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F. No. 6/11/2022 –DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

(Final Findings)
(Case No. AD (OI) -11/2022)

Dated: 29th September 2023

Subject: Anti-dumping investigation concerning imports of “Gypsum Board / Tiles with lamination at least on one side” originating in or exported from China PR and Oman.

A. BACKGROUND OF THE CASE

F. No. 6/11/2022 –DGTR: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as “the Rules”) thereof:

1. Whereas, M/s. Saint-Gobain India Private Limited, (hereinafter also referred to as the “Applicant” or the “domestic industry” or the “DI”) filed an application before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Act for the imposition of Anti-dumping duty on imports of “Gypsum Board / Tiles with lamination at least on one side” (hereinafter also referred to as the “subject goods” or the “product under consideration” or the “PUC”) from China PR and Oman (hereinafter also referred to as the “subject countries”) and has requested for imposition of anti-dumping duty.
2. And, whereas the Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant on behalf of the domestic industry, issued a public notice vide Notification No. 6/11/2022–DGTR dated 30.09.2022, published in the Gazette of India Extraordinary, initiating the subject investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:

- a) The Authority, under the above Rules, received a written application from the applicant on behalf of the domestic industry, alleging dumping of Gypsum Board / Tiles with lamination at least on one side from the subject countries.
- b) The Authority notified the embassies of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
- c) The Authority issued a public notice dated 30th September 2022 published in the Gazette of India Extraordinary, initiating an anti-dumping investigation concerning imports of the subject goods from the subject countries.
- d) The Authority sent a copy of the initiation notification and a copy of the non-confidential version of the application to the embassies of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as well as the other domestic producers as per the addresses made available by the applicant and requested them to make their views known in writing within the prescribed time limit.
- e) The embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit.
- f) The Authority sent questionnaires to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:
- (i) Global Gypsum Board CO LLC
 - (ii) Dream Brand New Material (Pingyi) Co Ltd
 - (iii) Linyi Excel Import & Export
 - (iv) Zonmay Building Materials Co., Ltd.
 - (v) Shijiazhuang Dian Yu Import and Export Co., Limited
- g) The Exporter's questionnaire has been filed by the following exporters/producers from the subject countries:
- (i) Global Gypsum Board CO LLC
 - (ii) Dream Brand New Material (Pingyi) Co Ltd
 - (iii) Zonmay Building Materials Co., Ltd & Linyi Excel Import & Export
 - (iv) Shijiazhuang Dian Yu Import and Export Co., Limited
- h) The Authority sent Importer's Questionnaire to the following known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
- (i) Kingston Multi Products India (P) Ltd.
 - (ii) R K Ceiling (P) Ltd
 - (iii) Complete Ceilings Interior Products Private Limited
 - (iv) Diamond International Inex Pvt Ltd
 - (v) Gypexim Pvt Ltd
 - (vi) MDG Impex Pvt Ltd

- (vii) Sam Gypsum Private Limited
- (viii) Universal Enterprises.
- (ix) Varni Aluminium.
- (x) A to Z Ceiling Products
- (xi) Shree Meenakshi Marketing
- (xii) Natural Stone Industries
- (xiii) Shree Saibaba Impex
- (xiv) Vikash Trading Company
- (xv) Adorn
- (xvi) Jojo Enterprises
- (xvii) Thaker Brothers
- (xviii) Todi Plywoods
- (xix) Preksha Interiors Pvt. Ltd
- (xx) Royal Enterprise
- (xxi) Rockstrenght World Industries Pvt Ltd
- (xxii) Under the Roof
- (xxiii) Shree Baalaji Traders
- (xxiv) Aerotex Ceiling System
- (xxv) Bright Interiors
- (xxvi) Knauf Ceiling Solutions (India) Private Limited
- (xxvii) Knauf India Private Limited

i) The following importers have responded to the initiation notification:

- (i) Kingston Multi Products India (P) Ltd.
- (ii) R K Ceiling (P) Ltd
- (iii) Complete Ceilings Interior Products Private Limited
- (iv) Diamond International Inex Pvt. Ltd.
- (v) Gypexim Pvt. Ltd.
- (vi) MDG Impex Pvt. Ltd.
- (vii) Sam Gypsum Private Limited
- (viii) Universal Enterprises
- (ix) Varni Aluminium
- (x) A to Z Ceiling Products
- (xi) Shree Meenakshi Marketing
- (xii) Natural Stone Industries
- (xiii) Shree Saibaba Impex
- (xiv) Vikash Trading Company
- (xv) Adorn
- (xvi) Jojo Enterprises
- (xvii) Thaker Brothers
- (xviii) Todi Plywoods
- (xix) Preksha Interiors Pvt. Ltd.
- (xx) Royal Enterprise
- (xxi) Rockstrength World Industries Pvt. Ltd.
- (xxii) Under the Roof
- (xxiii) Shree Baalaji Traders
- (xxiv) Aerotex Ceiling System
- (xxv) Bright Interiors
- (xxvi) Knauf Ceiling Solutions (India) Private Limited

(xxvii) Knauf India Private Limited

- j) It is also noted that out of the above importers following have responded to the importer's questionnaire response:
- i. Sam Gypsum Private Limited
 - ii. Vikas Trading Company
 - iii. R K Ceilings Private Limited
 - iv. Diamond International Inex Pvt Ltd
 - v. Complete Ceiling Interior Products Pvt. Ltd.
 - vi. Adorn
 - vii. Knauf Ceiling Solutions (India) Private Limited
- k) The Authority made available a non-confidential version of the evidence presented /submissions made by various interested parties through emails to all other interested parties.
- l) A request was made to the DG Systems data to provide the transaction-wise details of imports of the subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the same for computation of the volume of imports and its analysis after due examination of the transactions.
- m) The Non-Injurious Price (NIP) has been determined based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- n) Physical inspection through on-spot verification of the information provided by the domestic industry was carried out at their plant located at Jhagadia, Gujarat. The verification of the information provided by the exporters was carried out by the Authority to the extent deemed necessary. The Authority issues this final findings relying on such information.
- o) The period of investigation (hereinafter the "POI") for the present investigation is 1st April 2021 to 31st March 2022 (12 months). The injury period under investigation, covered periods from April 2018 to March 2019, April 2019 to March 2020, April 2020 to March 2021, and the POI.
- p) The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in this final findings.
- q) Information provided by the interested parties on a confidential basis was examined with regard to the 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 a confidential basis were directed to provide sufficient non-confidential versions of the information filed.

- r) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the final findings on the basis of the facts available.
- s) In accordance with Rule 6(6) of the Rules, the Authority also provided the opportunity to all interested parties to present their views orally in a hearing held on 5th July 2023. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- t) *** in these final findings represent information furnished by an interested party on a confidential basis and so considered by the Authority under the Rules.
- u) In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 20.09.2023 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post-disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post-disclosure submissions to the extent considered relevant are being examined in these final findings.
- v) The exchange rate adopted by the Authority for the subject investigation is US\$1 = 75.34.

C. PRODUCT UNDER CONSIDERATION (PUC) AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration was defined as:

4. The product under consideration in the present application is "Gypsum Board / Tiles with lamination at least on one side". Typically, PVC, Wax Paper and other similar materials are used for lamination on one side. Materials such as Metalized Polyester Film are used for lamination on the other side essentially to prevent moisture.

5. The subject goods are environment friendly, lightweight, high-quality decorative ceiling tiles that are also fire resistant. The subject goods are predominantly used for ceilings in auditoriums, conference rooms & educational institutes, offices, boutiques, shops, commercial and residential buildings, etc. The subject goods are also known as PVC Gypsum Tiles, Gypsum Ceiling Tiles, Ceiling tiles etc. PVC laminated gypsum ceiling tiles are strong and long-lasting.

6. The applicant has submitted that the product under consideration is classified under Chapter 68, under sub-headings 68069000, 68080000, 6809110, 68091900 and 68099000 of the Customs Tariff Act 1975. However, the applicant has claimed that some imports are also made under custom tariff heading 70195900 and 73083000. The custom classification is indicative only, and in no way, it is binding upon the product scope.

C.1. Submissions made by producers/exporters/importers/other interested parties

5. The submissions made by other interested parties with regard to the product under consideration and like article and considered relevant by the Authority are as follows:
 - a. Clarification is required on whether mineral fiber sound-absorbing sheets are covered by the present initiation or not.
 - b. Product under consideration includes only ceiling tiles made up of gypsum boards and have lamination on at least one side.
 - c. The Government of Sultanate of Oman has urged the Authority to exclude HS code 68091100 from the scope of PUC since it is not only related to gypsum board one side laminated / ceiling tiles. The same HS code has different gypsum products which could create a misleading picture of the import and injury analysis.

C.2. Submissions made by the domestic industry

6. The submissions made by the domestic industry with regard to the product under consideration and like article and considered relevant by the Authority are as follows:
 - a. The product under consideration in the present application is “Gypsum Board / Tiles with lamination at least on one side”. Typically, PVC, Wax Paper and other similar materials are used for lamination on one side. Materials such as metalized polyester film are used for lamination on the other side essentially to prevent moisture. The subject goods are also known as PVC Gypsum Tiles, Gypsum Ceiling Tiles, Ceiling tiles etc. PVC laminated gypsum ceiling tiles are strong and long-lasting.
 - b. The subject goods are environment friendly, lightweight, high-quality decorative ceiling tiles that are also fire resistant. The subject goods are predominantly used for ceilings in auditoriums, conference rooms & educational institutes, offices, boutiques, shops, commercial and residential buildings, etc.
 - c. One of the interested parties had filed submissions regarding the need for further clarification of the product scope. In this context, it is submitted that the said clarification is not called for, as the product under consideration only considered the subject goods produced out of gypsum and no other materials.
 - d. It is also clarified that the subject goods do not include non-laminated gypsum boards. Further, perforated tiles and other types of tiles not made from gypsum only are outside the purview of the product under consideration and investigation. Since the above tiles are not part of the product under consideration, no comments or clarification can be made about their exclusion from the scope of the product under consideration.
 - e. It is submitted that goods produced by the domestic industry and the subject goods imported from the subject countries are like articles. There is no known difference between the subject goods exported from the subject countries and those produced by the domestic industry. The subject goods produced by the domestic industry and imported from the subject countries are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process &

technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use the two interchangeably. The two are technically and commercially substitutable, and hence, should be treated as a 'like article' under the Rules.

C.3. Examination by the Authority

7. The product under consideration for the present investigation is "Gypsum Board / Tiles with lamination at least on one side". The subject goods are also known as PVC Gypsum Tiles, Gypsum Ceiling Tiles, Ceiling Tiles, etc. Typically, PVC, Wax Paper and other similar materials are used for lamination on one side. The subject goods are environment friendly, lightweight, high-quality decorative ceiling tiles that are also fire resistant. The subject goods are predominantly used for ceilings in auditoriums, conference rooms & educational institutes, offices, boutiques, shops, commercial and residential buildings, etc.



8. The subject goods are classified under chapter heading 68. The product under consideration is classified under Chapter 68, under sub-headings 68069000, 68080000, 68091100, 68091900 and 68099000 of the Customs Tariff Act 1975. However, the applicant has claimed that some imports are also made under custom tariff headings 70195900 and 73083000. The customs classification, however, is only indicative and not binding on the scope of the product under consideration in the present investigation.
9. In relation to the request for clarification related to mineral fiber boards, it is noted that the subject goods defined by the domestic industry clearly state that the product under consideration does not include non-laminated gypsum boards. Further, perforated tiles and other types of tiles not made from gypsum are outside the purview of the product under consideration and investigation.
10. As per Rule 2 (d) of the Rules relating to the definition of "like article", it is specified that "like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

11. On the basis of information on record, the Authority notes that there is no known difference in the product under consideration exported from the subject countries and the product produced by the Indian domestic industry. The product under consideration produced by the Indian domestic industry is comparable to the imported subject product in terms of characteristics such as physical and chemical characteristics, functions and uses, product specifications, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.
12. In relation to the request of the Government of Sultanate of Oman regarding the exclusion of HS code 68091100 from the scope of PUC, it is noted that customs classification is only indicative and not binding on the scope of the product under consideration in the present investigation. The determination of the duty shall be made as per the description of PUC. Therefore, goods other than the product under consideration, even if imported under the HS code 68091100, will not attract duties.
13. Thus, the Authority determines that the product produced by the domestic industry is a like article to the product under consideration imported from the subject countries in accordance with the Rules.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the other interested parties

14. The following submissions have been made by the interested parties with regard to the scope of the domestic industry and standing:
 - a. There are two more producers of the subject goods in India, namely Gyptech Systems Pvt. Ltd. and Indian Gypsum Pvt. Ltd., who are producing the subject goods prior to the period when the applicant started the production of the subject goods. Therefore, the applicant industry cannot be said to be the sole producer of the subject goods.
 - b. It is submitted that since other producers named by the applicant were there in existence during POI, the fact that they have not approached the Authority to address injury, proves that they are not suffering any injury.
 - c. It is submitted that there are multiple producers of the subject goods in India and therefore, the domestic industry cannot claim themselves to be a sole producer of the subject goods. The applicant has even failed to constitute a domestic industry under Rule 2(b) and standing in terms of Rule 5(3) of the AD Rules.

D.2. Submissions made by the domestic industry

15. The submissions made by the domestic industry during the course of the investigation with regard to the scope of the domestic industry & standing are as follows:
 - a. The present application has been filed by M/s Saint Gobain India Pvt. Ltd. (SGIPL), which is the sole producer of the product under consideration in India during the

period of investigation. It has been submitted that the domestic industry commenced production in their Jhagadia plant in October 2020.

- b. It is further submitted that apart from SGIPL, there are two other producers of the subject goods namely Asiatic Gypsum and Fourline Gyplam. However, both the producers commenced their production post-POI. Moreover, as per the information available with the domestic industry, both producers have temporarily stopped production due to aggressive dumping from the subject countries.
- c. In relation to the existence of the other two producers of the subject goods, it is submitted that as per the information available with the domestic industry, both the producers are not producing the subject goods and are mere traders of the same. Further, Gyptech Systems Pvt. Ltd. is importing the subject goods from China.
- d. The applicant has neither imported the subject goods from the subject countries nor are they related to any other producer/exporter of the subject goods in the subject countries or any importer in India and thus, constitute the domestic industry in terms of Rule 2(b).

D.3. Examination by the Authority

16. Rule 2 (b) of the Rules defines the domestic industry as under:

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

- 17. The application has been filed by M/s Saint Gobain India Pvt. Ltd. (SGIPL), who is the sole producer of the product under consideration in India during the period of investigation. It is also noted that they have started production of the subject goods at their Jhagadia plant in October 2020.
- 18. The domestic Industry has further submitted that post period of investigation, two other producers i.e Asiatic Gypsum and Fourline Gyplam had started production and have also temporarily shut down their operations. In this regard, the Authority sent communications to both the producers of the subject goods. However, no response was received from them.
- 19. Some of the interested parties have contended that Gyptech Systems Pvt. Ltd. and Indian Gypsum Pvt. Ltd. have been producing the subject goods before the domestic industry started commercial production. In this regard, the Authority has noted the submission of the domestic industry and sent written communications to both the companies requesting relevant information relating to their operations, production etc. for the subject goods. However, the Authority did not receive any communication from them. Therefore, there is no reliable information to ascertain whether both companies were producing the subject goods before/during the POI. Further, since the Authority has also not received any communication/letter opposing the contention of the applicant industry, the Authority has

considered the applicant industry as eligible to constitute the domestic industry in terms of Rule 2(b), fulfilling the criteria for standing in terms of Rule 5(3).

20. The applicant producer has also certified that there are no imports of the product under consideration by the applicant or any of its related parties, post-commencement of the production. Further, they are also not related to any importer of the subject goods in India.
21. In view of the above, the Authority considers the applicant eligible to be considered as the domestic industry within the meaning of Rule 2(b) and Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions made by the other interested parties

22. The following submissions have been made by the interested parties with regard to confidentiality:
 - a. The present application suffers from excessive use of confidentiality and the applicant has denied access to many basic information under the garb of confidentiality.
 - b. Rule 7 does not in any manner mean that the domestic industry can provide minimal information; rather it casts a responsibility on the domestic industry to furnish summaries in sufficient detail so as to permit a reasonable understanding of the substance of the information submitted on a confidential basis.
 - c. The law states that if the Authority finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Authority may disregard such information.

E.2. Submissions made by the domestic industry

23. The following submissions have been made by the domestic industry:
 - a. The applicant has followed the requirements mentioned under Trade Notice No. 10/2018 to the hilt and has provided all the information as required under the said Trade Notice. It is pertinent to note that while making bald accusations, the respondents have miserably failed to point out any material deviation from the requirements of Rule 7 read with the relevant Trade Notices.
 - b. That on directions of the Authority to revise non-confidential version of the application or provide reasons for claiming the confidentiality, the domestic industry has filed a revised non-confidential version of the application. However, no updated non-confidential version was circulated by other interested parties, despite filing a deficient response.
 - c. Exporters have not only claimed confidentiality with the domestic industry, they have even withheld critical information from the Authority. Therefore, their responses ought to have been rejected.

- d. The exporters have claimed excessive confidentiality without any proper justification. The non-confidential version of the questionnaire response has not been given for all the information contained in the confidential version without assigning proper reasons.
- e. The Hon'ble courts and Tribunals had clearly held that information provided to the Designated Authority on a confidential basis is not required to be treated as confidential merely because it is provided to the Designated Authority on a confidential basis and has further laid down detailed guidelines to examine claims of confidentiality. Further, it has been held that confidentiality is not a mere tool to deny disclosure to kill transparency, or to create a handicap for opposing parties. It has been laid down that for the purpose of transparency; there is an obligation on the Authority to require the parties to furnish non-confidential summaries, which shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.
- f. Unfortunately, neither of the said parties have even attempted to make good for the deficiencies in their responses, nor was any explanation provided for claiming such vital information as confidential.

E.3. Examination by the Authority

24. Various submissions made by the applicant, as well as other interested parties during the course of the investigation with regard to confidentiality, to the extent considered relevant by the Authority, are examined and addressed as follows:

25. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:

"Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated Authority on a confidential basis by any party in the course of investigation, shall, upon the designated Authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information. (2) The designated Authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated Authority a statement of reasons why summarization is not possible. (3) Notwithstanding anything contained in sub-rule (2), if the designated Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information."

26. The Authority examined the confidentiality claims of the interested parties and on being satisfied, allowed the claim on confidentiality. The Authority considers that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have

a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such by the Authority. Such information cannot be disclosed without specific permission of the party submitting it.

27. The Authority made available the non-confidential version of the evidence submitted by various interested parties by directing the interested parties to share the non-confidential version of submissions with each other through e-mails. Business sensitive information has been kept confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

F. NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

F.1. Submissions made by other interested parties

28. The submissions concerning normal value, export price and dumping margin made by the producers/exporters/importers/other opposing interested parties during the course of the investigation and considered relevant by the Authority are as follows:

- a. The applicant had constructed the cost of production of the subject goods in the subject countries based on their input cost and, therefore, the Authority is requested to adequately examine each factor carefully and make appropriate adjustments.
- b. The applicant has claimed excessive adjustments from the export price which is also intended to show a lower export price.
- c. The claims of dumping and injury margin in the application appear highly exaggerated and not based on relevant and applicable facts.
- d. The Authority must consider the actual data relevant for normal value and export price, meaning thereby dumping margin provided by the participating producers/exporters.
- e. The Authority may determine individual dumping and injury margin for the producer/exporter in this submission who had filed the exporter's questionnaire, as prescribed.
- f. The claim of the applicant industry for using a particular market situation from Oman cannot be accepted, as this claim was made for the first time in the written submissions. In this context, it is noted that notification submitted by the domestic industry merely established the minimum export price and the existence of dual pricing
- g. Moreover, in the previous investigations, concerning raw gypsum as input, the Authority has not considered that exporters from Oman are benefitted from any special circumstances. It is also submitted that the information relating to dual policy, or any other such information has not been filed by the domestic industry

and therefore, the claim relating to the particular market situation cannot be accepted.

- h. It is submitted that assuming but not admitting that the information for profits and domestic sales of the Chinese companies is considered as necessary information, non-filing of the same does not tantamount to rejection of the entire response. The information on export price provided by the Chinese companies is complete and accurate. Therefore, the authority cannot apply facts available to the information with respect to export price.
- i. The calculation of normal value for Oman based on cost parameters of applicant industry is incorrect and the Authority should accept the data reported by exporter from Oman. Alternatively, even if the Indian authority insists on using the constructed normal value, the costs used to construct the normal value must be from the producer's records and from the originating country, or even these costs must be adjusted back to reflect the conditions prevailing in the originating country.
- j. The respondents submit that the argument of the applicant on a particular market situation is highly belated. Further, the applicant has not provided any evidence of "dual pricing". The only document referred to by the applicant shows the existence of a minimum export price threshold. However, there is no evidence provided by the applicant on the control of domestic prices by the Oman Government. The administrative decision no. 246/2016 used by the applicant to allege particular market situation actually sets a minimum price threshold only for the export of raw gypsum. The fixation of minimum export price does not prove that the domestic price of raw gypsum is lower. The applicant has not provided any evidence with respect to the same.
- k. In relation to the requirement of filing separate responses by producer/exporter, the responding exporters have submitted that there is no bar to provide a single response for two related entities if both the entities have provided all the "necessary information" sought in the questionnaire response. The applicant has not pointed out a single instance where the entities have not provided the "necessary information".
- l. The submission to make Europe (combined) as surrogate is belated and therefore, cannot be accepted. Further, Europe (combined) cannot be an appropriate surrogate country as the union is not a member of the WTO and is merely a continent.
- m. The information provided by the Chinese exporters constitute necessary information as per available jurisprudence. It is further submitted that the application of facts available for the non-submission of certain information cannot be tantamount to the rejection of the entire response.
- n. The cost of production of the exporters reasonably reflects the cost associated with the production of the subject goods and rest of the claims of the applicant has no meaning.

F.2. Submissions by the domestic industry

29. The following submissions have been made by the domestic industry concerning normal value, export price and dumping margin and are considered relevant by the Authority:

- a. The domestic industry has provided sufficient evidence to support their claim of normal value and export price in their application for the purpose of the initiation. It is submitted by the domestic industry that they were not able to obtain any reliable information in relation to the prevailing prices in the subject countries. Further, the information on imports of the subject goods into the subject countries or exports to other countries was also not available in the public domain for the POI.
- b. The normal value information, based on 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 were constructed after considering the minimum export price of raw gypsum from Oman i.e., USD 12.5 / MT on the basis of the Administrative Decision No. 264/2016 dated 19.12.2016 published by Public Mining Authority, Sultanate of Oman. As regards China, being a non-market economy country, the applicant domestic industry has used the minimum export price of raw gypsum from Oman as the raw material price of raw gypsum for China. Therefore, the constructed normal value has been arrived at as per the norms followed by the authority and in accordance with the legal provisions.
- c. The domestic industry submits that the only participating exporter from Oman, has not filed the complete exporter questionnaire response and therefore, the domestic industry has requested the Authority, to kindly reject their responses in totality. They have also requested that while computing constructed normal value for them, the Authority should consider gypsum cost as USD 12.5 MT.
- d. None of the exporters from China has filed a complete exporter questionnaire response. Even the formats prescribed by the Authority have not been filed. In view thereof, the Authority ought to reject the responses of all the Chinese exporters. It is also submitted that the exporters have not disclosed their total sales channel and related entities exported had not filed complete questionnaire.
- e. The domestic industry further submitted that despite specific formats and instructions, producer / exporter from China PR namely, Linyi Excel Import & Export and Zonmay Building Materials Co., Ltd., had filed single exporter questionnaire response. Further, they have withheld the information that both the entities have exported the subject goods to India. In view of the above deficiencies and the fact that all the formats have not been filed by them, the Authority should reject their responses on this ground alone.
- f. The export price in the application is calculated based on the secondary source import data. Further, the applicant has deducted ocean freight, marine insurance, inland transportation, port handling and clearance charges, bank charges, commission, and credit costs as per the best information available with the domestic industry.

- g. The domestic industry has further requested the authority to consider prices from EU as a surrogate price prevailing in the subject countries, as none of the interested parties have provided a complete response.

F.3. Examination by the Authority

F.3.1. Determination of normal value and export price

Normal value computation

30. Under section 9A(1)(c) of the Act, the normal value in relation to an article means:

(i) the comparable price, in the ordinary course of trade, for the like article when destined 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 to 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 (b);

31. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have participated in the present investigation by filing their questionnaire responses:

- a. Global Gypsum Board Company Limited, Oman
- b. Zonmay Building Materials Co., Ltd. & Linyi Excel Import and Export
- c. Dream Brand New Materials (Pingyi) Co. Ltd
- d. Shijiazhuang Dianyu Import and Export Co., Limited

32. The exporter questionnaire response of all of the above-mentioned producers/exporters has been considered by the authority except for Zonmay Building Materials Co., Ltd. & Linyi Excel Import and Export. It is noted that Zonmay Building Materials Co., Ltd. & Linyi Excel Import and Export, have not filed the complete exporter's questionnaire response and relevant information sought by the authority despite giving sufficient opportunity to rectify the deficiency. In view thereof, it is decided not to accept its exporter questionnaire response. Accordingly, the Authority has applied facts available in terms of Rules 6(8).

33. In relation to the submission of considering exports from the EU after necessary adjustments as surrogate prices as normal value prevailing in the subject countries, it is noted that the quantum of imports from the EU is not significant. Therefore, the EU cannot be considered as a surrogate country for the subject countries.
34. In relation to the request for considering the particular market situation in Oman, it is noted that although the domestic industry had pointed to Administrative Decision No. 264/2016, it is noted that the domestic industry has not substantiated the existence of dual prices and how the same is impacting normal value calculation. In any case, in the absence of the required data, the Authority is not able to invoke the provisions of particular market situation from Oman.

Normal Value for all the producers from China PR

35. The applicant has submitted that China should be treated as a non-market economy, and the Chinese producers should be called upon to show that market economy conditions prevail in their industry with regard to the production and sale of the product. Unless the Chinese producers show that such market economy conditions prevail, their normal value should be determined in accordance with Para 7 of Annexure – I to the Anti-Dumping Rules.
36. As none of the producers from China PR have claimed market economy status for China PR, the Authority has to proceed in accordance with para 7 of Annexure – I of the Rules which reads as under:

“In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

37. The Authority notes that neither the applicants nor the other interested parties have provided any information and evidence to enable the determination of the normal value on the basis of prices, exports or constructed value in the market economy third country.
38. In view of the foregoing, and in accordance with para 7 of Annexure 1 of the rules, the Authority has considered the normal value on the basis of the price paid or payable in India. The Authority has considered the cost of production of the domestic industry as adjusted with reasonable addition for profit for the purpose of determining normal value. The normal value so determined is mentioned in the dumping margin table.

Export Price for China

Dream Brand New Materials (Pingvi) Co. Ltd.

39. The Authority notes that M/s Dream Brand New Material (Pingvi) Co Ltd (Dream Brand), a producer and exporter of the subject goods in China PR, has filed the questionnaire response. During the POI, the producer has exported *** MT of the subject goods for *** USD\$ directly to unrelated customers in India on FOB basis. The producer has claimed adjustment on account of inland transportation, port and other expenses. The Authority has examined the claims made by Dream Brand, and accordingly, the claims have been allowed. Accordingly, the net export price at an ex-factory level for Dream Brand New Material (Pingvi) Co. Ltd. has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

Shijiahuang Dian Yu Import and Export Co. Ltd., China PR (producer and exporter)

40. The Authority notes that M/s Shijiahuang Dian Yu Import and Export Co. Ltd. (Shijiahuang), a producer and exporter of the subject goods in China PR, has filed the questionnaire response. During the POI, the producer has exported *** MT of the subject goods for *** USD\$ directly to unrelated customers in India on FOB basis. The producer has provided relevant information in the form and manner required. The Authority has examined the claims made by Shijiahuang and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Shijiahuang Dian Yu Import and Export Co. Ltd. has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table.

Zonmay Building Materials Co., Ltd.

41. The Authority notes that M/s Zonmay Building Materials Co., Ltd. has exported the subject goods to their related trader, namely Linyi Excel Import and Export. The trader has ultimately sold the subject goods to Indian customers during the POI. However, the Authority has not received the details of sales by the Zonmay Building Materials Co. Ltd. (producer) to the Linyi Excel Import and Export (exporter). Due to this reason, the Authority could not calculate the export price for Zonmay Building Materials Co., Ltd.
42. In light of the facts above, the authority treats both Zonmay Building Materials Co., Ltd. And Linyi Excel Import and Export as non-cooperative in the investigation.

Other producers from China PR

43. The normal values and export price for all other non-cooperating producers and exporters of China PR is determined as per the facts available and considering the data provided by the cooperating producer and the same has been mentioned in the dumping margin table.

Normal value for Oman

Normal value for Global Gypsum Board Co LLC

44. Global Gypsum Board Co LLC, who is a producer of the subject goods in Oman has filed the questionnaire response.
45. From the response filed by GGBC, the Authority notes that the company has sold the subject goods in the domestic market directly to unrelated customers. However, it was noted that cost-related information filed by GGBC was grossly inadequate. The company has provided information related to the company as a whole but not provided any information related to the cost of subject goods in Appendix -7 and 8. In the absence of cost-related information of the subject goods, the Authority is unable to determine the cost of production and conduct an ordinary course of trade test for the subject goods. Therefore, the Authority is unable to determine the normal value for GGBC.
46. Accordingly, normal value for Global Gypsum Board Co LLC, has been constructed having regard to the cost of production in India, duly adjusted, and with reasonable SGA expense, and profit margin and the same is mentioned in the dumping margin table.

Normal value for all other producers from Oman

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

Export Price for Global Gypsum Board Co LLC, Oman

48. Global Gypsum Board Co. LLC (Global Gypsum Board), a producer and exporter of the subject goods in Oman, has filed the questionnaire response. During the POI, the producer has exported *** MT of the subject goods for USD\$ *** directly to unrelated customers in India on C&F basis. The producer has claimed adjustment on account of ocean freight, inland transportation, bank charges, port and other expenses. The claims made by the Global Gypsum Board were examined, and accordingly, the claims have been allowed. Accordingly, the net export price at an ex-factory level for Global Gypsum Board Co LLC has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table.

Other Producers from Oman

49. The export price for all other non-cooperating producers and exporters of Oman is determined as per the facts available considering the data provided by the cooperating producer is the same as mentioned in the dumping margin table below.

F.3.3. DUMPING MARGIN

50. Considering the normal value and export price as above, the dumping margins for all producers/exporters of the subject goods from the subject countries are determined as given in the dumping margin table below:

Dumping Margin Table

SN	Country	Particular	NV	NEP	DM		DM Range
			USD/MT	USD/MT	USD/MT	%	%
1	China	Dreambrand new materials (Pingyi)co., (Producer/ Exporter) China PR	***	***	***	***	110-120
2		Shijiazhuang DianYu Import and Export (Producer/Exporter) China PR	***	***	***	***	100-110
3		Any Other	***	***	***	***	120-130
4	Oman	Global Gypsum Board Co. LLC. (Producer/ Exporter) OMAN	***	***	***	***	50-60
5		Any Other	***	***	***	***	60-70

51. The Authority notes that the dumping margin from the subject countries is not only more than *de-minimus* but also significant.

G. ASSESSMENT OF INJURY AND CAUSAL LINK

G.1. Submissions made by other interested parties

52. The submissions with regard to the injury suffered by the domestic industry and the causal link made by the producers/exporters/importers/other opposing interested parties during the course of the investigation and considered relevant by the Authority are as follows:

- a. The claim of the domestic industry regarding material retardation cannot be accepted as there are producers, namely Indian Gypsum Pvt. Ltd. and Gyptech Systems Pvt. Ltd., who are already in the business of the product under consideration.
- b. It is further submitted that since the subject goods do not qualify the criteria of production, the applicant industry cannot be said to be a producer of the subject goods. Moreover, the value addition from raw material to the subject goods is very minimal, which also makes it clear that the current investigation cannot be examined under the clause of material retardation under injury.
- c. Considering value addition from gypsum boards, the subject goods cannot be considered as a new product for this present investigation.
- d. It is further submitted that the applicant industry cannot be considered as a nascent industry or an establishing industry because the value addition is insignificant (i.e., 4%) from the gypsum boards. Further, the investment done by the applicant industry

is also a minuscule percentage as compared to the total investment made by the applicant industry (company as a whole).

- e. The respondent has submitted that the applicant is not a nascent industry, and their claim that the commercial production began in October 2020 is wrong, as the applicant has been producing the product since February 2018, which is before the injury period. Therefore, the claims of material retardation do not stand. They have also requested the authority to terminate the present investigation as the applicant has attempted to mislead the authority. It is further submitted that the domestic industry is not undertaking "production" to the extent that it can command itself as engaged in the production of a product.
- f. In addition to the above, interested parties also submitted that even on account of the investment made by the domestic industry in the product under consideration, the present investigation does not pass the test of a nascent or new industry.
- g. In order to check if the industry is established, there is a need to examine the time of commencement of production, the nature of production, if the product is merely a new product line in an existing industry, size of production versus size of domestic market and stability of production. Based on these parameters, the Authority should examine the claim of the domestic industry and conclude that the domestic industry is not an establishing industry.
- h. It is submitted that the domestic industry is producing the subject goods from 2015 and therefore, they cannot be considered as a new or nascent industry.
- i. Sufficient data for material retardation has not been submitted. The Authority must examine whether the applicant is yet to find a way in the market or is already established.
- j. It is also submitted that the domestic industry is importing all the raw materials used for manufacturing boards and lamination from the subject countries. Further, an increase in raw material cannot be alleged as a factor when the domestic industry itself is producing the raw material.
- k. The inability to make a return within 2.1 years is because the commercial production of the applicant began during the pandemic when demand was lowest over the injury period.
- l. It is submitted that all the parameters have shown improvement and therefore, even on material injury the current investigation needs to be terminated.
- m. It is further submitted by the interested parties that there is substantial overlapping in the production process, commercial and research overlap, etc. in the production of the subject goods and the raw material i.e. gypsum board without lamination. Therefore, they cannot be considered the domestic industry as producers of the subject goods who can suffer any injury.
- n. The export of Omani industry to India is drastically dropping. There has been the export of small quantities in India from Oman during the last years. Therefore, their

export to the Indian market is *de-minimus*. Furthermore, the Omani company participating in this investigation stated that they stopped exporting to India since 2022.

- o. It is submitted that all injury parameters are increasing and therefore, facts are not supporting the contention of the domestic industry that they are not able to establish themselves.

G.2. Submissions by the domestic industry

53. The submissions of the domestic industry with regard to injury and causal link are reproduced below:

- a. It is submitted by the domestic industry that despite specifically being pointed out during the oral hearing by them, the respondents have not referred to any legal provision that mandates or even remotely suggests or gives any guidance with respect to any investment thresholds for considering any industry as a nascent industry, or for any other purpose. It is further submitted that since there is no legal provision nor any logical reasoning provided in this regard, the argument of the interested parties is devoid of any merit or substance and therefore, needs to be rejected.
- b. The domestic industry has further submitted that had it been the intent of the legislature to provide specific investment thresholds for the purpose of anti-dumping investigations, it would have specifically said so. The domestic industry has further pointed out that wherever numerical values were considered necessary, the law has specifically provided for the same. Further, the Authority is neither required nor supposed to traverse beyond what is specifically provided under the law and therefore, getting into investment levels of any nascent industry would not only be without the authority of law but also set unguided precedents.
- c. In relation to the submission that the subject goods do not constitute a new product, the domestic industry submitted that the term "new product" or "manufacture" has not been specifically defined in the anti-dumping laws. However, as per the Hon'ble Supreme Court the term "manufacture" means only those changes which result in a product with a new name, character and use. The domestic industry had further submitted that since the definition of manufacture is identical in anti-dumping and Excise law, the ratio of the apex court is of direct relevance and has an immense persuasive value, particularly in view of the fact that there is no logical or legal hurdle in understanding the concept.
- d. It is further submitted that investment in any project is a function of the capital requirement for that particular product. It is completely irrelevant whether the investment is "low" either in absolute terms or relative to the overall investment in the applicant company. The approach suggested by the interested parties cannot be resorted to under any circumstances as there are no norms for determining the threshold investment, in absolute or relative terms. Such an approach, unfortunately, would not only be detrimental to the applicant industry but also in complete disregard to the scheme of anti-dumping laws and procedures. What is really relevant

for the Authority is to be satisfied that the industry has made adequate investments to ensure efficiencies of production and use of appropriate technology.

- e. In relation to the overlapping of facilities, the domestic industry has submitted that the interested parties have attempted to give the impression that a new product cannot be said to come into existence if there is any overlapping in the process. It is further submitted that there could be a situation where the overlapping is substantial, even then the Authority can come to the conclusion that a new product is being manufactured. The high degree of overlapping may call for a closer examination but cannot be a decisive or conclusive test. Therefore, the real tests are those which have been given by the Hon'ble Supreme Court in the case cited above for the reasons mentioned therein.
- f. It is further submitted by the domestic industry that the so-called "overlap" in the production of the subject goods is minimal which is also restricted to costs incurred on account of overheads, marketing, etc. The contention of the interested parties that only two out of the twenty-five steps listed by the domestic industry in their application are exclusive for PUC business is factually incorrect and denied, machinery as well as plant and building for the product under consideration was completely different from the boards' manufacturing facility. They have also submitted that the value addition is more than 50%, a fact which was duly verified by the authority from the data on record. The domestic industry also relied on the previous DGTR investigations dealing with similar issues to substantiate their case.
- g. The domestic industry has also submitted that although they are producing the subject goods at one location, however, they intend to replicate similar facilities at other locations to cater to specific geographical markets, which could not be materialized due to incessant dumping from the subject countries.
- h. As regards the issue to other producers of the subject goods, the domestic industry has submitted that as per the information available with them, the other two producers who have commenced production post-POI have already shut down temporarily, due to dumped and injurious imports from the subject countries.
- i. As regards to the submission that since SG Group is using the existing infrastructure of R&D of the sister companies, this investigation cannot be considered as material retardation, the domestic industry has submitted that it has filed an anti-dumping application claiming material retardation to its establishment in the Indian market and not in other markets. Therefore, reliance on separate legal entities situated in different countries has no legal or logical bearing on the instant investigation.
- j. As regards the date of commencement of the production of the subject goods by the domestic industry, the domestic industry has submitted that they produced the subject goods first time in October 2020 in India and, prior to October 2020, they were importing the subject goods and selling in the Indian market. In view thereof, there was not even an iota of the information/evidence that suggests that the domestic industry had made any incorrect and misleading submissions.
- k. The domestic industry has suffered volume as well as price injury underselling on account of imports of the subject goods from the subject countries. The parameters

such as profits, cash profits, profit before interest, return on capital employed and market share were significantly adverse even in absolute numbers. Despite growth in terms of production and domestic sales, the domestic industry continues to incur losses on account of low-value dumped imports from the subject countries.

1. No other factor can be attributed to the material injury suffered by the domestic industry.

G.3. Examination by the Authority

54. Rule 11 of the Rules read with its Annexure-II thereto 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”.

55. As regards the consequent impact of dumped imports on the domestic industry, Para (iv) of Annexure-II of the Rules states as under-

“(iv) 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.”

56. Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for like products; and (b) the consequent impact of these imports on domestic producers of such products. Regarding the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been a significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree. For the purpose of the current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

57. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The Authority notes that the present case is the one for material retardation of the establishment of an industry. There is a need to address certain legal aspects regarding the concept of ‘material retardation’ to the establishment of an industry prior to proceeding with the injury analysis.

58. Article 3 of the WTO Agreement on the implementation of Article VI of the GATT provides no definition for 'material retardation'. The footnote 9 to Article 3 merely states as follows:

"Under this Agreement, the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."

59. Similar is the case with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, wherein Annexure-II merely clubs 'material injury', 'threat to material injury' and 'material retardation' under the definition of 'injury'. There is no further explanation as to what constitutes material retardation to the establishment of an industry.

60. However, it is clear that 'material retardation' applies only to unestablished industries and not industries that are fully established. This is true because it is not logical for the Authority to find that a domestic industry was being injured by the dumped imports (which presupposed that such an industry was already established) and at the same time the establishment of a domestic industry was materially retarded by those imports. The meaning of 'unestablished industries' has also not been provided in the Anti-Dumping Agreement, or the Act and the Rules. However, there has been a proposal at the WTO for amendment of the Anti-Dumping Agreement which provides some clarity as to the meaning of material retardation and establishment of the industry. However, the same has not yet been adopted by the members. Therefore, complete reliance cannot be placed on the same while deciding on the issue.

61. In addition to the above, the Authority has also analyzed the practice in other jurisdictions relating to the establishment of an industry. In this context, it is noted that Article 3.1 does not prescribe a specific methodology for determining whether an industry has been established. Therefore, the investigating Authority is allowed to use any reasonable methodology which is based on assumptions and inferences. However, these inferences must be based on facts and positive evidence. Further based on an analysis of the jurisprudence available on the subject, the Authority has analyzed whether the domestic industry is an establishing (nascent industry) or an established industry. In this context, the Authority has examined the following:

- a. The WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel also stressed on the importance of the degree to which the existing infrastructure is utilized for the production of the product under consideration. The domestic industry had set up a new manufacturing building, plant and machinery for the subject goods and started commercial production in October 2020. As noted above, the WTO Panel has observed that what is important is not the introduction of a new product line itself, but rather the degree of overlap with the existing infrastructure of the industry. The Authority notes that a new plant alongside the existing plant manufacturing gypsum plaster board is set up to manufacture the subject goods, and this is a new production line taking gypsum plaster board as a raw material. The degree of infrastructure overlapping in the present case is low and not significant between the existing infrastructure of the industry

producing Gypsum plaster board and the new plant producing subject goods that has been set up.

- b. As regards the submissions relating to overlapping in administrative functions, selling and marketing, distribution channel, R&D, etc., it is noted that while overlapping exists in these factors, the production process of the subject goods is distinct. The Authority has noted the contention of the applicant that some degree of overlapping would not preclude the industry from being a nascent industry. In addition to this, the fact that the domestic industry has set up a new plant having separate machinery and even a portion of the building for the production of the subject goods is also separate, cannot be ignored. Further, it is noted that the machinery used in manufacturing of gypsum boards different from the one which is used to produce subject goods. The production processes involved in the manufacturing of the subject goods differ from the production process of the gypsum board.
 - c. In relation to the submissions that the applicant is not a nascent industry, as they have been producing the product since February 2018, which is before the injury period, it is noted from records that the domestic industry started commercial production in October 2020.
 - d. As regards the submission that the amount invested in the manufacturing facilities of the subject goods is very negligible as compared to the amount invested by the company in other products, it is noted that investment in any project is a function of the capital requirement for that particular product and not the ratio of the amount invested by the company for other projects.
 - e. As regards, the submissions relating to insignificant value addition from Gypsum Boards to the subject goods is concerned, it is also noted that the value addition is substantial.
 - f. As regards the contention that the production, capacity utilization, market share and sales of the domestic industry have increased in the POI as compared to the previous year, the Authority notes that the performance of the domestic industry in terms of the above parameters is expected to improve considering that it has recently commenced production of the subject goods. As a result, thereof, the capacity utilization gradually improves. Thus, the increase in production and sales over the injury period is clearly reflective of the efforts made by the domestic industry to establish itself in the market. The Authority further notes that the phrase retardation means that dumped imports are preventing an infant industry from fully establishing itself to the point of reaching commercial stability of production which would allow it to prosper in the absence of dumped imports. Thus, in order to examine whether the imports have materially retarded the establishment of industry, the relevant aspect is not whether the industry showed some progress or made profits but the relevant aspect is its performance as against the projections made in the capex report. For this purpose, the Authority has compared the actual performance of the domestic industry with its projected performance reported in the capex report prepared by the domestic industry.
62. The Authority has taken note of the submissions of the domestic industry and all other interested parties and has analyzed the same considering the facts available on record and applicable laws. It is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while others may not. The Authority considers all

injury parameters and, thereafter, concludes whether the domestic industry has suffered injury due to dumping or not. The Authority has examined the injury parameters objectively taking into account the facts and arguments submitted by the domestic industry and other interested parties. The injury analysis made by the Authority hereunder *ipso facto* addresses all the concerns raised.

a. Assessment of Demand/ Apparent Consumption

63. The Authority has defined, for the purpose of the present investigation, the demand or apparent consumption of the product in India as the sum of domestic sales of the domestic industry, other Indian producers and imports from all sources. The demand so assessed is given in the table below.

Particulars	UoM	2018-19	2019-20	2020-21	2021-22
Imports from China PR	MT	51,880	49,857	45,375	38,610
Imports from Oman	MT	0	473	1,086	2,872
Imports from Total Subject Countries	MT	51,880	50,329	46,461	41,482
Imports from Other Countries	MT	503	165	513	72
Total Imports	MT	52,383	50,495	46,974	41,554
Share in Imports					
Subject countries	%	99%	100%	99%	100%
Other Countries	%	1%	0%	1%	0%
Applicant Industry Sales	MT	***	***	***	***
Indexed	Trend	0	0	100	336
Total Demand	MT	***	***	***	***
Indexed	Trend	100	93	95	97
Market Share in Demand					
Subject countries	%	***	***	***	***
Indexed	Trend	100	101	94	82
Other Countries	%	***	***	***	***
Indexed	Trend	100	34	107	15
Domestic Industry	%	***	***	***	***
Indexed	Trend	-	-	100	328

64. From the above table, it can be observed that during the injury investigation period, the demand has marginally declined in the POI as compared to the base year i.e., 2018-19. However, the same has increased as compared to the year 2019-20 & 20-21.

b. Volume effect of the dumped imports

65. With regard to the 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. The year-wise import data from the subject countries and other countries are given in the tables below:

Particulars	UoM	2018-19	2019-20	2020-21	2021-22
Imports from the subject countries	MT	51,880	50,329	46,461	41,482
Import from other countries	MT	503	165	513	72
Domestic Production	MT	***	***	***	***
Indexed	Trend	-	-	100	298
% Volume of import from the subject country in comparison to Indian production	%	***	***	***	***
Indexed	Trend	-	-	100	30
Demand in India	MT	***	***	***	***
Indexed	Trend	100	96	95	97
% Share of Subject Countries in Demand	%	***	***	***	***
Indexed	Trend	100	101	94	82

66. It is noted that the volume of imports from the subject countries is almost 100% of the total imports into India. Further, the share of imports from subject countries in relation to production and demand in India is also very significant.

G.3.1. Price effect of dumped imports and impact on the domestic industry

67. In terms of Annexure-II (ii) of the Rules, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to price undercutting, price suppression and price depression, if any.

a. Price undercutting

68. To determine price undercutting, a comparison has been made between the landed value of the product and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex-factory level:

Particulars	UoM	China PR	Oman	Subject countries
Import Quantity	MT	38,610	2,872	41,482
Landed value	Rs/MT	15,719	17,862	15,867
Domestic Selling Price	Rs/MT	***	***	***
Domestic Selling Price (Indexed)	Trend	100	100	100
Price Undercutting	Rs/MT	***	***	***
Price Undercutting	%	***	***	***

Price Undercutting	Range	50-60	30-40	50-60
Projected Selling price	Rs/MT	***	***	***
Domestic Selling Price (Projected) (Indexed)	Trend	100	100	100
Price Undercutting	Rs/MT	***	***	***
Price Undercutting	%	***	***	***
Price Undercutting	Range	45-55	30-40	45-55

69. The Authority notes that the landed price of imports is below the selling price of the domestic industry, resulting in positive and significant price undercutting. It is also noted that the price undercutting is also substantially positive when compared to the selling price as per the projections of the domestic industry.

70. The domestic industry contends that because of this aggressive pricing of the exporters from the subject goods, the domestic industry was unable to increase its sales volume and market share. Moreover, they are also not able to recover their complete cost. It has been further submitted that the domestic industry is not able to increase its market share due to significant price undercutting.

b. Price suppression/depression

71. Since the domestic industry is at a nascent stage, in order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress the prices to a significant degree or prevent the price increase which otherwise would have occurred in the normal course, the Authority has compared the landed value of the imports from the subject countries, the domestic selling price and the cost of sales of the PUC during the POI. The table below shows the comparison among the factors mentioned above:

Particulars	UoM	POI
Landed value from subject countries	Rs/MT	15,867
Trend		100
Domestic selling price	Rs/MT	***
Trend		100
Cost of Sales Rs. /MT	Rs/MT	***
Trend		100

72. It is noted from above that the landed value of imports from the subject countries are very low as compared to both domestic selling price as well as cost of sales. Thus, the landed price of subject goods from subject countries are preventing the domestic industry to increase its selling price to the remunerative levels. Thus, the prices of the domestic industry are suppressed and depressed.

G.3.2. Economic parameters relating to the domestic industry

73. Annexure-II to the Rules requires that determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped

imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital investments. The various injury parameters relating to the domestic industry are discussed below:

a. Production, sales & capacity utilization

74. The performance of the domestic industry with regard to production, domestic sales, capacity and capacity utilization is as follows:

Particulars	UoM	2020-21	POI	Projected
Capacity (MT)	MT	***	***	***
Trend	Indexed	100	100	100
Total Production (MT)	MT	***	***	***
Trend	Indexed	100	298	326
Capacity utilization Annualized	%	***	***	***
Trend	Indexed	100	298	326
Domestic Sales	MT	***	***	***
Trend	Indexed	100	336	373

75. It is noted that:

- a. During the injury period, the capacity, production, capacity utilization and sales have increased over the period of investigation, as the domestic industry commenced production.
- b. However, the domestic industry was not able to achieve its targeted projections during the period of investigation.

ii. Market share

76. Market share of alleged dumped imports and the domestic industry have been examined as below:

Particulars	UoM	2018-19	2019-20	2020-21	POI
Total Demand	MT	***	***	***	***
Trend	Indexed	100	96	95	97
DI % share of Total Domestic sales in Demand	%	***	***	***	***
Trend	Indexed	-	-	100	330
% Share of Subject Countries in Demand	%	***	***	***	***
Trend	Indexed	100	101	94	82
% Share of Other Countries in Demand		***	***	***	***

Trend	Indexed	100	34	107	15
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77. It is noted that the subject imports hold a significant share of the market in India throughout the injury period. Since there was no production in the initial two years, the imports from the subject countries and other countries were catering to the entirety of the demand. Even after the domestic industry has started production, the subject imports have commanded a significant share of the Indian market.

iii. Profits, Return on investment and cash profit

78. Since the domestic industry is at a nascent stage, in order to analyze the profitability, cash profits and return on capital employed of the domestic industry, the Authority has compared projected profitability with the performance of the domestic industry in the POI. Profits, return on investment and cash profits of the domestic industry over the injury period is given in the table below:

Particulars	UoM	Projections	POI
Domestic Sales Quantity	MT	***	***
Trend	Indexed	100	90
Ex-Factory Cost of Sales	Rs/MT	***	***
Trend	Indexed	100	135
Net Sales Realization	Rs/MT	***	***
Trend	Indexed	100	103
Profit / Loss	Rs/MT	***	***
Trend	Indexed	100	-57
Profit / Loss	%	***	***
Trend	Indexed	100	-56
Depreciation	Rs/MT	***	***
Trend	Indexed	100	96
Cash Profit	Rs/MT	***	***
Trend	Indexed	100	-43
Interest Cost	Rs/MT	***	***
Trend	Indexed	100	111
Capital Employed	Rs/MT	***	***
Trend	Indexed	100	100
Return on Capital Employed	Rs/MT	***	***
Trend	Indexed	100	-57

79. The Authority notes that the profitability of the domestic industry has been severely affected in the period of investigation. It indicates that the domestic industry was not able to increase its prices to a remunerative level. It is further noted that the cost of sales increased whereas the selling price has not increased as per projections.

80. The profitability of the domestic industry has considerably suffered as it has made losses as compared to the projected profit. Even the cash profit is also negative. As per the

submission of the domestic industry, because of this situation, the expansion plan at different locations was put on hold.

iv. Inventories

81. The inventory position of the domestic industry over the injury period is given in the table below:

Particulars	Units	2020-21	POI
Opening stock	MT	***	***
Closing stock	MT	***	***
Average stock	MT	***	***
Trend	Indexed	100	231

82. It is noted that the average inventories of the domestic industry have increased in the period of investigation. It has been submitted that the domestic industry has kept projections at lower capacity utilization in the initial years to avoid piling of inventory and to minimize inventory carrying cost. However, due to dumped and non-remunerative imports, inventory of the domestic industry doubled in the POI.

v. Employment, Wages and Productivity

83. The Authority has examined the information relating to employment, wages and productivity, as given below:

Particulars	Unit	2020-21	POI	Projections
Employees	No.	***	***	***
Trend	Indexed	100	134	134
Productivity per day	No/MT	***	***	***
Trend	Indexed	100	298	326
Wages	Rs. / No	***	***	***
Trend	Indexed	100	89	177

84. It is noted from the above table that:

- a. Productivity has increased in the POI as compared to the preceding years.
- b. The domestic industry has claimed that the number of employees engaged by them increased marginally during the POI.

vi. Magnitude of dumping

85. The magnitude of dumping is an indicator of the extent to which the imports are being dumped in India and are consequently causing or likely to cause injury to the domestic industry. It is noted that imports from the subject countries are entering into India at dumped prices and the margin of dumping is positive, above *de minimis* limits, and also significant.

vii. Growth

86. It is noted from the records that growth in volume as well as price parameters are very low in terms of comparison with the projections.

viii. Ability to raise capital investment

87. It is noted that the domestic industry is incurring actual losses and the return on capital employed is also significantly negative, as compared to projected positive profits and returns. Further, the market share is also abysmally low. This indicates that the ability of the domestic industry to raise fresh capital investments has been adversely impacted due to the subject imports.

H. EXAMINATION OF CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

88. The Authority examined known factors other than the dumped imports and ascertained whether these are at the same time have been injuring the domestic industry, so that the injury caused by these other factors, if any, is not attributed to the dumped imports. Factors which are relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped 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.

a. Imports from other sources

89. The imports of the subject goods from sources other than the subject countries are below *de-minimis*.

b. Contraction in demand

90. There is slight decline in demand with respect to base year but demand has increased compared to 2019-20 and 2020-21 for the product under consideration in India. The demand has increased in the period of investigation.

c. Changes in the pattern of consumption

91. The pattern of consumption for the product under consideration has not undergone any change. Therefore, changes in the pattern of consumption cannot be considered to have caused injury to the domestic industry.

d. Trade restrictive practices and competition between the foreign and the domestic industry.

92. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

e. Developments in technology

93. Technology for production of the product concerned has not undergone any change. Thus, developments in technology cannot be regarded as a factor of causing injury to the domestic injury.

f. Export performance

94. The domestic industry is not exporting the subject goods. Therefore, injury caused is only because of domestic operations.

g. Performance of other products being produced and sold by the domestic industry

95. The Authority has only considered data relating to the performance of the subject goods. Therefore, the performance of other products produced and sold are not a possible cause of injury to the domestic industry.

96. The Authority, thus, concludes that the domestic industry has suffered injury on account of the dumped imports from the subject country

I. Magnitude of injury margin / Price underselling

97. The Authority has determined the non-injurious price for the domestic industry on the basis of principles laid down in the Rules read with Annexure-III, as amended. The non-injurious price of the subject goods has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject countries for calculating the injury margin. For determining the non-injurious price, the best utilization of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilization of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure-III of the Rules and being followed.

98. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below

Injury margin Table / Price Underselling

SN	Country	Particular	NIP	LV	IM		IM Range
			USD/MT	USD/MT	USD/MT	%	%
1	China	Dreambrand new materials (Pingyi)co.,	***	***	***	***	0-10

		(Producer/ Exporter) China PR					
2		Shijiazhuang DianYu Import and Export (Producer/Exporter) China PR	***	***	***	***	10-20
3		Any Other	***	***	***	***	10-20
4	Oman	Global Gypsum Board Co. LLC.(Producer/ Exporter) OMAN	***	***	***	***	20-30
5		Any Other	***	***	***	***	50-60

99. It is noted that the injury margin is positive and significant for cooperating producers as well as all the subject countries for POI.

J. Indian Industry's Interest & Other Issues

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

101. The Authority considered whether imposition of anti-dumping duty shall have significant adverse public interest. For the purpose, the Authority examined the information on record pertaining to the interests of various parties, including the domestic industry, other domestic producers, importers and consumers of the product.

102. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers, and other interested parties. The Authority also prescribed a questionnaire for the consumers to provide relevant information regarding the present investigations, including possible effect of anti-dumping duty on their operations. The Authority sought information on, inter-alia interchangeability of the product supplied by various suppliers from different countries, the ability of the domestic industry to switch sources, effect of anti-dumping duty on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of anti-dumping duty.

103. Even though the Authority had prescribed formats for the users to quantify the impact of anti-dumping duty and elaborate how imposition of anti-dumping duty shall adversely impact them, it is noted that none of the users provided any relevant information. The domestic industry claimed that the impact of duties on the end consumers will be negligible and will not impact them. However, imposition of the duties will give legitimate protection to the domestic producers of the subject goods to establish themselves.

POST DISCLOSURE COMMENTS

104. The Authority issued the disclosure statement on 20.09.2023 disclosing essential facts under consideration in the investigation and inviting comments from all the interested parties. Most of the issues raised in the post disclosure comments have already been raised earlier and addressed appropriately hereinabove. Additional submissions to the extent relevant have been examined below:

Submissions of the other interested parties:

- a. The rejection of the normal value of Global Gypsum Board Co. LLC is without any legal and factual basis. The company has provided information on the PUC which can be crosschecked from various appendices filed. However, the information is rejected based on incorrect assumption and without giving opportunity to the exporter to clarify the same. Global Gypsum provided all the necessary information on cost and prices for the PUC. Determination on rejection of normal value without onsite or on-desk verification and without giving an opportunity to the exporter to explain/clarify the same is in violation of the principle of natural justice.
- b. Global gypsum has provided all necessary information for normal value determination and therefore, the Authority cannot apply facts available to that information. Reliance is placed on the WTO Panel in the US- Steel plates from India.
- c. The disclosure statement does not disclose how a separate facility to manufacture the product under consideration set alongside the existing facility manufacturing its raw material "Gypsum plaster Board" indicated that a new industry has been set up rather than a new product line. The disclosure statement except for stating its existence has not dealt with in detail 'the degree' of overlap of administrative functions.
- d. There is an overlap of (1) research facilities since the petitioner sells the PUC worldwide through Gyprex, and as sister companies, any research and development requirement for the product is met by the company globally; (2) customers and distribution channels, as an established brand, the petitioner is able to cater both requirements of the PUC raised through tenders and for residential purposes. (3) branding, marketing, customers, distribution channel, research, technical data sheet etc. as the applicant has used the same brand name 'gyprex' for selling the product prior to 2018, for tenders to provide the PUC and for selling the product through its new production facility. The disclosure statement does not elaborate on the factors that led to the conclusion that there exists different client networks and distribution channels which could state that it was a new industry.

- e. With respect to the distinctiveness of the production process, reliance is placed on investigations launched into ceramic tiles from India around the world to hold that having a separate facility to merely laminate a product will not make the PUC a new product but merely a different type of the gypsum product.
- f. Further, as per the meaning of 'production' as provided in SDH Equipment, there is no substantial transformation as the physical and technical properties, production technology, manufacturing process, plant and equipment, function and uses, consumer perception and customs classification remain largely the same for laminated gypsum board and its raw material 'un-laminated gypsum board'.
- g. While investment in any project is a function of the capital requirement for that particular product, such investment is required even where a company adds a new product line. The disclosure statement does not provide any reasoning as to why investments made by Saint Gobain towards the PUC was a new industry rather than a new product line or whether the investment made can be categorized as "genuine and substantial". The respondents have placed reliance on the proposal at the WTO for the Amendment of Anti-Dumping Agreement which clarifies the meaning of 'material retardation' and 'unestablished industries'.
- h. The claim of 50% value addition by the applicant was only made during oral hearings, not in writing. Therefore, the information cannot be taken into consideration by the Authority as per Rule 6(6) of the Rules. The disclosure statement does not provide a meaningful analysis of the information considered when examining that there is substantial value addition by the petitioner. The meaning of value addition is value of conversion of the material. The respondents strongly believe that the alleged value addition has been claimed by adding the value of purchased raw materials. Respondents strongly believe that the petitioner has considered gypsum powder for determining value addition'. Reliance is placed on findings in the matter of CPVC, wherein resin and compound were considered to be the same product, despite significant difference in NIP.
- i. Share of imports are declining in favour of Saint-Gobain, which risks monopolization and consequent predatory pricing. The post-POI increase in price is an indication of this.
- j. The injury margin as proposed in the disclosure statement is impossible in so far as residual margins are concerned. Thus, there is some error in the injury margin calculations.
- k. The applicant has continued to claim that Asiatic Gypsum and Fourline Gyplam Pvt Ltd have 'temporarily stopped production. The respondents are unaware if 'this information' has been placed on record and verified by the Authorities as the disclosure statement is silent regarding the same. In the event, the same has been placed on record, the respondents request the same be shared and reserve the right to comment on the same.
- l. It is requested that the anti- dumping duty be imposed only as fixed quantum of anti-dumping duty (fixed form of duty), expressed as duty per MT in US\$. Benchmark form

of duty will be inappropriate since freight form a significant part of the landed price, which were unusually high during COVID. The response on record shall show that the normal freight cost involved is US\$ 30-40 pmt, whereas the average freight cost during the POI was US\$ 120 pmt. This should be reduced from the export price to arrive at undistorted price (distortion due to freight). The ad valorem duties will be ineffective due to exchange rate fluctuations.

- m. That India has violated the requirements of article 5.5 of the anti-dumping agreement regarding by not issuing intention letter prior to the initiation.
- n. That the Indian Authorities should ensure that only the product under investigation will attract duties and no other product. It is further submitted that the imports of the product under consideration should only be used for analysis purpose.
- o. That the time provided for making comments on the disclosure statement is very short. Moreover, this limited period does not provide sufficient opportunity for interested parties to present their views comprehensively and may impede the representation of diverse perspectives.
- p. That the imports from Oman is *de-minimis* and moreover, exporters from Oman have stopped exporting the subject goods to India. Therefore, any injury to the domestic industry is because of China.
- q. That the construction of normal value for Oman is inconsistent with Article 2.2 of the anti-dumping agreement. In this case, the Government of Oman has requested the Authority to disclose data and calculations used to adjust the normal value to reflect selling prices within Oman, ensuring that these amendments were not intended to increase the normal value for Oman.
- r. That the Authority should have thoroughly examined the market conditions and the presence of other domestic producers before concluding that the domestic industry is suffering injury. Further, the Authority should check whether the applicant industry accounts for 50% of the production or below. Further, the DGTR has also not checked whether the application made by/or on behalf of the domestic industry is supported by a significant percentage of producers.
- s. Both the plain gypsum board and the PUC are used for ceiling applications and to that extent ~~extend~~ perform the same function. Even if laminated boards are preferred more on commercial facilities while the plain boards are preferred more on residential or industrial ceilings, it does not change the fact that the functions and usage of both are the same.
- t. It is requested that the Authority clarifies that mineral fibre sound absorption sheets or mineral fibre boards do not form part of the PUC in the present investigation. Such clarification is warranted because the mineral fibre sound absorption sheets and the PUC have a common HS classification code. It is submitted that, both the products have different raw materials, different product segments, different market demand and even the purpose for using both the products by the users are different.

Submissions of the domestic industry

105. Following submissions have been made by the domestic industry:

- a. That the exporters have not provided critical information even to the Authority and despite that the Authority, instead of rejecting their responses, proposes to reward them by giving them individual duties. Further, confidentiality on the essential information has deprived the domestic industry, its right to comment on the same and assist the Authority in reaching the correct conclusion. The domestic industry further requested the copies of all the correspondence with the exporters regarding completion of their responses.
- b. That the acceptance of the incomplete responses will create a very bad and unworkable precedent wherein the exporters will decide which information to give and which not to give. Moreover, the Authority would find it extremely difficult to follow the approach adopted in the instant case in other cases which comes before it. Therefore, responses of the exporters must be rejected.
- c. That the response filed by GGBC should not be accepted by the Authority, as they have failed to provide the information required for normal value computation. It is important to highlight that the exporter has intentionally not provided the costing information, as they want to withhold the actual conversion ratio from SQM to MT and also the actual price at which they are procuring the principal raw material i.e., raw gypsum. It is further submitted that the Authority in the case of new pneumatic radial tyres of rubber for buses and lorries, with or without tubes and/or flaps from Thailand has rejected exporters from Thailand for non-submission of normal value related information.
- d. Dream Brand New Materials (Pingyi) Co. Ltd. and Shijiahuang Dian Yu Import and Export Co. Ltd., China PR (producer and exporter), have not provided the information as per the prescribed formats. Since the exporters from China have not even sought any relaxation from the Authority, their response cannot be accepted in terms of the practice of the Authority. Further, this acceptance will encourage manipulations, as exporters will pick and choose the information that suits them the best.
- e. As regards the observation of the Authority in paragraph 34 of the disclosure statement regarding *existence of dual prices and how the same is impacting normal value calculation*, it is submitted that once the domestic industry has submitted *prima facie* evidence of administered prices (minimum export price of raw gypsum is 12.5 USD / MT), the onus to rebut the same would be on the Government of Oman and the exporter. To the best of our information, neither the Government nor the exporters from Oman have bothered to provide the relevant information. Moreover, in the absence of full cooperation from GGBC, the Authority ought to have accepted the un rebutted claim of the domestic industry and constructed its normal value taking into account gypsum price as USD 12.5 / MT. This request is without prejudice to the request of the domestic industry that the complete questionnaire response of the exporter from Oman needs to be rejected.
- f. In relation to the issue of new product from a new industry, it is submitted that the respondent parties have not been able to appreciate as to when a new product is said to have come into existence. The term “new product” or “manufacture” have not been

specifically defined in the anti-dumping laws. However, Rule 2(b) of the Anti-dumping Rules, while defining the term "domestic industry" refer to those domestic producers engaged in the "manufacture" of the like article. It is pertinent to note that the term "manufacture" has not been defined specifically in the Rules. It is further submitted by the domestic industry that they are fully aware that the definitions of another statute cannot be *ipso facto* borrowed in another statute. It would be most appropriate to adopt the same principles for the purpose of anti-dumping laws as the definition in the anti-dumping laws is similar to that in section 2(f) of the Central Excise Act, 1944. In both the statutes, the definition of "manufacture" is inclusive definition without actually defining the term. Thus, the fact whether a new product has emerged or not has to be ascertained in the context of the jurisprudence available. The activities carried out by the domestic industry are fully in line with the ingredients of the concept enunciated by the Hon'ble Supreme Court.

- g. As regards the criterion of "overlapping" it is submitted that the so-called "overlap" in the production of the subject goods is minimal, which is also restricted to costs incurred on account of overheads, marketing, etc. Further, there is not a single machine which is common to the production of the subject goods and its raw material.
- h. In relation to overlapping of utilities, marketing and distribution channel and customer contacts and human resource department is concerned, it is reiterated that such overlapping is not relevant and cannot lead to denial of claim for material retardation to the domestic industry.
- i. As regards the value addition criterion, domestic industry submitted that value addition has been inducted for only a limited purpose and there would be no occasion to use the principle or the numerical criterion for any other purpose whatsoever. It is for this reason the Authority has never used this criterion which is alien for the purpose of material retardation analysis.
- j. It is submitted that the dumping margin and injury margin is not only positive but also substantial. This shows that the domestic industry is suffering on account of imports from the subject countries.
- k. It is requested to recheck the quantum of imports of the subject goods from the subject countries and other countries. There is a difference in the import quantities between import data as per their petition and as used by the Authority in the disclosure statement.

Examination by the Authority:

- 106. The Authority notes that most of the submissions raised by the interested parties are repetitive and have already been addressed hereinabove. The submissions made by the interested parties, to the extent relevant and not addressed elsewhere, are examined below:
 - a. As regards the submission of violation of Article 5.5 of the anti-dumping agreement, it is noted that the DGTR has duly informed the Embassy of Oman about the receipt of the application prior to initiation. Therefore, there is no violation of Article 5.5 of the anti-dumping agreement.

- b. As regards the applicability of the duties, it is noted that only the product under consideration will be subject to anti-dumping duties irrespective of HS classification. Similarly, non-subject goods will not attract anti-dumping duties even if they are coming under the HS Codes of the PUC.
- c. In relation to the time provided for making comments on the disclosure statement, the Authority has noted that none of the interested parties had requested any extension.
- d. Imports from Oman are above *de-minimis*, as per the available data with DGTR. Further, as regards stopping of exports of the subject goods from Oman is concerned, no data / evidence / undertaking is filed to substantiate that there will be no exports of subject goods from Oman and therefore, same cannot be accepted.
- e. As regards the disclosure of normal value related information from Oman is concerned, it is noted that since the exporter from Oman has not provided complete information in relation to the determination of normal value, the Authority has rejected the information pertaining to normal value and applied facts available.
- f. As regards the contention of the Government of Oman relating to the applicant constituting eligible domestic industry for the purpose of the investigation, the Authority has sufficiently dealt with the domestic industry's standing and the injury suffered by it in the appropriate sections of the final findings.
- g. As regards the submission that the rejection of the normal value of Global Gypsum Boards Co. LLC is without any legal basis, and several cases cited by the domestic industry, the Authority notes that normal values and export prices have been determined in the past cases taking into account the fact and circumstances of each case, as per anti-dumping rules, and Agreement on anti-dumping. In this particular case also, the Authority has examined the information submitted by the exporters, and gave full opportunity to them to submit the relevant information which was not provided in their response. Based on the information provided, after examining the facts, the authority considers it appropriate that information given by the company with regard to export price can be considered while the information given by the company for normal value cannot be accepted. The argument of the exporter for acceptance of normal value is therefore rejected. The Authority considers that this provides a balance to the conflicting claims put forward by the two sides.
- h. Regarding the issue of dual pricing and particular market situation, the Authority notes that the relevant submissions have already been dealt with in the appropriate sections of this findings.
- i. As regards the submission that the exporters have not provided the complete information relating to excess confidentiality, the Authority notes that these issues have already been dealt with in the appropriate section of this findings. Since the information relating to exports to India is complete and verified by the Authority, the Authority has accepted their export price for the purpose of individual margins.
- j. Regarding the conversion norms and higher landed value compared to the export price, it is submitted that during the period of investigation, the ocean freight was substantially

high compared to the normal situation. This high freight resulted in higher landed value. Moreover, the Authority has verified the data and only the verified data has been used for the purpose of this investigation. Therefore, no prejudice will be caused to any party.

- k. As regards the submission that the disclosure statement incorrectly determines that the product under consideration is a new product and new industry, the Authority notes that the claims of the interested parties are dealt with in detail at the appropriate place in the findings. Further, the domestic industry has established during the course of the investigation that the subject goods fulfil all the criteria of a new industry and that the establishment of the industry is materially retarded due to dumped and injurious imports.
- l. As regards the submission of the interested parties that the claims of the domestic industry regarding significant value addition remain unsubstantiated, the Authority notes that it has already verified the costing and other details of the domestic industry, which substantiate such claims. It is also noted by the Authority that the exporters have merely alleged the value addition percentage. However, none of them have provided complete costing information to substantiate their claim of value addition. On the other hand, complete costing information was filed by the domestic industry in their application and the same has been considered by the Authority while arriving at its conclusion.
- m. As regards the contention regarding the increase in price of the PUC post POI, the Authority notes that such claim has been made for the very first time in the post disclosure comments. Further, the source of the data provided in the post disclosure comments has not been provided to the interested parties. Considering that the submission is belated and that the applicant would not get a chance to rebut this contention, the Authority is not in the position to accept this contention as it would go against the efforts of the Authority to keep the investigation fair.
- n. As regards the submission concerning import volume and injury margin of non-cooperating exporters, the Authority has re-examined the relevant computations to the extent necessary and the final findings have been reached only after making the necessary adjustments.
- o. As regards the contention regarding the standing of the applicant, the Authority notes that relevant submissions have already been dealt with at appropriate place in this finding.
- p. As regards the request for imposition of fixed form of duty, the Authority accepts the contention of the interested party and is recommending fixed form of duty through the present final findings.

CONCLUSIONS AND RECOMMENDATIONS

107. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of dumping and consequent injury to the domestic industry, the Authority concludes that:

- a. The product under consideration has been exported to India at a price below the normal value, resulting in dumping.

- b. The dumping of the subject goods has materially retarded the establishment of the domestic industry in India. The examination of the subject imports and the performance of the domestic industry clearly shows that the volume of the subject imports in absolute and relative terms has remained high even after the commencement of commercial production in India. The imports are priced below the actual and target prices of the domestic industry leading to price suppression. At current prices, the domestic industry will not be able to achieve its target performance. The domestic industry has not been able to produce the product to the extent it could have produced. Further, despite significant demand for the product in the country, the domestic industry has not been able to sell even to the limited extent it has produced, and has seen significant increase in closing inventories. The domestic industry is suffering significant financial losses and negative return on investment.
- c. The material retardation to the establishment of the domestic industry in India is due to the subject dumped imports from the subject countries.
- d. The information on record shows that the non-imposition of the anti-dumping duty will adversely and materially impact the indigenous production. On the other hand, there would be no material impact of imposition of the anti-dumping duty on the consumers or downstream industry or the public at large.
- e. On the basis of the information provided by the interested party and the investigation conducted, the Authority is of the view that imposition of the anti-dumping duty will not be against the public interest.

108. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, the exporter, the importers and the other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of the anti-dumping duty is required to offset the dumping and consequent injury. The Authority considers it necessary to recommend the imposition of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject countries.

109. Having regards to the lesser duty rule followed, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject countries for a period of 5 years, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Column 7 of the duty table appended below. The landed value of the imports for this purpose shall be the assessable value as determined by the Customs under Customs Act, 1962 and applicable level of the customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

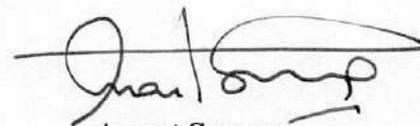
Duty Table

Sl. No	Heading	Description	Country of origin	Country of Export	Producer	Amount of Duty	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	68069000/ 68080000/ 68091100/ 68091900/ 68099000 / 70195900/ 73083000	Gypsum Board / Tiles with lamination at least on one side	China PR	China PR	Dream brand new materials (Pingyi) co. ltd.	23.46	MT	USD
2	-do-	-do-	China PR	China PR	Shijiazhuang Dian Yu Import and Export co. ltd.	35.68	MT	USD
3	-do-	-do-	China PR	Any country including China PR	Any other producer excluding producers mentioned in Sl. No. (1) to (2) above	47.62	MT	USD
4	-do-	-do-	Any country Other than subject countries	China PR	Any	47.62	MT	USD
5	-do-	-do-	Oman	Oman	Global Gypsum Board Co. LLC.	71.80	MT	USD

6	-do-	-do-	Oman	Any country including Oman	Any other producer excluding producers mentioned in Sl. No. (5)	91.42	MT	USD
7	-do-	-do-	Any country Other than subject countries	Oman	Any	91.42	MT	USD

FURTHER PROCEDURE

110. An appeal against the recommendation of the Designated Authority in these final findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.



Anant Swarup
Designated Authority