Figures in '000 tpa*

Country	2014	2015	2016	2017	2018
UAE	104	130	163	197	221
Qatar	28	29	32	35	39
Saudi Arabia	122	135	147	160	175
Bahrain	18	21	23	26	29
Kuwait	57	64	71	79	85
South Africa	7	8	9	10	10
Iraq	27	28	30	31	33
Total	363	415	475	539	591

- viii. The table below shows demand and consumption considered by JK White Cement in setting up this plant.

*Volumes in '000tpa*

Year	Demand	Supply	Surplus/(Deficit)
2012	256	768	512

2013	273	923	650
2014	297	923	626
2015	326	923	597
2016	362	923	561
2017	402	923	521
2018	450	923	473
2019	504	923	419
2020	564	923	359

- ix. JK White has considered the consumption of white cement outside Dubai and UAE for setting up this plant. It is not denied that there is significant future demand for white cement in other Middle East countries. However, the cost of production of white cement in UAE would be lower than the cost of production in India because of significantly lower fuel cost in UAE.
- x. Freight & transportation costs make exports from Indian plants to Middle East markets unviable, particularly because the producers in UAE and Iran are faced with significant surplus capacities and are willing to dump the material in Middle East market. Thus, competitiveness of UAE and Iran plant shall remain significantly higher/better as compared to competitiveness of a plant in India located in the State of Rajasthan.
- xi. Therefore, it is not possible for the company to compete with other producers in Middle East without setting up manufacturing base in UAE. It is for this reason that JK White is setting up production facilities in UAE. It would be worthy to mention here that this plant is being setup in joint venture with Government of Fujairah.
- xii. The company has envisaged the following capacity utilization for the new plant. It would be seen that the company has envisaged much lower utilization for quite sometime. This is clearly because of excessive capacities that would get created as a result of setting up of this plant in UAE.

Country	2014	2015	2016	2017	2018
Achievable volume	363	415	475	539	591
Total capacity	591	591	591	591	591
Capacity utilization	61%	70%	80%	91%	100%

- xiii. The company has envisaged following consumption pattern in UAE.

Year	Demand
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	In '000 MT
2012	256
2013	273
2014	297
2015	326
2016	362
2017	402
2018	450
2019	504
2020	564

- xiv. The company has envisaged consumption of white cement in UAE far below present capacities. Further, the company has envisaged consumption in Middle East far below the capacities that would exist in Middle East. Therefore, the company has envisaged far lower capacity utilization for the Middle East plant. This clearly establishes significant surplus capacities in Middle East and in particular in UAE.
- xv. The project report clearly establishes that there is already a surplus capacity in UAE. However, the plant has been set up keeping in mind the future demand in Middle East and more particularly in Iraq, Qatar, South Africa, Kuwait, Saudi Arabia etc. While the present surplus capacities in UAE and Iran would have been utilized by the rising demand in Middle East, the additions to capacities because of cost advantages in UAE would continue to keep significant surplus capacities in UAE. Thus, setting up of plant in UAE shall imply increased unutilized capacities in UAE. The fact that the plant is being set up by one of the domestic producers in India is totally irrelevant to the Designated Authority. In any case, there are two companies forming part of domestic industry in the present case and valuable rights of each of them cannot be compromised because of action of other.
- xvi. In fact prices of Indian exports to some of these 3rd country markets are on par or lower than UAE/Iran prices. Imports from Iran have not come for the last 12 years.

#### **Examination of Authority**

18. As regards the status of Indian Paint Association as an interested party, the Authority considers it unnecessary to determine whether IPA constitutes an interested party. The Authority has, however, considered submissions made by IPA to the extent relevant for the present purpose and the same have been addressed in the present Final Findings at appropriate places.

19. As regards the contention that domestic industry has created monopoly and the decision by the Competition Commission of India, it is noted that the said decision of the Competition Commission of India was clearly in respect of grey cement. In any case, the scope of CCI and the Designated Authority is different and the Authority considers it unnecessary to examine the issue for the present purposes.

20. With regard to new plant setup by one of the domestic producers in UAE, the Authority notes that setting up of new plant in UAE per se does not establish that there is no likelihood of dumping in the present case, which is determined by other relevant factors as well.

21. With regard to increase in selling price, Authority notes that increase in costs and price is more or less comparable with only exception of 2009-10 wherein inspite of decline in cost of production domestic industry net sales realization has increased. Further, IPA has not argued that the price of the product was selectively increased more for its members and the domestic industry was selling at much lower prices to other consumers outside putty market. Nor IPA has provided any evidence to show that the domestic industry has made efforts to create unfair competition to the wall putty producers.

22. With regard to exports of domestic industry, the Authority notes that the argument does not establish that the claimed injury or likelihood thereof is because of adverse export performance.

23. The Authority notes that the information provided by 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.

## **F. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS**

### **Dumping Margin Determination**

#### **Submissions made by the opposing interested parties**

24. The other interested parties have contended as follows:

- i. Dumping determination for UAE should be done as per the co-operating exporter's data.
- ii. Normal value calculated by the domestic industry is highly inflated and is not based on any facts and principles. Some sales invoices sporadically procured and provided by the domestic industry should not be relied upon as complete and verifiable information has been provided by the exporter. The petitioner has resorted to fiddling with information to mislead the Authority.

- iii. The average export price to third countries during the POI is above the export price to India. This would be higher than non-injurious price of domestic industry at the level of landed in India. The resultant injury margin would also be negative. Therefore, the export is unlikely to cause any injury to the domestic industry. Hence, the claims of domestic industry with regard to dumping under no circumstance should be taken into consideration by the Authority.
- iv. Exorbitant amounts adjusted towards freight, insurance and other charges to inflate the dumping margin by the domestic industry.
- v. There have been no imports from Iran for the past several years including the POI. No imports during the past several years itself is a good ground for withdrawal of existing duties.
- vi. There is no evidence produced by the petitioner in support of its claim of the dumping in the present matter. Petitioner has merely made assumptions.
- vii. There is no case of dumping. Invoices submitted by the domestic industry cannot be relied upon as it is not established that they are in the ordinary course of trade. Normal value calculated by the domestic industry is highly inflated and is not based on any facts and principles. Some sales invoices sporadically procured and provided by the domestic industry should not be relied upon as complete and verifiable information has been provided by the exporter.
- viii. Domestic industry has not been able to establish third country dumping. UNCOMTRADE data cannot be relied upon as it is of 2010.
- ix. In fact prices of Indian exports to some of these 3<sup>rd</sup> country markets are on par or lower than UAE/Iran prices. Imports from Iran have not come for the last 12 years.
- x. Iran and UAE have been supplying to third country markets for the last 10 years as the demand for the product is higher in these countries as compared to India, a fact admitted by domestic industry itself.
- xi. No case for dumping or recurrence of dumping is made out. Imports from Iran have not come for the last 10 years. Thus, the duty against Iran should be withdrawn along with UAE as it is the practice of the Hon'ble DA to discontinue duty against a subject country if imports have not arrived from that country for a long period of time.
- xii. The exchange rate considered by domestic industry is not as per RBI data which is 46.66 (average exchange rate of POI). The Authority should take into consideration correct CIF price and depreciation of rupee on the CIF price. IPA requested the Authority to ask domestic industry to provide import data along with CIF price for the period January 2012-July 2012.
- xiii. No invoice is provided for normal value in Iran. Normal value in Iran determined by domestic industry cannot be considered.

#### **Submissions made by domestic industry**

25. The domestic industry has contended as follows:

- i. Efforts were made to get any information about the price at which material is being traded in the domestic market of UAE and Iran. Efforts were also made to get any other reasonable evidence of price prevailing in UAE and Iran. The petitioners have been able to get evidence of the price prevailing in domestic market of UAE. Petitioners have provided a large number of invoices showing price of white cement in UAE. It would be seen that:
  - a. These are sales invoices for a producer in UAE for sale to a bulk customer in UAE.
  - b. These prices should be considered prices for bulk sales and, therefore, these selling prices should not be adjusted for any other expenses.
- ii. There is significant export of white cement from UAE to permit determination of export price and dumping margin in respect of UAE. The export price has been determined on the basis of Secondary Source data (Eximnet India). These prices being CIF export prices, the same have been adjusted for Ocean Freight, Marine Insurance, Commission, Port Expenses, Handling Charges and Bank Commission.
- iii. The dumping margin calculated establishes that the dumping margin continues to be beyond de-minimis limits in case of UAE.
- iv. In the case of Iran, the normal value has been established on the basis of constructed normal value. There is no current export from Iran to India. In the absence of actual shipments during the current POI, the likelihood of dumping is established by considering dumping margin in respect of exports to third countries. The volume and price of exports to third countries has been established on the basis of the customs data of the Government of Iran. It would be seen that the dumping margin is beyond de-minimis limits, thus, establishing that the Iranian producers are likely to resort to dumping in the event of revocation of anti dumping duties.

### **Examination by the Authority**

26. Under section 9A (1) (c), normal value in relation to an article means:
- i. The 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
  - ii. 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

- b. 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).

27. The Authority sent questionnaires to known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. In response thereto, only M/s Ras Al Khaimah (RAK), a producer & exporter from UAE has responded in this investigation by filing their questionnaires' response, which was verified by the Authority.

28. With regard to Iran, none of the producers has responded to the Authority. Under the circumstance, when exporters have preferred non-cooperation, the Authority has determined normal value on the basis of best available information in accordance to the rules. With regard to the argument that there were no exports from Iran for past one decade and, therefore, duty should be withdrawn, the Authority notes that the argument is without legal basis. Under the law, in the absence of continued dumping, the Authority is required to examine likelihood of recurrence of dumping. Mere absence of imports is insufficient to conclude that the anti dumping duty is required to be excluded.

### **Dumping Margin:**

#### **a) Normal Value**

#### **Iran**

29. The Authority notes that none of the exporters from Iran has responded to the initiation of the investigation and filed any information/ response. As information about the actual domestic sales price, information on exports to third countries or cost of production in Iran and other information as per the questionnaire have not been furnished by any of the producers/exporters from Iran, the Authority determined normal value as per the best available information as per the provisions of the rules which is as per price payable in India with due adjustments in the present case. Accordingly, normal value is determined in case of all exporters from Iran is USD \*\*\* per MT.

#### **UAE**

#### **M/s Ras Al Khaimah Co. For White Cement & Construction Material (RKC), UAE**

30. The Authority notes that one of the known exporter/producer from UAE has responded to the initiation of the investigation and filed information/ response about the actual domestic sales price, information on exports to third countries or cost of production in UAE and other information as per the questionnaire which has been verified by the Authority. The cost of production of the respondent has been compared with the transaction wise domestic sales and it's found that more than 80 % sales are profitable. Thus, the

Authority determines the normal value on the basis of domestic sales to non affiliated customers. The adjustments on account of Inland freight, insurance and interest are being allowed. Accordingly, normal value is determined in case of RKC is USD \*\*\* per MT.

**Non Cooperative exporters**

31. No other exporter/producer from UAE has responded to the Questionnaire. The Authority determines their Normal value based on the facts available on record.

**b) Export Price**

**Iran**

32. With regard to Iran, the Authority had sent questionnaires to all the known exporters/producers for the purpose of determination of dumping margin. None of the exporters / producers from Iran filed submissions and response to the questionnaire in the form and manner prescribed. Article 6.8 of the Agreement provides that in case an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary or final determinations, affirmative or negative, may be made on the basis of the facts available. Since there were no exports of the subject goods from Iran during the POI to India, the Export price could not be determined.

**UAE**

**M/s Ras Al Khaimah Co. For White Cement & Construction Material (RKC), UAE**

33. As stated above, one of the known exporter/producer from UAE has responded and furnished all relevant information with regard to export price. Export price is, therefore, determined based on the information furnished by RKC in case of RKC. Adjustments are made on account of ocean freight and inland freight, bank commission and credit cost after verification. Accordingly, net export price for the POI determined is USD \*\*\* per MT.

**Non- Cooperative exporters**

34. No other exporter/producer from UAE has responded to the Questionnaire. The Authority determines their Export price based on the facts available on record.

**c) Dumping Margin Calculations**

	UAE		Iran
	Cooperative Exporter(RKC)	Non Cooperative Exporters	

Normal value (US\$/MT)	***	***	***
Net Export price (US\$/MT)	***	***	NA
Dumping margin (US\$/MT)	***	***	NA
Dumping Margin % Range	1 to 10	5 to 15	NA

## **G. ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK**

### **Assessment of Injury**

#### **Submissions made by the opposing interested parties**

35. The submissions made by other interested parties are as follows:
- i. There is no injury to the domestic industry at present. The volume of imports has always been less than 1% and market share of domestic industry has been 99% since 2002. Thus, the apprehension of the domestic industry that upon revocation of the duty, the domestic market would be flooded with the imported goods is unfounded as volume of imported goods even before the imposition of the anti dumping duty was less than 1%.
  - ii. There is no price injury to the domestic industry. The domestic industry has increased the prices by 21% since 2011. There is no price undercutting, price underselling and price suppression/depression as the import price is much higher than the Net Sales Realization (NSR) of the domestic industry.
  - iii. The landed price of imports without addition of anti-dumping duty is much higher than domestic industry's selling price (domestic procurement prices as per IPA member invoices). The domestic industry has increased its selling price in March 2012 (as per invoices from petitioner companies).
  - iv. Domestic industry has been under duty protection for the last 10 years. Since imposition of anti-dumping duty, there is an increase in production, sales, landed value of imports and the domestic industry is operating at 97% of capacity utilization.
  - v. Domestic industry has not provided any evidence that all the imports entering in Kerala are consumed in costal regional markets and, therefore, the claim of domestic industry of Kerala imports cannot be accepted.
  - vi. There have been no imports from Iran since 2003-04 and, therefore, duty should be revoked with respect to imports from Iran.
  - vii. Domestic industry produces white cement and in this segment does not face any competition. The domestic industry sells white cement to the user industry like paint manufacturers and then compete with the paint companies in the wall putty segment. Therefore, Birla White and JK White Cement which produce white cement and wall putty are conflicted with the paint manufacturers who produce wall putty from white cement bought from Birla White and JK White Cement. This position of conflict has

resulted in increase of domestic prices by 21% since 2011 whereas in the same period the export price has been 20-30% less than the prevailing domestic price.

- viii. Price parallelism: Both JK White Cement and Birla White are increasing the price simultaneously. Since 2011, the domestic prices have increased by 21% since they command 99% of the market share. This parallel increase in domestic prices clearly indicates that the domestic industry is taking undue advantage of the anti dumping duty and exploiting the situation. This has impacted the user industry, i.e., the wall putty manufacturers and many among them constitute SMEs and the Authority must not disregard the interest of SMEs.
- ix. In the updated Proforma IV, imports from subject countries are appearing at 8,792 MT which is including 2,520 MT imports of 2012 as well. Thus, the import occurred during 2012 (post POI) should not be considered in the dumping and injury analysis.
- x. Past practices of Designated Authority and para 4(vii)(b) of Annexure III of Anti-dumping Rules show that freight cannot be included in NIP. Fourth proviso to Rule 10 of Customs Valuation Rules specifically provides that the cost of freight incurred in the movement of container from the port of entry to ICD/CFS shall not form part of the assessable value of the goods. Similarly, freight incurred for transporting the goods from the factory to the customer's premises also should not form part of the non injurious price.
- xi. No continued injury to the domestic industry. No price undercutting, price suppression/depression effect on the prices of the domestic industry.
- xii. Export price from Pakistan was USD 121 per MT in the POI whereas export price of subject countries was around USD 145 per MT during the same period. The volume of imports from Pakistan was significant. Thus, the imports from Pakistan are competing with the domestic industry.
- xiii. In light of final findings against imports of graphite electrode, causal link needs to be seen. The imports from Pakistan, other than subject countries, are at lower prices as that of subject countries. Therefore, there is no causal link between imports from subject countries and any alleged injury to the domestic industry on account of domestic sales.
- xiv. Proforma IVA shows that growth of the domestic industry during the POI as compared to the base year in terms of all the economic parameters like production, capacity utilization, domestic sales, market share, profits, cash profits and return on capital employed has been positive. There is thus no adverse effect on the volume as well as price parameters of the domestic industry during the POI.
- xv. Analysis of various injury parameters during injury period shows that there is no continuation of injury to domestic industry during the POI. Moreover, since the domestic industry has confirmed in the petition that there is no continued injury to the domestic industry, the interested parties are not making detailed submissions with regard to the fact that there is no continued injury to the domestic industry. At the same time it is reiterated that there is no likelihood of dumping and injury also in the event of revocation of existing AD duties from UAE and Iran.

- xvi. NIP should be based on Annexure III as per the rules and landed value needs to be worked out as per the relevant customs provisions and also in line with the consistent practice of the Authority.

### **Submissions made by the Domestic industry**

36. The domestic industry has submitted as follows:

- i. Performance of the domestic industry has improved in respect of production, capacity utilization, domestic sales, market share, profits, return on investment, cash flow, etc., which is because of imposition of anti dumping duty. Since the domestic industry has not suffered injury, the Designated Authority is required to examine likelihood of recurrence of injury to the domestic industry in the event of revocation of anti dumping duties.
- ii. The price undercutting must be determined by the Authority after adding freight & transportation incurred by the domestic industry upto depot maintained by the domestic industry.
- iii. Volume of imports would appear in the context of overall Indian demand. However, the volume of imports is quite significant if the demand in the region where the imports have been made is considered.
- iv. The low or negative price undercutting during the POI explains low level of imports during the current injury period as compared with the gross Indian demand, while the positive price undercutting even after adding anti dumping duty in Kerala region explains significant share of UAE white cement in Kerala region.
- v. The product is being imported in limited volume and at Cochin port. Domestic industry is facing tough competition with the dumped imports in Cochin region. It is the antidumping duty which provides some relief to the domestic industry from dumping. However, imports are undercutting prices of domestic industry in Cochin region
- vi. Performance of the domestic industry improved with the imposition of anti dumping duties. Even though the goods imported in the current investigation period had some adverse impact on the domestic industry, injury to the domestic industry was not severe, more so given the low volume of imports in the period. The domestic industry has not suffered continued injury as a result of existence of the present anti dumping duties which acted as a deterrent to the unfair trade practice of the subject countries.
- vii. The export prices from UAE to India and the world were comparable in the period 2008. In the year 2009, export price to the world clearly appears distorted due to recession in this period. Thereafter, export price to India is significantly higher than export price to rest of the world. The UAE producer was very well aware of the impending sunset review. It, therefore, appears a situation where the company was exporting the product under consideration at much higher price in view of present sunset review.
- viii. Entire sale of white cement by the domestic industry to wall putty manufacturers is in the region of 12% of total merchant sales of the domestic industry. The domestic industry has not resorted to any discriminatory increase in the price of white cement for any particular user industry segment. The prices have been increased in all segments.

Nor the domestic industry has considered discriminatory increase in the prices of white cement for wall putty consumers. On the contrary, wall putty manufacturers are getting white cement at a price lower than the price to the rest of the consumers.

- ix. The increase in price over the injury period was in fact lower than the increase in costs. Thus, the claim of IPA with regard to significant increase in prices disproportionate to cost increases is incorrect and without any basis. The increase in prices and costs are comparable. Infact, increase in price is lower than increase in cost.
- x. The domestic industry is constrained to sell the material in international market in competition to foreign producers only. The subject producers are selling the product in global market at prices lower than even Indian prices.
- xi. Under the law, “no present injury” does not imply “no likelihood of injury”. If the authority comes to a conclusion of no present injury, the authority must determine likelihood of injury.
- xii. The present price increase is on account of increase in the input cost and is in a situation where the domestic industry is protected from dumped imports by the existing anti dumping duties. Since price undercutting is significantly positive in the absence of no anti dumping duty, it follows that cessation of anti dumping duties shall lead to significant suppressing effect on the prices of the domestic industry in the market.
- xiii. With regard to acquisition of lime stone fields by the constituents of the domestic industry and its resultant potential impact on the costs, the domestic industry has submitted that lime stone fields were in possession of company in the past as well. These are acquired to ensure regular supply of lime stone to the company. Acquiring limestone fields ensured bargaining power to the companies with the suppliers of limestone in the market (the domestic industry does not have 100% captive availability of lime stone). Lime stone constitutes only 12-15% of the total cost of white cement. Therefore, this will not have significant affect on cost structures of domestic industry.
- xiv. The Designated Authority had included freight and transportation cost from factory to depot after due examination of the issue in the original investigation and the previous sunset review. Introduction of Annexure-III also does not vitiate the present position, as prior to introduction of Annexure-III, the Designated Authority followed the same practice as has now been codified under the law. According to the affidavit filed by the Designated Authority before Delhi High Court, Annexure-III has merely codified an existing practice. In other words, the methodology laid down in Annexure-III was earlier being followed as a matter of practice. Since the authority has added freight & transportation cost upto Depot in the previous cases, it should be added in the present case as well.
- xv. As regards argument of price parallelism alleged by other interested parties, Petitioner strongly refute the allegation of price parallelism and submit that the two companies have not done any act which can be remotely construed as a possible violation of competition law in the country.

- xvi. With regard to diversion of surplus capacities to India, petitioners submit that such diversion of capacities to Indian market is a natural outcome of withdrawal of anti dumping duties. As the surplus capacities exist with the exporting countries, it is quite natural that the exporters would be prompted to supply their material in the Indian market in order to utilize their production capacities, more particularly when prevailing price in India is more than their export price to third countries which is evident from the positive price undercutting in case of third country exports.
- xvii. With regard to the arguments of other interested parties on absence of likelihood of injury as evidenced by the setting up of production facilities by JK White in UAE, the domestic industry submits that the company has considered the consumption of white cement outside Dubai and UAE for setting up the production facilities. The company expects significant future demand for white cement in other Middle East countries. The cost of production of white cement in UAE would be lower than the cost of production in India because of significantly lower fuel cost in UAE. Further, freight & transportation costs make exports from Indian plants to Middle East markets unviable, particularly because the producers in UAE and Iran are faced with significant surplus capacities and are willing to dump the material in Middle East market.

### **Examination by the Authority**

37. Rule 11 of the AD Rules read with its 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....” .

38. Rule 23 of the Rules provides that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall apply mutatis mutandis in case of a review. In case the performance of the domestic industry shows that the domestic industry has not suffered injury during the current period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the domestic industry.

39. The Authority has taken note of submissions made by interested parties with regard to injury to the domestic industry and the same have been considered to the extent considered relevant and necessary. Contentions of the interested parties relating to improvement in all injury factors have also been in dealt with in the present Final Findings appropriately.

40. The Authority has examined and evaluated the injury data over the injury period consistent with its practice of examination of the same in sunset review cases. However, in an SSR investigation, the Authority assesses whether the cessation of the duties is likely to lead to continuation or recurrence of dumping and consequent injury. Therefore, absence of injury to the domestic industry during present review period does not in itself establish that the anti dumping duty should be allowed to cease.

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

42. For the purpose of current injury analysis, the Authority has examined the volume and prices effects of imports of the subject goods from the subject countries on the domestic industry and their effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

**I. Volume Effect of Dumped Imports**

43. 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. Annexure II (ii) of the anti dumping Rules provides as under:

*“While examining the volume of dumped imports, the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”*

**a). Assessment of demand and market share**

44. The Authority has determined demand or apparent consumption of the product under consideration in India as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed can also be seen in the table mentioned below:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Demand	MT	632,680	726,484	810,215	840,556
Sales of Domestic industry	MT	626,912	719,788	802,711	831,064
Sales of Other Indian Producers	MT	-	-	-	-
Imports from Subject Countries	MT	5,768	5,824	5,236	6,272
Imports from Other	MT	-			

Countries			872	2,268	3,220
Imports – all sources	MT	5,768	6,696	7,504	9,492
Market Share in Demand					
Domestic industry	%	99.09	99.08	99.07	98.87
Other Indian Producers	%	0	0	0	0
Subject Countries	%	0.91	0.80	0.65	0.75
Other Countries	%	0	0.12	0.28	0.38

45. The Authority notes the following from the above-mentioned table:

- i. It would be seen that there has been an overall increase in demand of the product in the country over the injury period including the period of investigation.
- ii. The volume of imports from UAE has increased during the POI as compared to base year as well as the previous year. There were no imports from Iran during the entire injury period.
- iii. The share of imports from subject countries remained less than 1% during the injury period as well as POI, which is insignificant.
- iv. The share of domestic industry is more than 99% of the total demand.

**b). Import volumes and market share**

46. The actual volume of imports during the period of investigation has been as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Imports from UAE	MT	5,768	5,824	5,236	6,272
Imports from Iran	MT	-	-	-	-
Imports from Subject Countries	MT	5,768	5,824	5,236	6,272
Imports from Other Countries	MT	-	872	2,268	3,220
Total Imports	MT	5,768	6,696	7,504	9,492
Market Share in Imports					
UAE	%	100%	87%	70%	66%
Iran	%	0%	0%	0%	0%

Subject Countries	%	100%	87%	70%	66%
Other Countries	%	0%	13%	30%	34%

47. The Authority notes the following from the above table:

- i. The demand for the subject goods has shown a positive trend and increased during the injury period.
- ii. Domestic industry holds substantial and significant share in the domestic market.
- iii. The volume of imports and consequently the market share of UAE remained at insignificant levels in the injury investigation period.
- iv. There is no import from Iran during the injury period as well as POI.
- v. Imports from other countries have shown an increasing trend.

## II. Price Effect

48. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows“

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as 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."*

49. The Authority notes that in a review investigation, it is required to examine whether there has been a significant price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of recurrence of price effect after cessation of duty. The Authority further determined whether the domestic industry is likely to face price underselling in the event of expiry of anti-dumping duty.

### a). **Price Undercutting**

50. The Authority notes that the landed price of imports is lower than the selling price of the domestic industry resulting positive price undercutting as is evident from the table below:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Landed Price	Rs./MT	6,120	7,204	7,226	7,564
Selling Price of Domestic industry	Rs./MT	***	***	***	***
Indexed	Trend	100	104	102	111
Price Undercutting	Rs./MT	***	***	***	***

Indexed	% Range	10 to 20	1 to 10	10 to 10	5 to 15
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b). **Price suppression and depression**

51. Price depression exists when the prices of the domestic industry decline over the injury period with the import prices remaining lower than the domestic industry's prices. Price suppression occurs when the dumping prevents price increases that would otherwise take place due to increase in costs.

52. The Authority has examined whether there was a significant adverse price effect by the dumped imports as compared with the price of the like product in India.

Particulars	Unit	2008-09	2009-10	2010-11	POI
Cost of production	Rs./MT	***	***	***	***
Indexed	Trend	100	92	99	109
Net sales realization	Rs./MT	***	***	***	***
Indexed	Trend	100	104	102	111

53. The Authority notes that the cost of production of the domestic industry declined in 2009-10 and increased thereafter. At the same time, the selling price increased in 2009-10; declined in 2010-11 and again increased in the period of investigation. The domestic industry was in position to pass on the increase in cost to the customers. In view of the above, the Authority concludes that there is no price depression and suppression in the present investigation.

**III. Other Economic Parameters relating to the Domestic Industry**

54. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows“

*"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural 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."*

a). **Production, Capacity and Capacity Utilization, Sales**

55. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2008-09	2009-10	2010-11	POI
Capacity	MT	8,96,250	9,60,000	9,60,000	9,60,000
Production	MT	6,91,076	8,15,715	8,88,612	9,30,256
Capacity Utilization	%	77%	85%	93%	97%
Domestic Sales	MT	6,26,912	7,19,788	8,02,711	8,31,064

56. The Authority notes the following:

- i. The production and capacity utilization of the domestic industry increased in comparison with the base year in line with the significant increase in demand over the injury period.
- ii. Production increased in period of investigation. Capacity utilization remained at 97% during the POI as against a 77% in the base year.
- iii. Sales also show the same trend as of production.

b). **Investment and cash flow**

57. Profits, return on investment and cash flow of the domestic industry has been examined as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Profit before interest and tax	Rs./Lacs	***	***	***	***
Indexed	Trend	100	154	133	142
Return on capital employed	%	***	***	***	***
Indexed	Trend	100	150	110	116
Cash profit	Rs./Lacs	***	***	***	***
Indexed	Trend	100	162	142	155

58. The Authority notes that the profitability of domestic industry showed increasing trends. Similar trend is observed with respect to cash profit and return on capital employed as well.

c). **Employment and wages**

59. The Authority notes that the constituents of the domestic industry are multi-product companies and, therefore, there may not be direct effect of dumping on employment levels of the domestic industry. Status of employment levels and wages of the domestic industry has been as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Employee	Nos.	***	***	***	***
Indexed	Trend	100	101	113	114
Wages	Rs./Lacs	***	***	***	***
Indexed	Trend	100	111	141	154

d). **Actual and potential decline in productivity**

60. The productivity of the domestic industry is given in the following table:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Productivity per employee	MT/No	***	***	***	***
Indexed	Trend	100	116	114	119
Productivity per day	MT/Day	1,920	2,266	2,468	2,584

61. The Authority notes from above table that productivity per employee of the domestic industry has shown improvement and there is no injury to the domestic industry on these parameters.

e). **Inventories**

62. The Authority has examined the inventory level of the domestic industry, which is given in the following table:

Particulars	Unit	2008-09	2009-10	2010-11	POI
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Average Stock	MT	30,453	35,467	36,224	35,548
Average Stock sufficient for no of days sales	Days	16	16	15	14

63. Based on the above, the Authority notes that the inventory levels of the domestic industry have increased during POI as compared to the base year, but the same has declined as compared to the previous year.

f). **Growth**

64. On examination of various economic parameters of the domestic industry, The Authority notes that the domestic industry showed improvement and growth in terms of production, sales, market share, profitability, ROI, cash profit, productivity etc. Overall, growth of the domestic industry remained significant and positive.

g). **Ability to raise capital**

65. The domestic industry is a multi product company. Their ability to raise further investment is not a significant factor in this case.

h). **Magnitude of Dumping**

66. It is noted that the dumping margin from UAE during the POI is positive but the landed values were above the NIP of the domestic industry. Further, in view of no imports of subject goods from Iran during the period of investigation; dumping margin could not be calculated for Iran.

i). **Factors affecting Domestic Prices**

67. Change in the cost structure, if any, and competition amongst the domestic industry, has been examined for analyzing the factors other than the dumped imports that might be affecting the prices in the domestic market. The Authority notes that with the anti-dumping duty in place, there are no external factors affecting the prices of the domestic industry during the injury period of this review investigation.

**Magnitude of injury and injury margin (POI)**

68. The non-injurious price for the subject good has been compared with the landed value of the exports from the subject countries for the same description for determination of injury margin. The Authority notes that landed price of imports is more than the non injurious price of domestic industry, which is as follows.

**UAE**

	UAE
NIP (Rs. per MT )	***
Landed Price (Rs. per MT)	***
Injury Margin (Rs. per MT)	(***)
Injury Margin as % age of Landed Price	(15 to 25)

### **Iran\***

	Iran
NIP (Rs. per MT )	***
Likely Landed Price (Rs. per MT) on the basis of Third Country Export as per WTA	***
Likely Injury Margin (Rs. per MT)	(***)
Likely Injury Margin as % age of Landed Price	(20 to 30)

\*(calculated on the basis of exports from Iran to 3rd countries as per WTA data as there are no exports from Iran to India during the injury period)

### **Conclusion on Injury**

69. From the above, the Authority concludes that the domestic industry has shown improvements in different injury parameters as is evident from the analysis herein above. Moreover, such situation of improvements and no continued injury is accepted and acknowledged by the domestic industry. However, the Authority in conformity with its practice analysis herein below the likelihood of continuation or recurrence of dumping and injury:

## **H. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**

### **Submissions made by the opposing interested parties**

70. The Authority, in brief, received following submissions:-

- i. Directions of Hon'ble CESTAT in the matter BASF vs. Designated Authority, 2010 (253) ELT 554 (Flexible Slabstock Polyol from EU, Japan, Singapore and USA) are important in this respect. The CESTAT in this case specifically rejected such analysis without indicating any basis for continuation of duty in a sunset review investigation.
- ii. Likelihood of recurrence of dumping and injury analysis in the petition is not based on POI or Post POI data. The domestic industry has analyzed likelihood of recurrence of dumping and injury based on 2010 data. However, POI of this case is the year 2011 (January 2011 to December

2011). The claims of domestic industry with regard to reason for why the exporter would like to export material at dumped price are all based on assumptions and presumptions.

- iii. Various factors suggest no likelihood of recurrence of dumping and injury, if the duties are revoked.
- iv. Performance of Domestic Industry is stable and progressive enough. During the injury period the imports from Pakistan, often at a very low price, have entered in the Indian market and although no measures against imports from Pakistan was in force, this increase has not prevented the domestic industry from maintaining a quite healthy situation for the last ten years. This shows DI is not impacted due to cheaper imports where as imports from UAE were at high prices. Therefore, the anti-dumping duties should be revoked as the purpose of anti-dumping measure is not to facilitate the domestic industry to create a monopoly on prices, but to eliminate the trade-distorting effects of injurious dumping and thus to ensure a fair competition in Indian market.
- v. Export price to other countries also suggests no likelihood of dumping and injury. The average export price to other countries during the POI is above the export price to India. This would be higher than non-injurious price of domestic industry at the level of landed price in India. The resultant injury margin would also have been negative. Therefore, the export price may be unlikely to cause any injury to the domestic industry. The price undercutting can be positive due to a high domestic sales realization of the domestic industry.
- vi. Negligible market share in the Indian market is relevant in the present case. It is evident that the imports of the subject goods from subject countries are in the range of 5,768 to 5,348 MT during the injury period which is negligible quantity in comparison to domestic demand. Market share of UAE was less than 1% not only during POI but also during the entire injury period. Thus, there is no effect on domestic industry on account of imports from subject countries.
- vii. There is no unutilized capacity as alleged by the domestic industry. It can be seen from the exporter data that there is no unutilized capacity in UAE and they have exported to India during injury period a minor volume considering the Indian demand and exports from co-operating exporter to other countries are significant during the POI at a price higher than that to India. It implies that the exports to other countries would not find their way into the Indian market.
- viii. Claim of surplus capacity by DI is baseless. The domestic industry has merely mentioned about excess capacities in the subject countries. However,

no evidence has been placed on record in support of their claim. Moreover, the domestic industry has not established as to how the same would find way into the Indian market at a lower price when they are already getting a higher price. The fact of mere availability of surplus capacity does not in itself sufficient to conclude a finding that the dumping and injury from a subject country, would recur or continue and cause injury to the domestic industry in case of withdrawal of duties.

- ix. JK Cement's plant in UAE contradicts the claim of DI that there is no significant demand in the domestic market of UAE.
- x. Recommendations and observations of various Panels and Appellate Bodies constituted under WTO provisions have time to time observed and admitted that the requirement to make a "determination" concerning likelihood therefore precludes an investigating authority from simply assuming that likelihood exists.
- xi. Coincided with robust growth in performance of the domestic industry and absence of facts suggesting likelihood of continuation of dumping and injury in the event of revocation of duties, the Authority should recommend revocation of existing duties from UAE and Iran at the earliest.
- xii. The calculation of non injurious price and landed value should be made at ex-factory level and ex-port level as Rules are amply clear as to the treatment of freight in NIP and landed value. Merely because addition of freight would lead to higher NIP could not be a reason to change the existing practice of excluding freight. Any arguments otherwise hoisted by the petitioner is implausible, concocted and presumably to frustrate the well settled legal provisions in this respect and for the same reason, such claims, needs to be summarily rejected by the Authority
- xiii. No Volume Effect on the Domestic Industry. The imports of the subject goods from subject countries are negligible quantity in comparison to domestic demand. which runs into Millions of Tons. Apparently, sales volume of the domestic industry in the domestic market has been in the range of 6,26,912 MT to 8,31,064 MT which is almost 99% of the domestic demand. Thus, there is no effect on domestic industry on account of imports from subject countries.
- xiv. No Price Effect of the Imports on the Domestic Industry
- xv. The domestic industry has neither determined correct price undercutting nor for the injury period as the domestic industry has added expenses after importation in the landed price on some presumption basis. Moreover,

although price undercutting exists on paper, it could be only due to a high domestic sales realization of the domestic industry.

- xvi. No Price Suppression/Depression. It is evident that whereas both the cost of production and selling price of subject goods increased over the injury period, the increases in the selling price were far more than increase in the cost of production. Thus, it is apparent that the price suppression/depression effect on the prices of domestic industry is missing during the POI.
- xvii. It can be seen from Proforma IVA that growth of the domestic industry during the POI as compared to the base year in terms of all the economic parameters like production, capacity utilization, domestic sales, market share, profits, cash profits and return on capital employed has been positive. There is thus no adverse effect on the volume as well as price parameters of the domestic industry during the POI. In view of the same, it may be noted that there is no continuation of injury to domestic industry during the POI. Moreover, the domestic industry itself has confirmed in the petition that there is no continued injury to the domestic industry (page 38 of the petition).
- xviii. Volume and Prices of Imports from Other Sources (Pakistan) is relevant with regard to the stable position of the DI. The share of imports from other than subject countries was 51% in POI. The imports from other countries were mainly from Pakistan. The export price from Pakistan was USD 121 per MT in POI whereas export price of subject countries was around USD 145 per MT during same period. Thus, the imports from Pakistan are competing with the imports from subject countries and are also competing with the domestic industry. No application has been filed by the domestic industry against Pakistan.
- xix. Domestic Industry is setting up a white cement plant in UAE so as to cater to the Middle East market which has a 16% market share.
- xx. Claims of excess capacity and price attractiveness of Indian Industry and claims of likelihood and recurrence of injury are based on mere conjectures, without any evidence.
- xxi. Imports from Iran were almost none during the last several years, which clearly show the paradigm shift in the nature of imports from Iran that of a long lasting nature ruling out any likelihood of recurrence of dumping and injury.
- xxii. The claim of the petitioner that Iran has been exporting the subject goods to third countries at significant dumped prices, is unsupported by any real evidence. No one contesting from Iran does not mean any illogical approaches and analysis can be slapped on Iran in an irresponsible manner.

- xxiii. DI itself claimed that it has not suffered from any injury. Further the petition of the DI clearly provides that capacity has increased by 32%, production increased by 73% and domestic sales in volume increased by 58% in POI as compared to 2002-03. Also domestic sales in value increased by 44% and profits increased by 82% in POI as compared to 2008-09.
- xxiv. Ultratech Cement has recently acquired a limestone field which is a raw material for the production of cement. This would result in further bringing down the cost of production.
- xxv. The volume of imports has always been less than 1% since 2002 of the total Indian demand and thus no case of injury on account of volumes. In addition it should also be noted that DI has a market share of 99% since 2002.
- xxvi. Currently there is no price undercutting, price underselling and price suppression/depression as the import price is much higher than the Net Sales Realization (NSR) of the DI.
- xxvii. The past practice of DGAD clearly establishes that freight cost cannot be included while computing NSR and NIP of the DI. It is to be noted that freight constitutes nearly 30% of the retail price invoice. Thus if the freight cost is added to the NIP and NSR of DI, the same should also be added to the CIF price so as to reflect the retail price of the imported goods.
- xxviii. Export price of DI is approx US\$ 110 and which is at least 20-30% lower than the NSR of the DI.
- xxix. Hence, there is no likelihood of dumping and subsequent injury in the event of revocation of duties.

#### **Submissions made by the domestic industry**

71. In order to determine whether the continued imposition of the duty is necessary to offset dumping, the Authority received following submission in brief from domestic industry:-

- i. Absence of continued import does not imply no likelihood of recurrence of dumping in the event of cessation of duties. Factors like excess capacity in subject countries, export orientation of exporting producers, vulnerability of Indian producers, price attractiveness of Indian market, long history of dumping, third country dumping from subject countries etc need to be examined to see the likelihood of recurrence of dumping in the event of revocation of duties.
- ii. There is continued dumping from UAE, as the price at which material is being exported to India is a dumped price. Though the volume is low and the

domestic industry may not have suffered overall injury, the volume is significant and sufficient to show the likely prices in the event of cessation of anti dumping duty. There is continued dumping from UAE and there is likelihood of recurrence of injury to the domestic industry after revocation of duty, as the import volume will increase substantially and significantly in the event of cessation of anti dumping duty.

- iii. Should there be no exports in the current investigation period, the same does not imply no likelihood of recurrence of dumping.
- iv. If export price to third countries are considered to determine potential landed price of imports into India, it would be seen that such landed price of imports are significantly below the selling price of the domestic industry. Thus, the imports are likely to undercut the domestic prices and therefore are likely to increase the demand for the product
- v. Factors like continuation of dumping in the case of UAE and recurrence of dumping from Iran as there is no continued imports from Iran are relevant with regard to likelihood examination of dumping.
- vi. In order to examine likelihood of continuation or recurrence of dumping in a sunset review investigation, the Rules have not prescribed any specific methodology. Practices of the investigating authority's world over are also not uniform. Absence of continued imports does not imply no likelihood of recurrence of dumping in the event of cessation of anti dumping duties. The anti dumping legislature mandates that the Authority is compulsorily required to examine if there is any likelihood for the continuation or recurrence of dumping before the expiry of the duty in force.
- vii. There is continued dumping from UAE hence there are no reason to believe that dumping would not recur in the event of revocation of duties.
- viii. Petitioners submit that no export from Iran is not sufficient for allowing expiry of duty. As an illustrative example of other countries practices, reliance is placed upon anti dumping duty imposed by Brazil on Jute Bags against India, wherein in first and second sunset reviews, duty has been continued by DECOM in a situation where there were no exports to Brazil in entire ten years period. In the 2<sup>nd</sup> sunset review investigation, duty has been continued further, despite no exports from India to Brazil in entire period. Further, in one of these cases, Brazil has not extended anti dumping duty on some producer from India, after satisfying that there was no likelihood of dumping by such Indian producer. Standards laid down by the WTO cannot be different from one country to another. Same is the practice being followed by other Investigating Authorities also

- ix. There is absence of continued dumping from Iran. However, exports from Iran to third countries shows that a) Iranian producers are exporting to third countries at dumped prices b) there is freely disposable present and potential capacities along with significantly low domestic demand which show likely exports in the event of revocation of duties.
- x. The information relevant with regard to freely disposable capacity as per *The Global White Cement* report is as follow;

SN	Company	Capacity Per Annum (MT)	Demand
<b>Iran</b>			
1	Benvid White	1,80,000	6,50,000
2	Abali	70,000	
3	Niyriz White	1,50,000	
4	Urmia	1,80,000	
5	Saveh	3,50,000	
	<b>Total</b>	9,30,000	
Freely disposable capacity in Iran		2,80,000	
<b>UAE</b>			
1	RKC	6,20,000	
Freely disposable capacity in UAE		3,90,000	2,30,000

- xi. The prices at which the subject goods are exported from Iran and UAE seem to be dumped prices as is evident from the information submitted to the Authority.
- xii. Thus, prices at which material is being exported to other countries is at dumped prices; capacities created by producers in subject countries are higher than their domestic demand; there is significantly low demand vis-à-vis excess capacity in subject countries; there is expansion of RKC as per public statement by Abdullah Yusuf, General Manager of the company; there is price attractiveness of Indian market; there is export orientation of units in subject countries and there is current dumping and third country dumping. These factors show likelihood of recurrence of dumping in the event of revocation of duties.
- xiii. Improvement in the present performance is due to anti dumping duty in force and in such a case, the Designated Authority is required to examine the likelihood of recurrence of injury to the domestic industry. In case, the Designated Authority holds that there is no continued injury to the Domestic Industry, the likelihood of injury to the domestic industry is required to be

seen in the event of expiry of the anti dumping duty in force. The decisions of WTO Appellate Body in the matter US- Corrosion Resistant Steel Sunset Review is relevant in this respect. Appellate Body on US — Oil Country Tubular Goods Sunset Reviews adopted a similar approach to the need to base a prospective likelihood determination on “positive evidence”.

- xiv. There is an export orientation of production units in subject countries along with a positive price undercutting which should be seen on region wise for the geographical and freight elements involved in the sale of the product which is suggestive of a likelihood of injury situation of the domestic situation.
- xv. Petitioners have determined dumping margin for third country exports. Information relating to exports of White Cement from UAE to various countries shows that UAE is exporting material to various countries at dumped price.
- xvi. In the event of revocation of duties the landed price of imports would be much lower than the net sales realization of the domestic industry causing price under cutting. Price attractiveness of the Indian market leads to increased importation, the landed price of imports are much below the NIP of the domestic industry in the region of imports causing threat of price suppression and depression and such price suppression and depression would lead to increased import at the cost of sales of the domestic industry.
- xvii. The sales of domestic industry into coastal region remained at 389664 which would directly be taken over by imports in the event of revocation of duties. Also, the increased imports would have price and volume effects as it has been shown in very detail in the submissions by showing possible impacts on all relevant parameters.
- xviii. Determination of injury in Mid Term and sunset review is the same or similar. The Designated Authority has in the past recommended extension of anti dumping duties in similarly placed situations. Further, following decisions of the Hon’ble Tribunal are directly applicable in the facts & circumstances of the present case such as Vinati Organics Ltd. Versus Designated Authority [2001 (127) E.L.T. 629 (Tri. - Del.), Indian Graphite Manufacturers Association v. Designated Authority [2006 (199) E.L.T. 722 (T)], Kalyani Steel Ltd. V/s Designated Authority [2006 (203) E.L.T. 418 (Tri. – Del.), Jindal Stainless Limited Versus Designated Authority [2006 (204) E.L.T. 267 (Tri. - Del.)], Hindustan Lever Limited v. Designated Authority reported in 2006 (200) E.L.T. 39 (T).
- xix. There is no continued injury due to imports from UAE but that is due to current duties however there is a great likelihood of increased imports and

subsequent injury as the price prevailing in India is higher than their export price to third countries.

- xx. The question as to why the exporter would like to export more quantity in the event of revocation of duties is explained with enough data and reasons which is again suggestive of likelihood.
- xxi. Following factors in the present case suggest likelihood of injury in the event of revocation of duties such as third country dumping practiced by the subject countries, vulnerability of the domestic industry as the imports from subject country is still present, ample and excess capacity available with the exporters coincided with a low domestic demand in these countries as evident from the table below;

	Capacity	Domestic Consumption	Freely Disposable Production Capacity	Capacity as % of demand
Iran	930000	650000	280000	143.08%
UAE	620000	230000	390000	269.57%

### **Examination by the Authority**

72. In terms of relevant provisions, the following aspects need to be examined by the Authority in a Sunset Review investigation:

- Whether the dumping continued and if so, whether it is likely to continue;
- In case where dumping did not continue, whether the dumping would recur or likely in the event of revocation of anti dumping duties;
- In case where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

73. Further, in a Sunset Review investigation, the Authority assesses whether the cessation of the duties is likely to lead to continuation or recurrence of dumping and consequent injury. The Authority has called for additional information in a Supplementary Questionnaire from the cooperating exporters for the period of investigation as well as six months beyond the period of investigation. The Authority has examined, *inter alia*, these

aspects on the basis of relevant information available on record based on various submissions by the interested parties as follows.

74. The Authority notes that as regards UAE, there are imports of the product under consideration in the POI but at insignificant levels and there were no imports from Iran during the injury period. However the domestic industry has not established as to how there would be an increase in imports from these countries to Indian market at a lower price, when the landed price of imports is higher than the NIP of the domestic industry. Hence, current level of imports or the rates at which imports have taken place is not suggestive of any likelihood or recurrence of injury in the event of revocation of duties. The relevant data in this respect are as follows;

Particulars	POI	Post POI
Landed Price (UAE) Rs./MT	***	***
NIP Rs./MT	***	***

75. The Authority notes that the Petitioners claimed that there is freely disposable capacity of 3,90,000 MT in UAE which will be diverted into India in the event of revocation of duties. However, the responding exporter from UAE has provided relevant information in this respect. The Authority has considered this information to examine surplus capacity in UAE. The Authority notes that the responding exporter is operating at 106% capacity utilization during POI. Hence, there is no chance of any diversion.

76. On examination of these factors, the Authority concludes that the dumping margins are positive in case of exports from UAE. However, the Authority notes that the landed value of UAE exports is well above the non-injurious price determined for the POI resulting in negative injury margin. The Authority also compared exports to third countries on the basis of information provided by the cooperating exporter from UAE and notes that, if the same is diverted to India the likely landed value is higher than the NIP of the domestic industry as well as higher as compared to actual landed value in India, thus showing least possibility of recurrence of injury to the domestic industry. The claims of domestic industry with regard to excess capacity in UAE were compared with the actual information which was provided by the cooperating exporter and it is found that no such excess capacity exists with the exporter. Hence, any reasonable conclusion on excess capacity can be that there is no likelihood of recurrence of dumping in terms of this parameter in the event of revocation of duties. Also, the price at which the product is being sold to other countries and domestic market of UAE is not suggestive of any probable situation that the exporter in UAE will get attracted to the market conditions in India in the event of revocation of duties.

77. There were submissions that one of the Indian producers, J K Cements, is setting up a plant in UAE and this alone shows the future of white cement demand in UAE. JK Cement has submitted that the same plant is not alone for White Cement. The project report would establish that there is already a surplus capacity in UAE. However, the plant has been set up keeping in mind the future demand in Middle East and more particularly in Iraq, Qatar, South Africa, Kuwait, Saudi Arabia etc. Similar submissions were made by RKC as well that future demand in Middle East including UAE, Iraq, Qatar, Bahrain, Kuwait, Saudi Arabia, Oman etc are promising. Hence, petitioners claim of excess availability of material in UAE which will be diverted into India does not appear to be correct as JK's own project is keeping in mind the UAE domestic market and nearby countries. The authority notes that the expansions/new plant etc by RKC have been examined during the verification to assess the future exportability of the exporter. There is nothing suggestive of an excess availability of capacity with the producer which can be shipped at dumped prices to India in the event of revocation of duties. Thus, there is no excess capacity causing imminent increase in dumped exports indicative of likelihood of recurrence of dumping.

78. As regards the likelihood of dumping from UAE, the Authority examined the likelihood based on a) Actual exports to India in POI, b) Actual exports to 3<sup>rd</sup> countries in POI (if diverted to India), c) Actual exports to India in post POI period, d) Actual exports to 3<sup>rd</sup> country in post POI (if diverted to India), e) Imports in to India from UAE for POI as per World Trade Atlas, and f) Imports in to India from UAE for post POI period as per World Trade Atlas. The Authority found that dumping and the likelihood of dumping based on the above data are negative, except for Actual Exports to India during POI, as shown below:

Calculation of Dumping Margin		As per RKC				As per WTA Data			
		POI-Export price-India	Post POI-Export price-India	POI-Export price-3rd Country	Post POI-Export price-3rd Country	POI-Export price-India	POI-Export price-3rd Country	Post POI-Export price-India	Post POI-Export price-3rd Country
Normal Value	US\$/MT	***	***	***	***	***	Not Available	***	Not Available
Net Export Price	US\$/MT	***	***	***	***	***		***	
Dumping Margin	US\$/MT	***	***	***	***	***		***	
Dumping Margin %	%range	1 to 10	-5 to +5	-5 to +5	-1 to-10	1 to10		-5 to +5	

79. As regards the likelihood of injury from UAE, the Authority examined the likelihood based on a) Actual exports to India in POI, b) Actual exports to 3<sup>rd</sup> countries in POI (if diverted to India), c) Actual exports to India in post POI period, d) Actual exports to 3<sup>rd</sup> countries in post POI (if diverted to India), e) Imports in to India from UAE for POI as per World Trade Atlas, and f) Imports in to India from UAE for post POI period as per World Trade Atlas, and found that injury and the likelihood of injury based on the above data are negative, as shown below:

<b>Calculation of Injury Margin</b>							
	Unit	POI (as per RKC)	Post POI(as per RKC)	POI based on 3rd Country	Post POI 3rd country(as per RKC)	POI(as per WTA)	Post POI(as per WTA)
		2011	2012	2011	2012	2011	2012
Landed Value	Rs./MT	***	***	***	***	***	***
NIP	Rs./MT	***	***	***	***	***	***
Injury Margin	Rs./MT	(***)	(***)	(***)	(***)	(***)	(***)
Injury Margin	% Range	-15 to -25	-20 to -30	-20 to-30	-25 to-35	-15 to-25	-25 to - 35

80. As regards Iran, the Authority concludes on the basis of evidences on record that there is no likelihood of dumping and consequent injury in case of cessation of anti-dumping duties. The submissions of domestic industry have been predominantly on excess capacity in Iran. Claims of third country dumping cannot be relied upon in the absence of any reasonable evidence pertaining to normal value in this country and reliable information on net export prices especially when there is no import into India for almost a decade now. The Authority notes that as per the data available in World Trade Atlas, exports from Iran to third countries, the likely dumping margin as well as likely injury margin are negative. Thus, it does not suggest any likelihood of dumping and injury in case of cessation of anti-dumping duties.

<b>Calculation of Likelihood of Dumping Margin-Iran</b>			
		<b>As per WTA</b>	
		POI-Export price-3rd Country	Post POI- Export price- 3rd Country
CNV	US\$/MT	***	***
Net Export Price	US\$/MT	***	***
Dumping Margin	US\$/MT	(***)	(***)
Dumping Margin	%	-5 to-15	-20 to -30

<b>Calculation of Likelihood of Injury Margin-Iran</b>			

	Unit	POI(3rd country as per WTA)	Post POI(3rd country as per WTA)
		2011	2012
Landed Value	Rs./MT	***	***
NIP	Rs./MT	***	***
Injury Margin	Rs./MT	(***)	(***)
Injury Margin %	% Range	-20 to-30	-35 to -45

81. The information submitted by the petitioner shows the capacity in Iran is 9,30,000 MT and actual production is 6,50,000 MT. The export to world have been about 98,810 MT as per the data submitted by the petitioner. Such data with regard to world exports from Iran should be considered as insignificant considering the total capacity and excess capacity claimed by the petitioner disproving the export orientation of producers in Iran. The Authority notes that , despite such surplus capacity claimed, there is no export of the subject goods from Iran to India that too for such a prolonged period, thus, showing no real possibility of imports from Iran coming into India in case of revocation of duties. Hence, diversion or inflow of subject goods into India in the event of revocation of duties is not proved and established.
82. In the instant case, there were no imports from Iran during the injury period and insignificant imports (less than 1% of total demand) from UAE in the period of investigation. The prices at which the material from subject countries reached the Indian market could not have impacted the existing prices in India and also do not exhibit any threat on future prices. In view of the above, the Authority concludes that the subject goods are not likely to continue to be dumped, if the present anti dumping duty is allowed to cease.
83. With regard to Iran, the domestic industry has claimed an excess capacity of 280000. It is further noted that none of the exporters from Iran has responded to the Authority so as to corroborate and accept or reject the claims of interested parties. The Authority notes that there were no imports from Iran for a long time and such nonappearance of continued imports for such prolonged period does not sink well with the argument that the alleged excess capacity can come to the Indian market at dumped prices and can cause subsequent injury to the domestic industry. Thus, there is no injury from the imports from subject countries nor there is any likelihood of injury from import from the subject countries in the event of revocation of duties in terms of the excess capacity in subject countries.

84. It is also noted that the inventory levels with the responding exporter are not suggestive of any additional volumes available with the exporter which can swiftly reach the Indian market in the event of revocation of duties. The inventory remained at \*\*\*MT which is just 1.95% of the annual production.
85. The Authority notes that the price behavior of subject imports during the POI did not injure the domestic industry. Level of current dumping and injury margin are suggestive of the fact that there is no likelihood of injury in the event of revocation of duties. The data in this respect are as follows:

Particulars	UAE (Based on exporter's data)		UAE (Based on WTA data)		Iran (Based on WTA data )	
	POI	Post POI	POI	Post POI	POI	Post POI
Dumping margin Range (%)	1 to 10	-5 to +5	10 to 10	-5 to +5	-5 to -15	-20 to -30
Injury Margin Range (%)	-15 to -25	-20 to -30	-15 to -25	-25 to -35	-20 to -30	-35 to -45

86. It is concluded that an examination of excess capacity in subject countries, nature and behavior of imports, dumping and injury margins during the POI and post POI, impacts of third country export prices in the case of diversion of the same to India and comparison of landed price to NIP of the domestic industry during the POI and post POI etc shows that there is no likelihood of recurrence of injury in the event of revocation of existing anti dumping duties on imports of White Cement from UAE and Iran.

## **I. EXAMINATION OF CAUSAL LINK**

### **Submissions made by the opposing Interested Parties**

87. The following views were expressed in brief by the opposing interested parties with regard to causal link examination:
- i. With regard to claim of domestic industry regarding causal link analysis in sunset review investigation, the Designated Authority has already rejected a similar case of arguments in the case of Graphite Electrodes from China PR where in the Authority proceeded to examine the causal link aspect. Same approach is essential in the present case as well.
  - ii. The data shows that demand of the subject goods has increased significantly in POI as compared to base year. The share of the domestic industry in domestic market has also increased significantly in POI as compared to base year. The market share of the subject countries was very insignificant in the entire injury period which was less than 1%.

- iii. The share of imports of other countries mainly Pakistan increased substantially from base year to POI. It may be noted that the imports from Pakistan, other than subject countries, are at lower prices as that of subject countries. Therefore, there is no causal link between imports from subject countries and any alleged injury to the domestic industry on account of domestic sales.

### **Submissions made by the Domestic Industry**

88. The following views were expressed in brief by domestic industry with regard to causal link examination:

- i. It is contended that the causal link has already been established in the original investigation. In the present review investigations, the Authority has to examine whether revocation of anti dumping duty would lead to continuance or recurrence of dumping and injury.

### **Examination by the Authority**

90. It is concluded from the above facts that injury to the domestic industry has been not been caused by the imports of the subject goods from the subject countries in the POI. Annexure 2 to the Rules provides as follows with regard to Causal Link:

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the Designated Authority. The Designated Authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter-alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.”

**Volume and Prices of imports from other sources:** - Since there is no injury to the domestic industry and imports from countries other than subject countries are negligible, therefore, the same could not have caused injury to the domestic industry.

**Contraction in demand:** - The injury statement contains information with regard to demand of the product under consideration over the entire injury period. It would be seen that the demand of the product under consideration has shown a positive growth throughout the injury

period. Hence, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.

**Changes in the patterns of consumption:** - The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is unlikely to contribute to the injury to the domestic industry.

**Trade restrictive practices of and competition between the foreign and domestic producers:** - There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

**Developments in technology:** - Technology for production of the product has not undergone any change nor there are any likely changes in coming future. Developments in technology are, therefore, not a factor of injury.

**Export performance:** - The petitioner exports the product under consideration. However, information relating to domestic sales only has been taken into consideration for assessment of injury to the extent possible.

**Performance of other products produced and sold by the domestic industry:-** The petitioner companies are multi product companies. The information provided for the product under consideration does not contain any information of other products. Therefore, the performance of other products did not cause any impact over injury to the domestic industry.

## **J. OTHER ISSUES**

### **Views of exporters/importers and other interested parties**

91. Following submissions in brief were made by the opposing interested parties:

- i. Monopolistic Practices by the Domestic Industry under the aegis of ADD. The purpose of anti-dumping measure is not to facilitate the domestic industry to create a monopoly on prices, but to eliminate the trade-distorting effects of injurious dumping and thus to ensure the fair competition in Indian Market. In the present case, exorbitant amount of AD duties are in force for the past 12 years and the domestic price of the product has sky rocketed in a monopolistic manner by effectively blocking imports of subject goods from subject countries.
- ii. Anti-dumping duties levied on the imports of this product from UAE and Iran are in force since 14<sup>th</sup> June 2001. Despite of the fact that the domestic industry has not suffered continued injury, the Designated Authority has recommended Anti-dumping duty in the last sunset review. However, domestic industry has created monopoly behind the Anti-dumping duty on prices which resulted in profits of the domestic industry increasing

continually during the injury period which can be verified by the Authority from confidential data.

- iii. Our claims of such reprehensible behavior of the domestic industry is further proved factually correct in the light of a recent decision by the Competition Commission of India (Case No 29/2010) wherein the commission levied a hefty fine of around Rs 6,300 crore on the domestic cement producers for adopting monopolistic and unfair trade practices. The fact of the matter is, even though such cases prima facie appears concerning grey cement, that the Authority may take cognizance of such behavior as grey and white cement business is done under the same roofs by these companies.
- iv. There is enough reason to believe and it is evident that the anti dumping duties are now misused by these producers to operate a cartel in the country and as a result their realization (NSR) is much higher than their fair price (NIP).
- v. Even though there is a self admission in the petition by the petitioner that white cement is a low price product, the domestic industry with such unfair practices and with undue advantage of ADD escalated the prices to such high levels, serving which is not the purpose of ADD.
- vi. Extrapolated import information for POI in the updated Proforma IV-A. In the updated Proforma IV imports from subject countries are appearing at 8,792 MT which is including 2,520 MT imports of 2012 as well. However, POI of this case is January 2011 to December 2011. Thus, the import occurred during 2012 (post POI) should not be considered in the dumping and injury analysis.
- vii. An important issue in the present case is whether freight and commission cost can be considered for the determination of NSR, NIP and Landed Value. The findings of the Authority with regard to F.No-14/17/2010-DGAD dated 17<sup>th</sup> February 2012 and F.No-14/3/2011-DGAD dated 9<sup>th</sup> February 2013 issued by the Designated Authority with regard to imports of Soda Ash may applied in the present case as well which confirms the freight incurred by the domestic industry should not be included in their NIP.
- viii. Para 4(vii)(b) of Annexure III of Anti-dumping Rules provides that non injurious price should be determined at ex-factory level and no post manufacturing expenses such as freight outward, etc should be included.
- ix. Similarly, Fourth proviso to Rule 10 of Customs Valuation Rules specifically provides that the cost of freight incurred in the movement of container from the port of entry to ICD/CFS shall not form part of the assessable value of the

goods. Similarly, freight incurred for transporting the goods from the factory to the customer's premises also should not form part of non injurious price.

- x. The calculation of non injurious price and landed value should be made at ex-factory level and ex-port level as Rules are amply clear as to the treatment of freight in NIP and landed value. Merely because addition of freight would lead to higher NIP could not be a reason to change the existing practice of excluding freight. Any arguments otherwise hoisted by the petitioner is implausible, concocted and presumably to frustrate the well settled legal provisions in this respect and for the same reason, such claims, needs to be summarily rejected by the Authority.
- xi. Any argument of freight costs were included in the first sunset review investigations hence the same practice should be adopted in the present review also is highly misplaced and untenable as the Annexure III under Rule 17 (1) were introduced in 2011 where as the final finding of the previous investigation was published in the year 2007. When Annexure III clarifies what should be the treatment of freight under the rule, any previous treatment of the same in the absence of such clear cut rules is irrelevant for the present investigation. Any interpretation otherwise is only to mislead the Authority and all the more in violation of anti dumping rules and also Section 14 (1) of Customs Act 1962.
- xii. Both JK White Cement and Birla White are increasing the price simultaneously. Since 2011, the domestic prices have increased by 21%.
- xiii. The DI has been able to increase their prices as they command 99% of the market share since 2002. This has impacted the user industry, i.e. the wall putty manufacturers and many among them constitute SME.
- xiv. DGAD cannot disregard the interest of the SME manufacturers especially when the DI is taking undue advantage of the anti dumping duty.

### **Views of Domestic Industry**

92. Following submissions in brief were made by the domestic industry:

- i. There is a long history of dumping in the country and the subject countries are exporting at dumped prices to third countries.
- ii. Second sunset review does not mean that the duties should be revoked.
- iii. Response filed by RKC is incorrect and misleading.
- iv. There are factors affecting domestic prices especially the freight involved in the sale of the product. Freight should be included in the price for

comparison purposes. Freight was included in the selling price in the previous investigation which should be considered in the present investigation also. Shipment of goods from the plant to depot is made by the petitioners at their own expense. Such expenses are reported as freight/transportation costs by the petitioners. Since such depots are nothing but extended warehouses of the petitioners, it is submitted that freight and transportation cost paid by the company is a part of costs incurred by the petitioners in production and sale of the product under consideration. Further, the domestic industry pays excise duty on the basis of the price mentioned on the sales invoices. The freight incurred by the domestic industry from factory warehouse to depot warehouse is not separately reported by the domestic industry on these sales invoices.

- v. White Cement is a low priced product. Transportation plays a very vital role while determining price by the producer. While the material is consumed everywhere in the country, 95% production is at one place in the Country. In fact, white cement plants are in limited numbers. Given significant transportation cost involved in shipping the goods within the Country, prices differ region by region within the Country. At the same time, goods are imported at selected places in the Country. It would be highly misleading to compare the prices in one region with the imported product prices in another region. For example, prices of domestic industry in North cannot be compared with the landed price of imports in Kerala. In view of this, while comparing the prices of the domestic industry, freight, transportation and other expenses upto the place of landing imported material may please be considered.

### **Examination by the Authority**

93. Various other issues raised by the interested parties were examined by the Authority in detail as under:

- i. The information provided by different parties including RKC was examined for adequacy and accuracy. Additional information/clarifications were sought where ever applicable before taking into consideration and found to be in place.
- ii. With regard to inclusion of freight in the selling price, the Authority is of the view that the inland transport cost incurred by the Domestic industry should not be included in NIP for the purpose of comparison with the landed price as it will not be in line with the practice followed by the Authority in this regard and also not in line with Annexure III to the Anti-dumping Rules governing determination of NIP, according to which *since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight- outward etc. at ex-factory level.*

- iii. Accordingly, the inland transport cost incurred by the domestic industry has not been included in their NIP.
- iv. Further it is noted that only 5.98% of the materials of the domestic industry are sold in the Kerala region which is insignificant in relation to total sales in India.
- v. With regard to the contention of price increases by the domestic industry, it is noted that sales realization of the applicants for the entire injury period was considered and verified and movement in prices at annual averages were examined.
- vi. With regard to incorrect import data provided by the petitioner, it was clarified by the petitioner that there was an error in the figures and corrected figures were provided. The Authority considered such rectified information for the purpose of this Final Findings.

**K. INDIAN INDUSTRY'S INTEREST**

94. The Authority recognizes 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. The present review undertaken by the Authority is in line with the interest of all parties privy to this investigation and any duty imposed will only be allowed to continue in a situation where it is found to be inalienable as per the provisions of the AD Rules and facts of the present case.

**L. POST DISCLOSURE STATEMENT SUBMISSIONS**

**Post Disclosure Statement submissions by the opposing interested parties**

95. Following are the submissions made by the opposing interested parties on the disclosure statement:

- (i) Interested parties are not aware of any submissions having been made by domestic industry with regard to Project Report of J.K's plant in UAE and strongly dispute the contents of the Project Report. The Authority should not place any reliance on the same as the same is not verified and verifiable information. Therefore, the Authority should not consider such uncorroborated information as no opportunities were provided to the other interested parties to offer meaningful comments at appropriate times.
- (ii) We have noted the proposed conclusion with regard to excess capacity in subject countries, nature and behavior of imports, dumping and injury margins during the POI and post POI, impacts of third country export prices in the case of diversion of the same to India and comparison of landed price to NIP of the domestic

industry during the POI and post POI etc. We request the Authority to kindly confirm the same.

- (iii) The Domestic Industry is in a very healthy state; has achieved maximum market share possible; has been able to achieve very high capacity utilization and been able to increase their production, domestic sales, and profits. Further the increase in domestic selling price has happened with a simultaneous increase in the import price of the PUC. In fact the as per the available invoices of the Domestic Industry, the import price is higher than the selling price of the Domestic Industry. Moreover, the landed price of the imports is higher than the NIP of the DI which clearly severs the causal link between imports from the subject countries and the injury claimed by the Domestic Industry. In fact Domestic Industry is not claiming any injury and its claim of recurrence of dumping and injury has rightly been found to be incorrect by the Authority. In view of the same, it is submitted before the Authority that the anti dumping duties against import of white cement from UAE and Iran should be discontinued.

#### **Post Disclosure Statement submissions by the Domestic Industry**

96. Following are the submissions made by the Domestic Industry on the disclosure statement:

- a. Even though the volume of imports is low, product under consideration continues to be exported to India at dumping prices from UAE.
- b. Performance of the Domestic Industry has remained positive, which is a result of imposition of anti dumping duty. However, there is clearly likelihood of injury to the domestic industry in the event of cessation of anti dumping duty.
- c. Price undercutting without prevailing anti dumping duties is significantly positive.
- d. There is no justification for not adding freight to the cost and NIP. On the contrary, Central Excise Act, 1944- Valuation of excisable goods for purposes of charging of duty of excise- clearly establishes that depot is required to be considered as extended factory gate.
- e. Even the NIP law requires that the NIP be determined at the ex-factory level and the Central Excise Act provides that the depot shall be considered as extended factory gate and freight from factory gate to depot shall be considered as part of the cost. On this account itself, freight is required to be added to NIP.
- f. Notwithstanding, and as an alternative, petitioners submit that their argument is with regard to comparison of import price with the domestic industry's price for determining injury margin. In any case, it is well established legal position that there is no specified law for injury margin determination and that the principles of fair comparison enshrined under Annexure-I for determination of dumping margin shall apply for injury margin as well. Further, the principles of fair comparison under dumping law provisions clearly provide for comparison of

normal value and export price at the same level of trade. Thus, on this account as well, the freight cost must be added to NIP to determine injury margin.

- g. Entire conclusions stated in the disclosure statement shall be reversed the moment freight is added in NIP. The price undercutting and injury margin shall be significantly position after including the freight involved.

### **Examination by the Authority**

97. Submissions made by the opposing interested parties and the domestic industry have been examined by the Authority. The Authority finds that submissions are repetitive and have been adequately dealt with under relevant heads in this Notification. Still, the Authority has examined major submissions to the extent found relevant hereunder:

- i) The Authority has carefully considered all the submissions of the domestic industry and other interested parties received after the disclosure statement in this matter. The Authority noted that there are no imports of the product under consideration from Iran during the entire injury period of the investigation and the imports from the UAE are insignificant and constitute a meager 0.75% of the demand of the subject goods in the country during the period of investigation. It is also noted that imports of the subject goods from the UAE constitute less than 1% of the demand during the entire injury period of the review investigation.
- ii) Further, there are two major producers of subject goods in the country and their performance has significantly improved during the review period. Hence, it is considered appropriate to hold that there is no likelihood of injury to the domestic industry if anti dumping duties are not extended.
- iii) The Authority further notes that the overall analysis, therefore, reveals clearly that against a total demand of 8.41 Lac MT, imports from the UAE are to the tune of only 6272 MT and there is no imports from Iran. Therefore, the Authority is of the view that once the anti dumping duty is removed, likelihood of import at dumped prices and consequent injury to the domestic industry is not borne out by facts and circumstances of this case.
- iv) With regard to inclusion of freight in the selling price, the Authority is of the view that the inland transport cost incurred by the Domestic industry should not be included in NIP for the purpose of comparison with the landed price as it will not be in line with the practice followed by the Authority in this regard and also not in line with Annexure III to the Anti-dumping Rules governing determination of NIP, according to which *since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight-outward etc. shall not be considered while assessing non injurious price.*

### **M. CONCLUSIONS**

98. Having regard to the contentions raised, information provided and submissions made by the domestic industry and the opposing interested parties and facts available before the Authority and on the basis of the above analysis of the state of continuation of dumping and

consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

- i. White Cement has been exported to India by the UAE below its normal value resulting in dumping. There are no imports from Iran in the injury investigation period;
- ii. The domestic industry has not suffered any injury from the imports from the subject countries;
- iii. There is no likelihood of continuation or recurrence of dumping and injury to the domestic industry in case the anti-dumping duties imposed on the imports of White Cement from the subject countries are withdrawn.

**N RECOMMENDATION:**

99. After having concluded in the earlier paragraphs that non continuation of anti dumping duties will not lead to likelihood of continuation or recurrence of dumping and injury to the domestic industry, the Authority recommends not to continue the anti dumping duties on the imports of the subject goods from the subject countries which were imposed by the Central Government vide Notification No 99/2001-Customs dated 3rd October, 2001, and extended vide Notification No 56/2007-Customs dated 12th April 2007 and further extended up to 11th April 2013 by vide Notification No.28/2012-Customs (ADD) dated 21st May, 2012.

100. An appeal against the order of the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(J S Deepak)**

**Designated Authority**