

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

NOTIFICATION

New Delhi 15th January, 2013.

Final Findings

Subject: Anti-dumping investigation concerning imports of Plain Gypsum Plaster Boards, originating in or exported from China PR, Indonesia, Thailand, and UAE.

No. 14/45/2010-DGAD:- Having regard to the Customs Tariff Act 1975 as amended in 1995 and thereafter (hereinafter 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 referred to as the Rules) thereof:

A. Background of the case:

1. The background of the case is as follows:

- i. Whereas M/s. Saint-Gobain Gyproc India Ltd, Mumbai (hereinafter referred to as the domestic industry) filed an application before the Designated Authority (hereinafter also referred to as the Authority) for initiation of Anti-dumping duty investigation concerning imports of Plain Gypsum Plaster Boards of all thicknesses and dimensions (hereinafter also referred to as the subject goods), originating in or exported from China PR, Indonesia, Thailand and UAE (hereinafter referred to as the subject countries) and requested for levy of anti-dumping duties on the subject goods.
- ii. Whereas, the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 21st July 2011, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries, to determine the existence, degree and effect of alleged dumping and to recommend the anti-dumping duty, in accordance with the Customs Tariff Act 1975 as amended in 1995 and thereafter (hereinafter 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 referred to as the Rules) thereof.
- iii. Whereas, the Designated Authority issued the Preliminary Findings vide Notification No. 14/45/2010-DGAD dated, 19th March 2012 and recommended imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries.

- iv. Whereas, the Designated Authority conducted an oral hearing on 10th April, 2012 followed by another oral hearing on 26th November, 2012, due to the change in the incumbency in the office of the Designated Authority and written submissions and rejoinder submissions were made by the interested parties.
- v. Whereas, the Designated Authority had earlier issued a disclosure statement on 6th September, 2012 disclosing the essential facts of the investigation to the interested parties. The present disclosure statement is being issued due to the change in the incumbency in the office of the Designated Authority and following the written submissions and rejoinder submissions.

B. PROCEDURE

- 2. Procedure described below has been followed with regard to the subject investigation:
 - i. The Authority notified the embassies of the subject countries in India about the receipt of the application for anti-dumping investigation and imposition of anti-dumping measures on the imports of the subject goods, originating in or exported from the subject countries, in accordance with sub-Rule 5(5) of the Anti-dumping Rules supra, before proceeding to initiate the investigation.
 - ii. The Authority issued a public notice dated 21st July 2011, published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries.
 - iii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the Applicant) and industry associations and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the Anti-dumping Rules.
 - iv. The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India (whose details were made available by the Applicant) and gave them opportunity to make their views known in writing within forty days from the date of the letter.
 - v. The Authority provided a copy of the non-confidential version of the application of the domestic industry to the known exporters and the embassies of the subject countries in India in accordance with Rule 6(3) of the Anti-dumping Rules. A copy of the non-confidential version of the application of the domestic industry was also provided to other interested parties, wherever requested.
 - vi. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the Anti-dumping Rules:

S.N.	Name of Producer/ Exporter

1	Gypsemna Company (L.L.C) PO Box 74682, Plot No. 51 MR2 Industrial City of Abu Dhabi (ICAD-II) Mussafah, Abu Dhabi, United Arab Emirates.
2	The Siam Gypsum Industry (Saraburi) Co., Ltd. No.9, Pakin Bldg,5th Floor, Ratchadapisek Road, Dindang, Bangkok -10400, Thailand
3	Pt. Siam Indo Gypsum Industry Jl. Inspeksi, Kalimalang Km 2 kp Cikedokan RT/RW. 001/01 Cibitung, Bekasi 17520, Indonesia
4	Pt Petrojaya Boral Plasterboard Graha Mobisel building 4th Floor, Mampang, Prapatanraya No 139 Jakarta, Selatan 12790 Indonesia
5	Shandong Baier Bbuilding Materials Ziqiu Pingri Linyi Shandong Linyi City , China PR
6	Linyi HuameiGypsum Building Materials Co.Ltd Luozhuang District, Linyi, Qingdao, China PR
7	CNBM International Corporation Floor 17th No.4 Building Zhuyu International Commercial Center No.9, Shouti South Road Haidian District, China PR

vii. In response to the initiation notification, the following producers/exporters from the subject countries filed exporters questionnaire response in the prescribed format:

- (a) M/s Gypsemna Co. L.L.C., Abu Dhabi, UAE.
- (b) M/s Siam Gypsum Industry (Songkhla) Co. Ltd. Bangkok, Thailand.
- (c) M/s Siam Gypsum Industry (Saraburi) Co. Ltd. Bangkok, Thailand.

viii. After the initiation of the investigation, another company namely M/s Knauf LLC, Dubai, UAE had submitted only a letter informing the Authority that they have not exported the subject goods during the POI. Subsequent to the issue of the Preliminary Finding by the Authority, M/s Knauf also submitted exporter's questionnaire response. But, since the company did not export the subject goods to India during the POI, the Authority has not accepted their belated response.

ix. Importers' Questionnaires were sent by the Authority to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:

S.No.	Name of Importers/Exporters
1	Sastha Senior Building Product, 34 Spurtank Road, Chetpet, Chennai 600 031
2	Lafarge Boral Gypsum India Private Limited, A-10 Green Park, New Delhi-110016

3	Lafarge Boral Gypsum India Pvt Ltd, Door No.34 Spurtank Road , Chetpet, Chennai 600 031
4	Vikash Trading Company, No.10/12nd Floorold, Bangalore Road, Hosur 635 109, Tamil Nadu
5	Total Solutions Building Material Co,Head office 318,3rd Cross, Baba Lane,Dharga Mohalla, Old Madras Road, Bangalore-16

- x. Importer's questionnaire response in the prescribed format were received from the following importers/users of the subject goods In India:
- (a) M/s Vikas Trading Company, Bangalore.
 - (b) M/s Aramstrong World Industries, Mumbai.
 - (c) M/s Lafarge Boral Gypsum India, Gurgaon, (Renamed as M/s Boral Gypsum India Pvt. Ltd).
- xi. Submissions were also made by M/s Total Solution Building Materials Co Ltd, Bangalore and M/s India Gypsum, Cochin.
- xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xiii. Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xiv. Investigation was carried out for the period starting from 1st January 2010 to 31st December 2010 (POI). The examination of trends, in the context of injury analysis covered the period from April 2007-March 2008, April 2008-March 2009 and April 2009-March 2010 and the POI.
- xv. The Designated Authority issued the Preliminary Findings vide Notification No. 14/45/2010-DGAD dated, 19th March 2012 and recommended imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries.
- xvi. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided opportunity to all the known interested parties to present their views orally in the oral hearing held on 10th April, 2012 and 26th November, 2012. The parties, which presented their views in the oral hearings, were requested to file written submissions and rejoinders of the views expressed by them orally.
- xvii. The submissions made by the interested parties during the course of the investigation, including comments received post disclosure, considered relevant by the Authority, have been addressed in this final finding.

- xviii. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the interested parties.
- xix. In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to the known interested parties vide disclosure statement dated 6th September, 2012 and 4th January, 2013 and comments received thereon, considered relevant by the Authority, have been addressed in this final finding.
- xx. *** in this Final Finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- xxi. 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 considered such interested parties as non-cooperative and recorded this final finding on the basis of the facts available.
- xxii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xxiii. The competent Authority has extended the time period for completing the subject investigation up to 20th January, 2013 vide their letter No. 354/70/2012-TRU dated 3rd October, 2012.
- xxiv. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs 46.44.

Litigation before the High Court of Madras

3. A Writ Petition was filed by M/s Boral gypsum India Pvt. Ltd (formerly known as Lafarge Boral Gypsum Pvt. Ltd) before the High Court of Madras vide No. 10348 of 2012. The Hon'ble Court vide their order dated 2.7.2012 disposed the writ petition and directed *inter alia* as under:

“7. As the petitioner has sought to consider their objections raised at the time of passing of the Preliminary Findings without going in to the merits of the case, the first respondent is directed to consider the objections in paragraph 46(vii) and (ix) at the time of passing of the Final Finding and pas orders in accordance with law as per provisions of the Act, after giving opportunity to the petitioner to substantiate their case.

8. *Accordingly, the writ petition is disposed of. No. costs. Consequently connected miscellaneous petitions are closed.”*

4. The relevant paragraphs of the preliminary findings issued by the Authority, on which the Hon’ble High Court has issued the above stated orders are as under:

“vii. The imports are made by a related company in India which incurs all the selling expenses like advertisement expenses, sales promotion expenses, warehousing charges etc. to sell the product. Hence, in order to arrive at a fair comparison, what is to be compared is the net selling price of the trading company in India with the selling price of the petitioner.”

“ix. During the period of 2008-09 and 2009-10, the market share of imports decreased. Despite this, market share of the domestic industry declined. At the same time, the market share of the other Indian producer, Lafarge Boral Gypsum India Pvt. Ltd, increased in the same period. This shows that the loss of market share to the Domestic industry is on account of internal domestic competition i.e., Lafarge Boral Gypsum Indian Pvt. Limited and not because of alleged dumping by the subject countries.”

5. In compliance with the orders of the Hon’ble High Court, an opportunity was allowed to the petitioners before the High Court and the other interested parties to make their submissions. The submissions made by the petitioners before the High Court and other interested parties are summarized as below:

5.1 **Submissions made by M/s Gypsum Boral India Pvt. Ltd (petitioners before the High Court of Madras)**

a. Anti-dumping Duty is intended to remedy any injury suffered by the domestic producer in India due to the sale of imported dumped goods in the domestic market at prices less than the prices of the domestic producers. As a principle, India has adopted the policy of imposing Anti-dumping Duty on the lower of dumping margin or injury margin.

b. Annexure III to the AD Rules prescribes the “Principles for determination of non-injurious price”, i.e. fair selling (notional) price at which the domestic industry would not suffer any injury. The NIP includes administrative expenses and selling expenses. This Non-injurious price of the domestic producer then has to be compared with the price at which imported products are actually competing with the domestically manufactured products. A comparison amongst two factors always has to be done at a same level, which is referred to in trade parlance as ‘same level of trade’.

c. The Siam Gypsum Industry (Saraburi) Co Limited and The Siam Gypsum Industry (Songkhla) Co Limited export the subject goods only to their related importer in India, namely, Boral Gypsum India Pvt. Ltd. who in turn re-sells them in India after incurring selling and administrative expenses in India. These expenses are, inter-alia, for marketing the product and therefore are incurred before the goods are ready to be sold to the end customers. Thus, the price at which the end customer in India can get

the imported goods is the price at which Boral Gypsum India Pvt. Ltd. re-sells these imported goods in India.

d. The injury margin based on the difference between the Non-Injurious Price of the petitioner and the re-sale price of Boral Gypsum India Pvt. Ltd. would be sufficient to remove the injury, if any, suffered by the domestic producers because the imported goods compete with the domestically manufactured goods only at the level when they are resold in India.

e. In this regard the following findings of the European Union are relevant:

- (i) Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America

“(116) Certain exporting producers claimed that the prices used for the injury margin calculations were the CIF Community frontier prices rather than the resale prices to the first unrelated customer. They claimed that these calculations have to be corrected in order to take into account the value and quantities of sales to the first unrelated customer.

(117) This claim was found to be relevant for two exporting producers and the injury calculations were corrected accordingly.”

- (ii) Commission Regulation (EU) No 446/2011 of 10 May 2011 imposing a provisional anti-dumping duty on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

“(74) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Union industry to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the countries concerned to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for the existing customs duties and post-importation costs. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

- (iii) Council Regulation (EC) No 261/2008 of 17 March 2008 imposing a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic of China

“(74) A comparison for comparable models of the product concerned was made between the sampled exporting producers'

and the Community industry's average selling prices in the Community. To this end, Community industrys' ex-works prices to unrelated customers, net of all rebates and taxes have been compared with the cif Community frontier prices of exporting producers of the PRC, duly adjusted for unloading and customs clearance costs. Given that Community industry normally sells its Community production directly to retailers, whereas the Chinese goods are sold to retailers via related or unrelated importers and/or traders, an adjustment to the import price was made where appropriate to ensure that the comparison is made at the same level of trade.”

- f. It is an admitted fact that Boral Gypsum India Pvt. Ltd. is a producer of plain gypsum plasterboards in India. The products of the petitioner and those produced and marketed by Boral Gypsum India Pvt Ltd compete in the same market. The details of selling price of domestically manufactured goods by Boral Gypsum India Private Limited and those imported from Thailand and resold by them in the Indian market are given below:

Selling price (Rs per meter cube)		2008-09	2009-10	POI
g. From the above table,	A. Domestically manufactured goods	***	***	***
	B. Imported goods resold	***	***	***
	C. Difference (A-B) (%)	10-15	15-20	5-10

it can be seen that the selling price of Boral Gypsum India Pvt. Ltd. for domestically manufactured goods has been much lower than the selling price of imported goods throughout the injury investigation period. In such circumstances, where the selling price of domestically manufactured goods has been much lower than the selling price of imported goods, the injury if any, suffered by the domestic industry is only due to domestic competition and not due to imported products.

- h. The claim is further proved by the fact that the profitability of the domestic producer deteriorated since the setting up of production unit by Boral Gypsum India Private Limited, despite fall in volume of imports into India. The following can be noted from the above table:
- i. Boral Gypsum India Pvt. Ltd. started selling its own manufactured goods in India during the year 2008-09. The imports from the subject countries decreased during the year 2008-09 as compared to the year 2007-08. The sales of the petitioner also decreased during the year 2008-09 as compared to the year 2007-08. This clearly

shows that there is no causal link between the imports from the subject countries and the volume injury suffered by the petitioner. The real cause of volume injury suffered by the petitioner is the domestic competition from Boral Gypsum India Pvt. Ltd.

- j. The profit making situation of the petitioner during the year 2007-08 turned into a loss making situation during the year 2008-09. During the year 2008-09, the imports from subject countries recorded a decline as compared to the year 2007-08. On the other hand, the sale of goods produced by Boral Gypsum India Private Limited started off during the year 2008-09 with sales of 26,547 M3. The fact that the petitioner started incurring losses during the year 2008-09 when the imports from subject countries actually declined clearly shows that there is no causal link between the imports from subject countries and the injury suffered by the petitioner. The real cause of injury suffered by the petitioner is the domestic competition from Boral Gypsum India Pvt. Ltd.
- k. The sales of Boral Gypsum India Private Limited further increased by about 50% during the year 2009-10 as compared to the year 2008-09 causing a further volume effect to the petitioner. The increase in sales of the other domestic producer caused the losses of the petitioner to inflate to 117 basis points during the year 2009-10 from a loss of 36 basis points during the year 2008-09.
- l. The losses of the petitioner reduced during POI as compared to the year 2009-10 despite a 100% increase in imports from the subject countries during POI. This also demonstrates that there is no causal link between the imports from the subject countries and the injury suffered by the petitioner.

5.2 **Submissions made by the Domestic Industry.**

- a. While calculating NIP post manufacturing expenses are not to be considered i.e. NIP should be at ex-factory level. Therefore, calculating the landed value taking into consideration the expenses being incurred by the related parties of the exporter and then comparing it with the NIP which is at ex-factory level will lead to absurd figure.
- b. The methodology suggested by the interested parties for determination of landed value and ultimately for injury margin is contrary to established and consistent practice of the Designated Authority. In addition to the above, it is submitted that the methodology suggested by the interested parties is not laid down under the Act or the Rules.
- c. The case law cited by the interested parties are misplaced and hence denied as principle emerging out of these cases laws of comparison at "same level of trade" will get violated in the context of the Indian anti-dumping rules and procedures if the Authority will follow the methodology prescribed by them.
- d. As regards injury to domestic industry, it is noted in the preliminary finding that the sales of the domestic applicant has declined to 95% in the POI as compared to the base year i.e. 2007-08 inspite of the fact that the adjusted demand has increased by 15% in the POI as compared to the base year. While the imports from the subject countries

had almost doubled in the POI as compared to the base year. In view of the above, it is clear that the contention of the interested parties that domestic competition from Lafarge Boral Gypsum India Pvt. Ltd. is the real cause of injury to the domestic industry is wrong and hence denied.

5.3 Submissions made on behalf of M/s Gypsemna, UAE.

a. The movement in selling prices and consequently profit/loss are not at all attributable to the dumped imports. Instead these are directly reflective of (i) the incidence of high fixed cost coming out of new production facility which could not be fully optimized; (ii) start up operations; (iii) movements in the costs; (iv) domestic competition; (v) lack of demand to utilize the capacities. It is natural that the plant could not run optimum in view of lack of demand of the product in the country and capacities far outstripping the demand in the Country. Further, Lafarge commenced commercial production in 2008-09 and started fiercely competing with domestic industry in this period. Thus, the domestic industry was not able to increase its price in proportion to the import price and suffered financial losses.

b. Inability of the domestic industry to increase selling prices despite increase in the import price is clearly due to introduction of domestic competition in this period from a new manufacturer who has set up significant production capacities in the country and is now competing with the domestic industry on one hand and increase in the incidence of fixed cost on the other hand from the setting up of another production facility by the domestic industry.

c. Positive price undercutting of similar region throughout the period and significant variation in profitability despite undercutting in similar region clearly establishes lack of casual link between undercutting and profitability.

d. Positive price underselling of similar region throughout the period clearly establishes that profitability of the domestic industry has not changed because of any suppressing/depressing effect of imports. This is clearly not a case where the extent of price underselling increased significantly over the period. The extent of price underselling was in the similar region throughout the period.

e. The mere fact that the importer in their case is a related party and the importer in our case is an unrelated party is entirely irrelevant for the present purpose, particularly in view of the reasons advanced by SIAM for consideration of resale price. Whether the buyer is related or unrelated, since the goods have moved between two customs authorities, both the seller and the buyer should have admittedly sold the goods at arm's length in either situation. It does not appear a case that the importer has claimed before Indian customs authorities that its import price is unreliable because of association with the exporter. If the import price at CIF level has been claimed at arm length before the Indian customs authorities, there is no difference between the situation of SIAM and our situation in so far as the issue raised by SIAM is concerned.

6. After the issue of the earlier disclosure statement by the Authority on 6th September, 2012, M/s Vikas Trading Corporation and M/s Boral Gypsum India (P) Ltd filed writ petitions vide No. 25304 of 2012 and 25669 of 2012 before the Hon'ble Madras High Court challenging the disclosure

statement. The Hon'ble Court vide their orders dated 30th November, 2012 dismissed the writ petitions.

Examination by the Authority

7. The submissions made by the interested parties in the context of the above stated orders of the Hon'ble High Court of Madras and other submissions raised by the interested parties during the course of the investigation have been addressed by the Authority in the respective areas of this final finding.

C. Product Under Consideration and Like Article

Submissions made by the domestic industry

8. The following are the submissions made by the domestic industry with regard to the product under consideration (PUC) and like article during the course of the investigation:
 - i. The product under consideration is "Plain Gypsum Plaster Boards of all thicknesses and dimensions", excluding the following:
 - a. Gypsum Boards having water absorption up to and including 5%. These Boards are generally referred to as "Moisture Resistant Boards" which have specific application in places where moisture resistance is desired. These moisture resistant properties are acquired by addition of certain water-repelling additives.
 - b. Gypsum Boards having a minimum breaking load of 24 Newtons in the transverse direction and 50 Newtons in the longitudinal direction per millimetre of thickness of the Board. Boards that are typically designed for special application are characterized as "Impact Resistant Boards" or "Fire Resistant Boards".
 - ii. Plain Gypsum Boards are also referred to as standard gypsum boards, regular gypsum boards or gypsum boards in common trade parlance across the world. The subject goods are used in interior construction in suspended ceiling and partition applications. The subject goods are classified under chapter heading 68091100. The subject goods are also being imported under tariff headings 68099900 and 68091900.
 - iii. There is no known difference in the subject goods produced by the Indian industry and the subject goods exported from the subject countries. The subject goods produced by the Indian industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.
 - iv. The interested parties have not filed sufficient grounds justifying their claim of exclusion. It is a settled principle of law that the onus to prove exclusion from the Product under

Consideration rests completely on the party who makes such claim. Further, the interested parties have referred to technical specifications, but the same have been kept confidential.

- v. Moisture resistant boards of water absorption upto and including 5% have not even been claimed as the “Product under Consideration”. Therefore, the question of exclusion of Gypsum Ceiling Boards with Moisture Barrier', does not arise.
- vi. *Fire Boards and "shaft wall" boards* are already excluded from the purview of the “Product under Consideration”. However, the Domestic Industry has no comments if the Fire boards meeting the specifications in the table below are excluded:

Properties	Specifications	Test Method	End Use
Weight	Minimum 9.8Kg/m ² for 12.5mm & 11.7Kg/m ² for 15mm	IS 2542	Areas requiring higher fire rating like server room, lift area etc . Complies with EN 520 Type F
Branding on Board	Type of board to be mentioned		
Strength of board (Longitudnal)	9.5mm- Min 400 N	IS 2542	
	12.5mm- Min 550 N		
	15mm- Min 650 N		
Fire Rating	Min 60 Minutes for 80mm thick system	BS 476 Part 6 Bs 476 Part 7 BS 476 part 20 & 22	

- vii. The Heat board with the specification given by the interested parties should not be excluded as this board is a like article to the product under consideration and can commercially and technically substitute the same. Further there was no material import, if any, of this board into India during the POI from subject countries.
- viii. *Fire Heat Board or fire resistant boards* are already excluded from the “Product under Consideration” provided they fulfill the technical criteria mentioned therein and, therefore, there is no question of making any specific exclusion. However, the Domestic Industry has no comments if the Fire boards meeting the specifications in the table below are excluded:

Properties	Specifications	Test Method	End Use
Weight	Minimum 9.8Kg/m ² for 12.5mm & 11.7Kg/m ² for 15mm	IS 2542	Wall lining & ceiling system to give increased fire system with vapour control.Complies with EN 14190
Branding on Board	Type of board to be mentioned		
Strength of board (Longitudnal)	9.5mm- Min 400 N	IS 2542	

	12.5mm- Min 550 N		
	15mm- Min 650 N		
Fire Rating	Min 60 Minutes for 80mm thick system	BS 476 Part 6 Bs 476 Part 7 BS 476 part 20 & 22	
Thermal conductivity	Min 0.24 W/Mk		

ix. The Echo boards having the below mentioned specification may be excluded from the PUC:

Properties	Specifications	Test Method	End Use
Weight	Minimum 9.8Kg/m ² for 12.5mm & 11.7Kg/m ² for 15mm	IS 2542	Wall lining & ceiling system to give increased fire system with vapour control. Complies with EN 14190
Branding on Board	Type of board to be mentioned		
Strength of board (Longitudnal)	9.5mm- Min 400 N	IS 2542	
	12.5mm- Min 550 N		
	15mm- Min 650 N		
Fire Rating	Min 60 Minutes for 80mm thick system	BS 476 Part 6 Bs 476 Part 7 BS 476 part 20 & 22	
Thermal conductivity	Min 0.24 W/Mk		

x. Domestic Industry has no comments if the impact boards meeting the specifications in the table below are excluded:

Properties	Specifications	Test Method	End Use
Weight	Minimum 9.8Kg/m ² for 12.5mm & 11.7Kg/m ² for 15mm	IS 2542	Wall lining & ceiling system to give increased fire system with vapour control. Complies with EN 14190
Branding on Board	Type of board to be mentioned		
Strength of board (Longitudnal)	9.5mm- Min 400 N	IS 2542	
	12.5mm- Min 550 N		
	15mm- Min 650 N		
Fire Rating	Min 60 Minutes for 80mm thick system	BS 476 Part 6 Bs 476 Part 7 BS 476 part 20 & 22	

Thermal conductivity	Min 0.24 W/Mk		
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- xi. The Anti-mold or weather board mentioned by the respondents should not be excluded as this board is a “like article” to the product under consideration and can commercially and technically substitute the same. Further, the interested parties have not made out a cogent case as to how these boards are not technically and commercially substitutable with the Product under Consideration.
- xii. The thermal board mentioned by the respondents should not be excluded as this board is a “like article” to the product under consideration and can commercially and technically substitute the same. Further, the interested parties have not made out a cogent case as to how these boards are not technically and commercially substitutable with the Product under Consideration.
- xiii. As regards the submission for exclusion of 'Gypsum Ceiling Boards with Moisture Barrier', being imported by M/s Armstrong, from the purview of the PUC, Authority’s attention is invited to the Product under Consideration defined by the applicant wherein moisture resistant boards of water absorption up to and including 5% have not even been claimed as the “Product under Consideration”.
- xiv. It is a well-settled principle that anti-dumping is a special measure and the protection sought to be restricted only where dumping is taking place and injury is caused to the Domestic Industry. It is preposterous to suggest that the Domestic Industry has been selective in defining the Product under Consideration. As regards the products being manufactured by the Domestic Industry, full information has been provided to the Authority.
- xv. Imports of *moisture resistant boards and fire resistant boards* had been taking place at much higher prices which did not have any adverse effect on the domestic industry. Had the domestic industry included these products in the scope of the “Product under Consideration”, the same interested parties would have raised the issue as to why those products which are not “Like Article” and which do not cause injury to the Domestic Industry have been included. Further, such specialty products constitute a very small portion of the domestic industry’s turnover and also the total domestic market.
- xvi. The technical specifications of all the excluded boards should be mentioned in the findings.
- xvii. The onus to prove exclusion of certain boards rests solely upon the party who is making the claim for exclusion. Such claims have to be based on discernible evidence and should necessarily pass the test of technical and commercial substitutability.
- xviii. The Authority has incorrectly excluded several varieties of boards from the Product under Consideration on the basis that the Domestic Industry had not shown any documentary evidence of the production and supply of these goods. Gypsum ceiling board with aluminum edges sealed in white film, Heat board, Anti-mold board, Weather board and Thermal board are "like article" to the Product under Consideration as these boards can commercially and technically substitute the same.

- xix. The Domestic Industry has no objection if ceiling tiles (generally in size 600 mm x 600 mm) are excluded from the purview of the investigations as the same were never intended to be included in the product under consideration.
- xx. The claim made by interested parties that one of the key factors for deciding the substitutability of the product is the “end use”. As the end use of the plain board and specialty boards are altogether different, these cannot be termed as like article. The claim made by interested parties for exclusion itself goes to strengthen the claim of domestic industry regarding like article.

Submissions made by the producers/exporters/importers/and other interested parties

9. The following submissions have been made by the producers/exporters/importers/and other interested parties with regard to product under consideration and like article during the course of the investigation:

- i. Gypsum Boards are primarily of two types: Plain Boards and Technical Boards. The following varieties of technical gypsum plaster boards should be excluded from the scope of the PUC:
 - a) Fire Board: Gypsum Boards that meet the fire rating standard of more than 30 minutes on fire exposure as per BS 476: Part 20 and 22, including "shaft wall" boards. These Boards have specially formulated Core which gives superior fire resistance and higher strength. These boards are used for areas which require higher fire rating like Server Rooms, Lift areas etc.
 - (b) Heat Board: Gypsum Boards with polyester metalized foil firmly bonded on to the backside which gives at least 75% solar reflectance. These boards are used as partition around places where large amount of heat radiation is generated like generator rooms or in places which need insulation from a hot atmosphere around it, like top floor of a building.
 - (c) Fire Heat Board: Gypsum Boards that meet the Fire rating standards of more than 30 minutes on Fire Exposure as per BS 476: Part 20 and 22 (copies enclosed as Exhibit 1B and Exhibit 1C) and also have a polyester metalized foil firmly bonded on to the backside that gives at least 75% solar reflectance. These Boards have a specially formulated Core which gives superior Fire resistance and higher strength and also have a polyester metalized foil firmly bonded on to the backside to reduce the risk of condensation forming on the back of the board. These boards are used for protection around places that are exposed to risk of fire and also as wall lining.
 - (d) ECHO Board: Gypsum Boards that have square or circle perforations on their sides which provides them special sound absorption properties. These boards have a Noise Reduction Coefficient (‘NRC’) in the range of 0.65 to 0.80 as per IS 8225-1987 in reverberation room. These boards are used in Cinema Halls, Recording rooms and other places where reverberation effect of sound has to be minimized.

(e) Impact Board: Gypsum Boards with high density core giving them higher breaking load strength than a regular Standard Board. This is mainly used in high traffic zone areas like foot-steps, stair cases etc., where there is frequent heavy weights movement. These boards weigh 12.5 kilograms per meter square of 12.5 mm thickness (+/- 0.35 kg/m²) as against a standard board that weighs around 9 kilograms per meter square of 12 mm thickness. Thus the Impact Boards are 50 percent heavier than the standard boards and hence are used in places where heavy loads are to be stored or moved.

(f) Anti-mold Board or Weather Board: Gypsum Boards with certain special additives added to the core and a special paper liner added to the surfaces to give them enhanced protection against mold or fungus growth falling within Anti Mold standard (ASTM Standard) D 3273. These boards find special use in hospitals, warehouses and other areas which are exposed to moisture or abnormal environmental conditions.

(g) Thermal Board: Gypsum Boards with XPS Composite Panel at the back side using PVA Glue which offers additional thermal Insulation with the lower thickness of the Board.

ii. 'Gypsum Ceiling Boards with Moisture Barrier', being imported by M/s Armstrong, falls under the excluded category of the PUC and therefore should be specifically excluded from the scope of the present investigation. Similarly, 'Gypsum Ceiling Boards with Aluminium Edges Sealed in White Film' should also be excluded from the scope of the PUC.

iii. The definition of the product under consideration in the present case is highly selective and abusive of anti dumping law. Petitioner has very selectively considered scope of the product under consideration and excluded those product types which the petitioner is not producing in India and which are being imported by the petitioner from its affiliated plants overseas.

iv. The petitioner has specifically excluded 'moisture resistant boards' and 'fire resistant boards'; as petitioner itself is importing these excluded category from its own subsidiary/sister concern, in Thailand.

v. The scope of the investigation is only 'plain gypsum plaster board' and any board other than 'plain boards' should be excluded from the scope of the investigation.

vi. Petitioner has very selectively considered scope of the product under consideration and excluded those product types which the petitioner is not producing in India and which are being imported by the petitioner from its affiliated plants overseas that make them earn high profits. The petitioner has deliberately restricted the scope of the product under consideration to establish its standing.

vii. Exclusion of specialty board from the scope of product under consideration has enabled Saint Gobain to establish its "standing" as a domestic industry despite significant imports by the company. Since specialty boards are sold along with plain boards as a basket

product, in any case, the consumers at large would not import specialty board from different suppliers in subject countries and thus, domestic industry, in any case, is protected in this specialty boards.

- viii. It is a well settled principle that only dislike articles can be excluded from the scope of the product under consideration. If the excluded and included products are like/one article, the same cannot be excluded. There is nothing in the petition which establishes how the excluded products are dislike articles and how all included products are like/one article. The petitioner needs to justify the reasons for selectively proceeding with the scope of the product under consideration. The cost difference between plain and specialty board is 5-10%. Such being the case, the like article should be considered as specialty boards.
- ix. If circumvention is feared, it is the petitioner who should provide technical specifications since they have restricted the product under consideration as Plain Gypsum Board. All other products should be considered as excluded product from the scope of product under consideration.
- x. Petitioner has selectively considered scope of the product under consideration and excluded those product types which the petitioner is not producing in India and which are being imported by the petitioner from its affiliated plants overseas.
- xi. Only dislike products can be excluded from the scope of the product under consideration. If the excluded and included products are like/one article, the same cannot be excluded. The cost difference between plain and specialty board is 5-10%. Such being the case, the like article should be considered as specialty boards.
- xii. Ceiling tiles are different products from Plain Gypsum Plaster Boards and should be excluded from the scope of investigation.

Examination by the Authority

10. The product under consideration in the present investigation, as defined by the Authority in the initiation notification, is “Plain Gypsum Plaster Boards of all thicknesses and dimensions”, excluding the following:-
- (i) Gypsum Boards having water absorption up to and including 5%. These Boards are generally referred to as “Moisture Resistant Boards” which have specific application in places where moisture resistance is desired. These moisture resistant properties are acquired by addition of certain water-repelling additives.
 - (ii) Gypsum Boards having a minimum breaking load of 24 Newtons in the transverse direction and 50 Newtons in the longitudinal direction per millimetre of thickness of the Board. Boards that are typically designed for special application are characterized as “Impact Resistant Boards” or “Fire Resistant Boards.
11. Plain Gypsum Boards are also referred to as standard gypsum boards, regular gypsum boards or gypsum boards in common trade parlance across the world. The subject goods are used in interior construction in suspended ceiling and partition applications.

12. Plain Gypsum Boards are classified under chapter heading 68091100 as given below:

Tariff Item	Description of Goods
68	Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware
6809	Articles of plaster or of compositions based on plaster-Boards, sheets, panels, tiles and similar articles, not ornamented.
68091100	Faced or reinforced with paper or paperboard only

13. The domestic industry submitted that the subject goods are also being imported under other tariff headings 68099900 and 68091900, apart from 68091100. But, the Authority notes that as per the DGCI&S data, the subject goods are found to be imported only under the tariff sub-heads 68091100 and 68091900. However, customs classification is indicative only and is in no way binding upon the scope of the present investigation.

14. The submissions concerning the product under consideration and like article, made by the interested parties during the course of the subject investigation and considered relevant by the Authority are addressed hereunder:

- i. The Authority initiated the subject investigation by defining the product under consideration as Plain Gypsum Plaster Boards of all thicknesses and dimensions, excluding the Gypsum Boards having water absorption up to and including 5% and the Gypsum Boards having a minimum breaking load of 24 Newtons in the transverse direction and 50 Newtons in the longitudinal direction per millimetre of thickness of the Board.
- ii. The Authority notes that the Plain Gypsum Plaster Boards are also referred to as Standard Gypsum Boards, Regular Gypsum Boards or simply Gypsum Boards in common trade parlance across the world. The subject goods are used in interior construction in suspended ceiling and partition applications.
- iii. The Authority notes that the Gypsum Plaster Boards that are typically designed for special applications to provide moisture resistance or fire resistance or impact resistance are characterized as “Moisture Resistant Boards”, “Impact Resistant Boards” or “Fire Resistant Boards”, respectively and are as such beyond the scope of the product under consideration in the present investigation.
- iv. The Authority further notes that broadly there are two types of Gypsum Plaster Boards viz. Plain Gypsum Plaster Boards and Specialized or Technical or Value Added Gypsum

Plaster Boards. The production process of the various types of the Gypsum Plaster Boards is more or less same. However, specific inputs/additives are added to obtain desired properties in the end product.

- v. Post initiation, the interested parties claimed exclusion of Fire Boards, Heat Boards, Fire Heat Boards, ECHO Boards, Impact Boards, Anti-mold Boards or Weather Boards, Thermal Boards, Gypsum Ceiling Boards with Moisture Barrier and Gypsum Ceiling Boards with Aluminum Edges Sealed in White Film', from the scope of the product under consideration. The matter is examined as below:

Fire Boards

- ❖ The interested parties submitted that "Fire Boards" are gypsum plaster boards that meet the fire rating standard of more than 30 minutes on fire exposure as these boards have specially formulated core which gives superior fire resistance and higher strength to the product and requested for their exclusion from the purview of the PUC. The domestic industry also agreed for the exclusion of this type of boards subject to the specifications provided by them. The Authority notes that the product under consideration in the subject investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and Fire Boards or "Fire Resistant Boards" are as such excluded from the purview of the product under consideration".

Fire Heat Boards

- ❖ The interested parties have submitted that "Fire Heat Boards" are gypsum plaster boards that meet the fire rating standards of more than 30 minutes on Fire Exposure as per BS 476: Part 20 and 22 (copies enclosed as Exhibit 1B and Exhibit 1C) and also have a polyester metalized foil firmly bonded on to the backside that gives at least 75% solar reflectance. These boards are used for protection around places that are exposed to risk of fire and also as wall lining. The domestic industry submitted that *Fire Heat Boards* or fire resistant boards are already excluded from the "Product under Consideration" provided they fulfill the technical criteria mentioned by them and, therefore, there is no question of making any specific exclusion. The Authority notes that the product under consideration in the subject investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and the "Fire Heat Boards" being fire resistant boards are as such excluded from the purview of the product under consideration.

Impact Boards

- ❖ The Authority notes that "Impact Boards" are that type of gypsum plaster boards that have high density core which give them higher breaking load strength. As submitted by the interested parties, such type of gypsum boards having higher breaking load strength are mainly used in high traffic zone areas like foot-steps, stair cases etc., where there is frequent heavy weights movement. The interested parties have further submitted that these boards weigh 12.5 kilograms per meter square of 12.5 mm thickness (+/- 0.35 kg/m²) as against a standard board that weighs around 9 kilograms per meter square of 12 mm thickness. The domestic industry submitted that the "Impact Boards" are already excluded from the "Product under Consideration" provided they fulfill the technical

criteria mentioned by them and, therefore, there is no question of making any specific exclusion. The Authority notes that the product under consideration in the subject investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and the “Impact Boards” are as such excluded from the purview of the product under consideration.

Gypsum Ceiling Boards with Moisture Barrier

- ❖ The Authority notes that the interested parties have requested for exclusion of “Gypsum Ceiling Boards with Moisture Barrier”. The Authority further notes that the domestic industry has also informed that the moisture resistant boards of water absorption up to and including 5% have already been excluded from the purview of the “Product under Consideration” and therefore, the question of specific exclusion of Gypsum Ceiling Boards with Moisture Barrier, does not arise. The Authority notes that the product under consideration in the subject investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and “Gypsum Ceiling Boards with Moisture Barrier” being moisture resistant boards are as such excluded from the purview of the product under consideration.

ECHO Boards

- ❖ The Authority notes that “ECHO Boards” are gypsum plaster boards which provide special sound absorption properties. The interested parties have submitted that “ECHO Boards” have square or circle perforations on their sides and a Noise Reduction Coefficient (‘NRC’) in the range of 0.65 to 0.80 as per IS 8225-1987 in reverberation room, that provide special sound absorption properties. They have further submitted that due to their special sound absorption properties, these boards are used in Cinema Halls, Recording rooms and other places where reverberation effect of sound has to be minimized. The Authority further notes that the domestic industry has also agreed for the exclusion of the “ECHO Boards” from the purview of the PUC, with specifications as provided by them. The Authority notes that the PUC in the present investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and the “ECHO Board” is a special/value added variant of gypsum plaster board. The Authority further notes that the domestic industry has not provided any documentary evidence to substantiate production of “ECHO Board” by them during the injury period including POI, in conformity with the technical specifications being claimed by them. In view of the above position, the Authority notes that “ECHO Board”, being a special/value added variant of the gypsum plaster boards, is excluded from the purview of the PUC.

Heat Boards

- ❖ The interested parties stated that “Heat Board” is gypsum plaster boards with polyester metalized foil firmly bonded on to the backside which gives at least 75% solar reflectance and claimed its exclusion from the purview of the PUC. But, the domestic industry has argued that this type of board is a like article to the product under consideration and can commercially and technically substitute the same. Further, domestic industry has submitted that there was no material imports, if any, of this board into India during the POI from subject countries and requested not to exclude the “Heat Boards” from the

purview of the PUC. The Authority notes that the product under consideration in the present investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and “Heat Board” is a special/value added variant of gypsum plaster board. The Authority further notes that the domestic industry has not furnished any documentary evidence to substantiate production and supply of the same variety during the injury period including POI. In view of the above position, the Authority notes that “Heat Board”, being a special/value added variant of the gypsum plaster boards, is excluded from the purview of the product under consideration.

Anti-mold Boards or Weather Boards

- ❖ As submitted by the interested parties, the “Anti-mold Boards or Weather Boards” are gypsum plaster boards with certain special additives added to the core and a special paper liner added to the surfaces to give them enhanced protection against mold or fungus growth. They have further submitted that these boards find special use in hospitals, warehouses and other areas which are exposed to moisture or abnormal environmental conditions. The interested parties have requested for the exclusion of such type of gypsum plaster boards from the purview of the PUC. On the contrary, the domestic industry has submitted that it is a “like article” to the product under consideration and can commercially and technically substitute the same. The Authority notes that the product under consideration in the present investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions and “Anti-mold Board or Weather Board”, is a special/value added variant of the gypsum plaster board. The Authority further notes that the domestic industry has not furnished any documentary evidence to substantiate production and supply of this variety of gypsum plaster board during the injury period including POI. In view of the above position, the Authority notes that “Anti-mold Boards or Weather Boards”, being a special/value added variant of the gypsum plaster boards, is excluded from the purview of the product under consideration.

Thermal Boards

- ❖ The interested parties have submitted that “Thermal Boards” are gypsum plaster boards with XPS Composite Panel at the back side using PVA Glue which offers additional thermal insulation with the lower thickness of the Board and therefore be excluded from the purview of the PUC. On the contrary, the domestic industry has submitted that thermal board should not be excluded as this board is a “like article” to the product under consideration and can commercially and technically substitute the same. The Authority notes that the product under consideration in the present investigation is plain gypsum plaster board and “Thermal Board”, is a special/value added variant of the gypsum plaster boards. The Authority further notes that the domestic industry has not furnished any documentary evidence to substantiate production and supply of “Thermal Boards” during the injury period including POI. In view of the above position, the Authority notes that “Thermal Board”, being a special/value added variant of the gypsum plaster boards, is excluded from the purview of the PUC.

Gypsum Ceiling Board with Aluminium Edges Sealed in White Film

- ❖ The interested parties requested for exclusion of “Gypsum Ceiling Boards with Aluminium Edges Sealed in White Film” from the purview of the PUC. The Authority notes that the product under consideration in the present investigation is plain gypsum plaster boards of all thicknesses and dimensions and “Gypsum Ceiling Board with Aluminium Edges Sealed in White Film”, being a special/value added variant of the gypsum plaster board, is excluded from the purview of the PUC. The Authority further notes that the domestic industry has also not furnished any documentary evidence to substantiate production and supply of the same variety during the injury period including POI.

Ceiling Tiles

- ❖ The interested parties have submitted that Ceiling Tiles are different from the PUC and beyond the scope of the present investigation. The domestic industry also in its submissions has acknowledged that ceiling tiles are beyond the scope of the PUC and therefore beyond the purview of the present investigation.

15. As the product under consideration in the present investigation is plain gypsum plaster boards of all thicknesses and dimensions and in view of the above position the Authority recommended exclusion of the following products from the scope of the anti-dumping measures in the Preliminary Findings and also excludes the same from the final determination as well:

- Gypsum Boards having water absorption up to and including 5% (Moisture Resistant Boards)
- Gypsum Boards having a minimum breaking load of 24 neutrons in the transverse direction and 50 neutrons in the longitudinal direction per millimeter of thickness (Impact Resistant Boards or Fire Resistant Board)
- Fire Boards
- Fire Heat Boards
- Impact Boards
- Gypsum Ceiling Boards with Moisture Barrier
- ECHO Boards
- Heat Boards
- Anti-mold Boards or Weather Boards
- Thermal Boards
- Gypsum Ceiling Boards with Aluminium Edges Sealed in White Film.
- Ceiling Tiles

16. As regards the submission of the domestic industry that technical specifications of all the excluded boards must specifically be mentioned in the findings as their absence may lead to circumvention, the Authority notes that the technical specifications provided by the domestic industry and other interested parties in their submissions have very much been reflected in this final finding. The Authority has already noted in the examination of the Product Under Consideration that since the product under consideration is Plain Gypsum Plaster Board, all the special / technical / value added Gypsum Plaster Boards are beyond the scope of PUC. Moreover, the domestic industry has not demonstrated any documentary evidence to substantiate production and supply of the excluded products. Considering the fact that the PUC in the present investigation is Plain Gypsum Plaster Boards of all thicknesses and dimensions, all other

products are hereby excluded from the scope of the product under consideration. As regards circumvention, the Authority notes that the fear expressed by the domestic industry is hypothetical. Nevertheless, in the event of such a situation, there is another set of Rules concerning circumvention, which can be taken recourse to.

17. Keeping in view the submissions made by the interested parties and the examination of the submissions, as above, the Authority holds that the product under consideration in the present investigation is “Plain Gypsum Plaster Boards of all thicknesses and dimensions”, excluding the following:-

- Gypsum Boards having water absorption up to and including 5% (Moisture Resistant Boards)
- Gypsum Boards having a minimum breaking load of 24 neutrons in the transverse direction and 50 neutrons in the longitudinal direction per millimeter of thickness (Impact Resistant Boards or Fire Resistant Board)
- Fire Boards
- Fire Heat Boards
- Impact Boards
- Gypsum Ceiling Boards with Moisture Barrier
- ECHO Boards
- Heat Boards
- Anti-mold Boards or Weather Boards
- Thermal Boards
- Gypsum Ceiling Boards with Aluminium Edges Sealed in White Film.
- Ceiling Tiles

Like Article

18. Rule 2(d) of the Anti-dumping Rules defines like article as follows:

“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 the characteristics closely resembling those of the articles under investigation.

19. The domestic industry has claimed that the subject goods, which are being dumped into India, are identical to the domestic like product being produced by them. The domestic industry has further claimed that there is no known difference in their product and the subject goods exported from the subject countries and are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods and there is no significant difference in the subject goods produced by the domestic industry and those exported from the subject countries and both are technically and commercially substitutable. The interested parties have also not disputed the likeness of the subject goods being produced by the domestic industry and those exported from the subject countries.

20. The Authority notes that there is no known difference in the subject goods produced by the domestic industry and those exported from the subject countries. The subject goods produced by the Indian industry and that imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the interested parties have raised any objection in this regard. In view of the above, the subject goods produced by the domestic industry are being treated as domestic like articles to the product under consideration imported from subject countries and the two are considered to be technically and commercially substitutable and therefore like articles in terms of the Rules.

D. Standing and Scope of Domestic Industry

Submissions made by the domestic industry

21. The views of domestic industry with regard to the standing and scope of domestic industry are as follows:

- i. The Domestic Industry is not related to any exporter of the Product under Consideration from the subject countries. The Domestic Industry had categorically clarified in the application itself that they are not related to any exporter of the Product under Consideration from the subject countries.
- ii. Some of the interested parties have claimed that the applicant Domestic Industry has related exporters from the subject countries and, therefore, cannot be considered as an eligible “Domestic Industry” in terms of Rule 2(b). The exclusions under Rule 2(b) gets triggered only when a producer is related to an exporter, importer or has self imports or has imports through a related importer. None of the interested parties have produced any evidence contrary to declarations made by domestic industry in the context of Rule 2(b).

Submissions made by the producers/exporters/importers/and other interested parties

22. The submissions made by the producers/exporters/importers/and other interested parties with regard to the standing and scope of domestic industry during the course of the investigation are as follows:

- i. The petitioner has plants in UAE and Thailand, details of which have not been disclosed to the Designated Authority.
- ii. Since the technical product types are being exported by related entities, the petitioner has excluded these from the scope of the product under consideration.

Examination by the Authority

23. The submissions concerning Standing and Scope of Domestic Industry made by the interested parties during the course of the subject investigation and considered relevant by the Authority are addressed hereunder:

- i. Rule 2(b) of the Anti-dumping Rules, as amended, defines domestic industry as under: -

“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.

- ii. The Authority notes that in the subject investigation the application was filed by M/s. Saint-Gobain Gyproc India Ltd, on behalf of the domestic industry. As per the information furnished by M/s. Saint-Gobain Gyproc India Ltd, there is another producer of the subject goods in India namely M/s Lafarge Boral Gypsum India Pvt. Ltd. (LBGI), subsequently renamed as Boral Gypsum India Pvt. Ltd (LBGI). The share of the applicant company in the total domestic production of the subject goods was claimed to be 79% and the balance accounted for by M/s Lafarge Boral Gypsum India Pvt. Ltd. However, as claimed by the applicant company, M/s Lafarge Boral Gypsum India Pvt. Ltd is a regular importer of the subject goods and has also imported the subject goods in the period of investigation, thereby making them ineligible for the status of domestic industry under the Rules. The Authority notes that none of the interested parties, including M/s Lafarge Boral Gypsum India Pvt. Ltd, have disputed this fact.
- iii. The Authority further notes that none of the interested parties have substantiated their claim by furnishing documentary evidence that M/s. Saint-Gobain Gyproc India Ltd’s related companies in the subject countries have exported the subject goods to India during the POI. It may be the position that some of their related companies in the subject countries may have exported certain excluded variety of the Gypsum Plaster Boards, but that does not make them ineligible for the status of domestic industry under the Rules. In view of the above position, the Authority considers M/s. Saint-Gobain Gyproc India Ltd as commanding a major proportion of the production of the subject goods in India and therefore constituting domestic industry under the Rules. Moreover, the domestic industry has submitted the information concerning imports of value added Gypsum Plaster Boards by themselves from the subject countries. The Authority notes that since the value added Gypsum Plaster Boards are beyond the scope of the PUC, the information submitted by the domestic industry concerning imports of value added Gypsum Plaster Boards by themselves from the subject countries is not relevant to the present investigation.

E. Confidentiality

Submissions made by the domestic industry during the course of investigation with regard to confidentiality

24. The submissions made by the domestic industry with regard to confidentiality are as follows:

- i. The volume related information of capacity and production cannot be claimed as confidential.
- ii. The Authority should disclose the computation of normal value for non-cooperative exporters and detailed calculation of residual duties.
- iii. Letter filed by UAE embassy to Designated Authority during the course of the hearing should be circulated to the domestic industry.

Submissions made by the producers/exporters/importers/and other interested parties

- i. The DGCI&S data relied upon by the Authority have not been made available to the respondents.
- ii. Raw Import Data as provided by IBIS (International Business Information Services) has not been provided with the petition by the petitioner. No confidentiality can be claimed on such data.
- iii. The contention of the domestic industry that the final figures for the non-cooperative exporters must be disclosed is without any legal basis.

Examination by the Authority

25. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

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

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

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

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

27. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to “respective interested parties”, while non-confidential facts are required to be disclosed to all interested parties. At no stage the Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests.
28. The Authority notes that it would be sufficient if full explanation of the reasons for the methodology used in the establishment and comparison of the normal value, NIP etc is disclosed instead of disclosing the actual figures. Normal Value, export price and non-injurious price are based on the confidential information submitted by the parties and disclosure of computation of the same would be of significant competitive advantage to a competitor and its disclosure could have a significantly adverse effect upon the persons supplying the information.
29. It is noted that disclosure of the commercially sensitive and confidential information, provided by the interested parties to the Designated Authority, by reposing trust and confidence, to facilitate the investigation, will completely vitiate the market atmosphere both in the domestic as well as international fronts. The disclosure of confidential information relating to the cost of production, cost of sales, project report, etc. of the domestic industry will provide undue advantage to its domestic as well as overseas competitors and place the domestic industry in a disadvantageous position before the consumers. Likewise disclosure of the confidential information relating to the exporters such as normal value, net export price, landed price etc. will jeopardize their commercial interest vis-à-vis their competitors as well as buyers.
30. The Authority notes that details regarding export price, dumping margin, injury margin, CNV, NIP, etc, which are based on commercially sensitive information of the Domestic Industry and producers/exporters cannot be disclosed to all the interested parties. However, the information with regard to the Normal Value, Export Price and Dumping Margin and NIP in respect of individual cooperating exporters and domestic industry has been disclosed to the respective parties.
31. As regards the submission of the domestic industry that the letter submitted by the UAE embassy during the course of the oral hearing should be provided to them, the Authority notes that the copy has been kept in the public file for inspection by the interested parties.
32. As regards the submission of the interested parties that the DGCI&S data relied upon by the Authority have not been made available to the respondents, the Authority notes that the transaction wise DGCIS data also contains confidential information like name of the importers, invoice details etc. therefore, the Authority has not shared the transaction wise DGCIS import data with the interested parties.

F. Methodology for determination of Dumping Margin

Submissions made by the domestic industry during the course of investigation

33. The submissions made by the domestic industry with regard to Normal Value, Export Price and Dumping Margin are, as follows:

- i. In UAE the prices of Gas is Government supported and controlled and Zones Corp which supplies the gas in UAE is a government controlled company. In view of this, the prices of the gas in UAE cannot be said to be reflective of market price. Due to this particular market situation, the Authority should reject the normal value of the exporter in UAE and adopt constructed methodology based on market determined prices. Moreover, the Authority should disregard the domestic selling price of the exporter for the purpose of normal value as the capacity utilization of the concerned exporter is around 25%-30% and in such a case it is not possible for any company to fetch profit due to the high per unit fixed cost.
- ii. Authority should reject domestic selling prices of Gypsum in Thailand since being Government controlled and not reflective of market price. In view of this, the normal value based on the domestic prices and costs of the exporter should be disregarded as well. The Authority should take into account the market price of gypsum to arrive at the Constructed Normal Value (CNV) in respect of Thailand.
- iii. The ex-factory price for non-cooperative exporter should not be based on the lowest ex-factory price of the cooperative exporter as this will give undue advantage to the non-cooperative exporters. Ex-factory price for non-cooperative exporter should be based on the basis of lowest CIF price available from the DGCIS data.
- iv. The exporters from Thailand have themselves accepted in the questionnaire response that they have not sold any quantity of the same thickness in the domestic market which had been exported to India. However, in the Preliminary Findings, it has been stated that the normal value is based on the domestic selling prices of the same thickness as the one exported to India. It needs to be clarified.
- v. The objection of the interested parties that the domestic industry has not provided the actual selling price of the subject good in Thailand even when it has a related company in Thailand is without any basis. Each entity within the group is different legal entity with independent management. The related entity refused to share their confidential information with domestic industry.

Submissions made by the producers/exporters/importers/and other interested parties

34. The submissions made by the producers/exporters/importers/and other interested parties with regard to normal value, export price and dumping margin are as follows:
- i. The appropriate unit of measurement for the subject goods is meter square (M2) and not meter cube (M3).
 - ii. The ocean freight claimed by the domestic industry at 143% of the FOB price itself is untenable. The transport cost is around USD 20 per meter cube.
 - iii. In the preliminary finding, the Authority has rightly concluded that the minimum export price for Gypsum fixed by Government of Thailand would not impact the domestic selling prices of Gypsum available in Thailand. In this regard we also wish to highlight that even the Government of India is imposing export duty on export of iron ore from

India. This by itself would not mean that the domestic selling price of iron ore in India is influenced by the Government.

- iv. Saint Gobain has constructed normal value for UAE/Thailand. This is despite the fact that they have their own subsidiaries in UAE/Thailand producing Gypsum Plaster Boards. Such being the case, petitioner deliberately did not provide evidence of normal value on the basis of actual selling price in these countries. They misled the Designated Authority in claiming that the prices of product in the subject countries were not available and adopted its own high cost of production to show dumping, despite the fact that they have easy access to domestic prices in the exporting countries.
- v. Imports from subject countries have increased during the POI only because of fresh production and resultant exports from UAE.
- vi. Gypsemna submits that due adjustment for startup operations is provided under the Rules. In view of start up operations of the company, the cost of production in the POI is required to be adjusted appropriately. Such adjusted costs of production are materially below the selling price in respect of domestic sales. Gypsemna's profitable position during the POI, despite low capacity utilization, is due to the adjusted start-up cost.
- vii. No facts or evidences have been provided by the domestic industry in support of their claim that the natural gas prices in UAE are not based on market forces. The parallel drawn by the petitioner with the polypropylene AD case is factually misplaced. The utilities in India are also being supplied by Govt. of India agencies. It does not, however, mean that the prices of product sold by them are not reflective of market values.
- viii. The petitioner's claim that the Thailand Government controls the prices of Gypsum in Thailand is not supported by any evidence. The argument of the petitioner that the domestic selling price of Gypsum in Thailand is Government controlled and therefore normal value based on the domestic prices and costs of the exporter should be disregarded, is without any basis. Government of India is also imposing export duty on export of iron ore from India. This by itself would not mean that the Indian Government is regulating the domestic selling price of iron ore.
- ix. In so far as UAE is concerned, the volume of exports reported by Gypsemna in the questionnaire response is higher than the volume of imports considered by the petitioner. Such being the case, there is no question of existence of "any other exporter" in the present case and therefore there is no justification for adopting a different price for "any other exporter". The question of differential and lower price shall arise only if there is a producer or exporter who has preferred non-cooperation.
- x. M/s Knauf commenced commercial production up to the end of the POI. They have no export of the subject goods during the POI. In view of this, the authority should specify Knauf as a new exporter in the duty table and take up New Shipper Review (NSR) investigation for the company at this stage itself.

- xi. IBIS imports of gypsum board are reported in the units of measurement such as pcs,pac,,nos,bag,kgs,sht,sqm,ctn, etc. Whereas import listing of product under consideration provided by the petitioner (which is also from IBIS) includes imports reported in pcs, nos and sqm only. It thus appears that petitioner possibly has not included imports made by it.

Examination by the Authority

35. The submissions made by the domestic industry and the interested parties with regard to Normal Value, Export Price and Dumping Margin have been appropriately dealt with by the Authority while determining the dumping margin for the co-operative and the non-cooperative exporters. However, the specific issues as raised by the interested parties in the course of the present investigation have been addressed by the Authority as follows:

- i. The domestic industry submitted that in UAE the prices of Gas is Government supported and Government controlled and therefore the prices of the gas in UAE cannot be said to be reflective of market price. They further submitted that due to this particular market situation, the Authority should reject the normal value of the exporter in UAE and adopt constructed methodology based on market determined prices. In their counter argument the interested parties submitted that the utilities in India are also being supplied by Govt. of India agencies. It does not, however, mean that the prices of product sold by them are not reflective of market values. The Authority notes that it has not been denied by any of the interested parties that the prices of gas in UAE are not Govt. controlled. However, the existence of Government control on the supply of gas in the UAE cannot be the basis to conclude that a dual pricing policy exists in the UAE. The domestic industry alleged that a separate rate of gas is charged on the domestic producers as compared to the one being charged on the exporters. In support of their argument, the domestic industry submitted import data for Japan in respect of import of gas. The Authority further notes that the domestic industry's related company has manufacturing facilities for production of the subject goods in UAE. However, no substantive documentary evidence of the Govt. Policy in UAE having dual pricing for supply of gas has been furnished by the domestic industry. The Authority further notes that comparison of the domestic prices of gas in UAE with the import statistics from Japan cannot be a convincing evidence on the alleged dual pricing prevalent in the UAE, as the domestic prices for gas in UAE and import statistics in Japan are not on an even platform, so as to be considered for a like-to-like comparison. The documents submitted by the domestic industry itself show that various types of gases are exported from UAE to Japan. In view of the same, the Authority does not consider that a particular market situation is prevailing in the UAE in the context of the Normal Value for product under consideration.
- ii. The domestic industry further submits that Authority should disregard the domestic selling price of M/s Gypsemna, UAE for the purpose of normal value as their capacity utilization is around 25%-30% and in such a case it is not possible for any company to fetch profit due to the high per unit fixed cost. M/s Gypsemna in their counter argument submitted that it is for this reason the company has considered start-up cost and segregated the cost of production for the start-up operations. The Authority notes that the submissions in this regard have been examined with reference to the relevant provisions

of the Anti-Dumping Rules, apart from the project report of M/s Gypsemna for the project for the subject goods, while determining the normal value.

- iii. The domestic industry submitted that Authority should reject domestic selling prices of Gypsum in Thailand, since being Government controlled and not reflective of market price. They further submitted that in view of this, the normal value based on the domestic prices and costs of the exporter should be disregarded as well and Authority should take into account the market price of gypsum to arrive at the constructed normal value in respect of Thailand. The concerned interested parties in their counter argument submitted that Government of India is imposing export duty on export of iron ore from India. This by itself would not mean that the Indian Government is regulating the domestic selling price of iron ore. The Authority notes that the export price of Gypsum in Thailand, a major raw material for manufacturing the subject goods, is Government controlled. However this by itself cannot construe that a dual pricing policy is prevailing in Thailand, signifying a particular market situation. No evidence has been furnished by the domestic industry with regard to any Government control on the domestic prices of Gypsum in Thailand, despite themselves having related producer in that country. Moreover, during the verification of data submitted by the co-operating exporters from Thailand, the Authority has not come across any evidence of Govt. control on the domestic prices of Gypsum.
- iv. The domestic industry submitted that the ex-factory export price for non-cooperative exporter should be based on the basis of lowest CIF price available from the DGCIS data, instead of the lowest ex-factory export price of the cooperative exporter, as this will give undue advantage to the non-cooperative exporters. The Authority notes that the ex-factory export price for non-cooperative exporters has been determined by the Authority as per the consistent practice of the DGAD. Moreover, the Anti-Dumping Rules do not provide for any specific guidelines in this regard.
- v. Post initiation, M/s Knauf, Dubai informed that they have not made any exports of the subject goods to India during the POI. But, post-PF they submitted exporter's questionnaire response as well, which being much belated, has not been considered by the Authority. Since, M/s Knauf LLC has not exported the subject goods to India during the POI, no separate Dumping-Margin could be assessed by the Authority for M/s Knauf. However, the company may take recourse to the provisions of New Shipper Review (NSR) as laid down under the Anti-Dumping Rules, if they so desire.
- vi. As regards the submissions of the interested parties that the domestic industry has failed to submit the information on Normal Value in the subject countries despite having the related entities producing the subject goods in the subject countries, the Authority notes that the entities in the subject countries even though may be related to each other but may not necessarily share information particularly with regard to the cost of production and the prices of the subject goods. In view of the same the Authority does not agree with the submissions by the interested parties that the domestic industry has deliberately withheld the information on the cost and price structure of the subject goods in the subject countries while submitting the application for initiation of the investigation. Based on prima-facie evidence of existence of dumping and injury to the domestic industry from

the imports of the subject goods from the subject countries, the Authority initiated the present investigation. However, the Authority has relied upon verified data for the final determination.

- vii. As regards the query of the domestic industry that the basis of calculation of normal value in respect of the producers/exporters of Thailand needs to be clarified by the Authority, the methodology of determination of normal value as given in the Preliminary Finding and this final finding is self-explanatory.
- viii. As regards the submission of the interested parties that the appropriate unit of measurement for the subject goods is meter square (M2) and not meter cube (M3), the Authority notes that in the instant case since thickness of the PUC is also a factor of analysis, it is appropriate to cause such analysis on the basis of meter cube (M3) and not meter square.
- ix. The interested parties argued that ocean freight has been claimed by the domestic industry at 143% of the FOB price itself and on a transaction by transaction basis the transport cost was around USD 20 per meter cube, the Authority notes that while calculating the Net Export Price, the ocean freight has been taken on the basis of verified data.

G. NORMAL VALUE

Determination of Normal value in respect of Non-cooperative Exporters/Producers from China PR and Indonesia

CHINA PR

36. The Authority notes that none of the producers/exporters from China PR have submitted questionnaire response and are therefore non-cooperative. In the absence of any response and China PR being a non-market economy, the Authority therefore considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value for China PR. Para 7 of Annexure I of the Rules provides that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of 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 domestic industry proposed that Thailand be taken as an appropriate market economy third country for determination of normal values for China PR, without making available any reliable information as required under the Rules. Moreover, the Authority notes that China PR and Thailand cannot be considered as at the same level of development. In view of the above, in terms of Para 7 of Annexure I of the Rules, the Authority determines the Constructed Normal Value (CNV) in respect of China PR *“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”*.

Indonesia

38. The Authority notes that none of the producers/exporters from Indonesia have submitted exporter’s questionnaire response and are therefore non-cooperative. Therefore, the Authority has relied upon the facts available in terms of Rule 6(8) of the Rules for the determination of normal value in respect of Indonesia and determined the Normal Value accordingly.

Determination of Normal value in respect of Co-operative Exporters/Producers from Thailand and UAE

General Methodology for working out dumping margin for responding exporters

39. It was first determined by the Authority that whether the total domestic sales of the subject goods by the producers/exporters concerned in the subject country was representative when compared to their total sales of the subject goods in the exporting country. Thereafter, it was examined whether their sales are under ordinary course of trade in terms of Rule 2 of the annexure I to the Anti-dumping Rules. Wherever the exporters have provided transaction wise details of sales made in home market and same has been accepted by the Authority after verification of information, the said verified information has been relied upon to determine the average selling price of various thicknesses of the subject goods sold in the home market. For the determination of the ordinary course of trade test, the cost of production of the product concerned was examined with reference to the records maintained by the producers. Further, all domestic sales transactions were examined with reference to the cost of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade or not. Thus, only the profitable transactions have been taken into consideration for the determination of normal value for the cooperating producers/exporters where sales below costs exceed 20%.

UAE

M/s Gypsemna Company (L.L.C), UAE:

40. The data submitted by M/s Gypsemna and verified by the Authority has been considered for determination of the Normal Value. M/s Gypsemna submitted details of sales of the subject goods in the domestic market. The Authority notes that the company sold a total quantity of *** square meter (***) cubic meter) of the subject goods in the domestic market. The Authority further notes that the thickness of the subject goods sold in domestic market varied from *** mm

to *** mm. An analysis of the domestic sales of the company during the POI reveals that there were significant differences in the sales price based on thickness of the goods sold to the consumers. The sales price of the subject goods in the domestic market along with the quantity sold in domestic market is as follow:

Sl. No.	Thickness	Volume			Value
		No. Of Boards	SQM	M3	in AED
1	***	***	***	***	***
2	***	***	***	***	***
3	***	***	***	***	***
4	***	***	***	***	***
5	***	***	***	***	***
6	***	***	***	***	***
7	***	***	***	***	***
	Total	***	***	***	***

41. The Authority further notes that the subject goods have been sold by the subject company to the independent entities as well as to a related company. The sales of the subject goods to the related company have been noted to be in the ordinary course of trade and have been accepted by the Authority for the determination of Normal Value. The Authority further notes that the company has incurred operating losses during the POI, as the capacity utilization was noted to be at *** %. In this regard the company claimed adjustments on account of startup expenses in respect of some of the elements of the fixed cost in terms of the Anti-Dumping Rules. In support of their claim, the company submitted a copy of project report for the production of Gypsum Plaster Boards. The adjustment on account of startup expenses was claimed by the company at *** % capacity utilization. The Authority notes from the report that the company was likely to attain the capacity usages of *** % during the *** year of its commercial production. Accordingly, the claim of the company for start up expenses has been accepted by the Authority. Further, the deductions claimed by the company on account of the packing cost, inland freight and credit cost in the domestic sales have also been accepted by the Authority. For the purpose of determining the normal value for the PUC in respect of Gypsemna, only the sales of the width of the subject goods, as have been exported to India, have been considered by the Authority.

Thailand

M/s Siam Gypsum Industry (Songkhla) Co. Ltd, Thailand

42. The information submitted by the company in its questionnaire response was verified by the Authority. The company submitted details of sales of the subject goods in the domestic market. The Authority notes that the company sold a total quantity of *** Cubic Meter of the subject goods in the domestic market. The Authority further notes that the thickness of the subject goods sold in domestic market varied from *** mm to *** mm. An analysis of the domestic sales of the company during the POI revealed that there were significant differences in the sales price

based on thickness of the goods sold to the consumers. The ex-factory sales price of subject goods, based on thickness varied from US \$ *** per Cubic Meter to US \$ *** per Cubic Meter. Therefore, for the purpose of arriving at the normal value and for comparison on a like-to-like basis, the domestic sales price of the thickness of the Gypsum Plaster Board, as exported by the company to India, has been considered by the Authority. During verification the Authority noted that the subject goods are also being sold by the company through related entities i.e. M/s ***, ***, ***, and M/s Siam Gypsum (Saraburi) Co. Ltd. The ex-factory sales price of the goods sold through ***, ***, ***, and M/s Siam Gypsum (Saraburi) Co. Ltd were noted by the Authority to be at a price significantly lower than the average selling price to other entities. Therefore, the sales of the goods through these two related entities have not been considered by the Authority in determining the Normal Value. The company has claimed adjustments on account of inland transportation, ocean freight, insurance, port handling charges, customs fees, differential in marketing / advertising expenses and the administrative expenses, credit cost and loyalty and target setting expenses. The expenses as verified and to the extent based on actual have been allowed.

M/s Siam Gypsum Industry (Saraburi) Co. Ltd

43. The data submitted by the company in its questionnaire response was verified by the Authority. The company submitted details of sales of the subject goods in the domestic market. The Authority notes that the company sold a total quantity of *** Cubic Meter of the subject goods in the domestic market. The Authority further notes that the thickness of the subject goods sold in domestic market varied from *** mm to *** mm. An analysis of the domestic sales of the company during the POI revealed that there were significant differences in the sales price based on thickness of the goods sold to the consumers. The ex-factory sales price of subject goods, based on thickness varied from US \$ *** per cubic meter to US \$ *** per cubic meter. During the verification the Authority noted that the subject goods are also being sold by the company through related entities i.e. M/s ***, ***, ***, and M/s Siam Gypsum (Songkhla) Co. Ltd. The ex-factory sales price of the goods sold through ***, ***, ***, and M/s Siam Gypsum (Songkhla) Co. Ltd were noted by the Authority to be at a price significantly lower than the average selling price to other entities. Therefore, the sales of the goods to these two related entities have not been considered by the Authority in determining the Normal Value. Further, the Authority has considered only the thicknesses of the subject goods which have been exported to India. The Authority notes that the company sold subject goods of the thickness of *** mm in the exports to India. In the absence of the sales of the thickness *** mm in the domestic market, the Authority has considered the sales of the subject goods of thickness *** mm in the domestic market for determination of normal value. Therefore, for the purpose of arriving at the normal value and for comparison on like-to-like basis, the domestic sales price of the thickness of the Gypsum Plaster Board, as exported by the company to India has been considered. The company has claimed further adjustments on account of inland transportation, ocean freight, insurance, port handling charges, custom fees, differential in marketing / advertising expenses and the administrative expenses, credit cost and loyalty and target setting expenses and Bank charges. The adjustments claimed by the company have been allowed as verified based on actual of the expenses incurred by the company.

Determination of Normal value in respect of Non-Cooperative Exporters/Producers from Thailand and UAE

Non Cooperative exporters, UAE

44. The Authority determined normal value for non-cooperative producers/exporters from UAE, on the basis of facts available as per the Rules.

Non Cooperative exporters, Thailand

45. The Authority determined normal value for non-cooperative producers/exporters from Thailand, on the basis of facts available as per the Rules

EXPORT PRICE

UAE

M/s Gypsemna Co. (L.L.C.), Dubai

46. M/s Gypsemna, UAE submitted details of their exports of the subject goods to India in the prescribed proforma. Based on verification of the data submitted by the company, the Authority notes that the company has exported the subject goods to India only of the thickness of *** mm during the POI. In the export price, the company has claimed adjustments on account of packing, credit cost, local transportation, documentation charges, ocean freight and BL&THC charges. The deductions claimed by the company as stated above have been accepted by the Authority based on verification and being based on actual. Based on the verification of claims and based on actual the above stated adjustments from the export price as above have been allowed by the Authority.

Non Cooperative exporters from UAE

47. The Authority notes that no other exporter from UAE has submitted exporter's questionnaire response. Therefore, the Authority has adopted the lowest representative net export price to India of the cooperating exporters from UAE.

Thailand

The Siam Gypsum Industry (Songkhla) Co. Ltd. Thailand

48. The data submitted by the company in response to the exporter's questionnaire was verified by the Authority. The Authority notes that the company has exported the subject goods of the thickness of *** mm and *** mm to Indian market. In the export price, the company has claimed adjustments on account of Ocean freight, port handling charges, credit cost and bank charges. Based on the verification of claims and based on actual the above stated adjustments from the export price as above have been allowed by the Authority.

The Siam Gypsum Industry (Saraburi) Co. Ltd. Thailand

49. The data submitted by the company in response to the exporter's questionnaire was verified by the Authority. The company submitted details of its exports of subject goods to India in the prescribed proforma. The Authority notes that the company has only sold the subject goods of the thickness of *** mm to Indian market. In the export price, the company has claimed adjustments on account of inland transportation, Ocean freight, port handling charges, credit cost

and bank charges. Based on the verification of claims and based on actual adjustments from the export price as above have been allowed by the Authority.

Non Cooperative exporters from Thailand

50. The Authority notes that no other exporter from Thailand has submitted exporter’s questionnaire response. Therefore, the Authority has adopted the lowest representative net export price to India of the cooperative exporters from Thailand for determining the net export price in case of non-cooperative exporters.

Determination of Export Price in respect of China PR and Indonesia

51. The Authority notes that none of the exporters/producers of subject goods from China PR and Indonesia have responded to the Authority in the form and manner prescribed. In the absence of response from the producers/exporters from the said countries, the Authority has determined the export price in respect of these countries on the basis of best available information in terms of Rule 6(8) of the anti-dumping Rules. The Authority has relied upon DGCI&S import data for the purpose of arriving at the weighted average CIF value of imports from the said countries during the POI. Adjustments on account of ocean freight, insurance, port expenses etc have been considered as claimed by the petitioner and subject to appropriate adjustments to arrive at the net export price in respect of the said countries.

H. DUMPING MARGIN

52. The Authority has considered the Normal Value of the cooperative exporters for the subject goods based on domestic sales after considering the adjustments as claimed and verified. The Normal Value has been accordingly determined based on thickness of the subject goods sold in a domestic market. The comparison of the export price has been made with the Normal Value in respect of the thicknesses of the PUC exported to India during the POI. Based on the comparison of the normal values and the export price, the dumping margin is determined as follows:

In US\$/Cubic Meter

Sl. No.	Country	Producer Exporter	Normal Value	Net Export Price	Dumping Margin	Dumping Margin %	Dumping Margin % range
1.	Thailand	The Siam Gypsum Industry (Songkhla) Co. Ltd. Thailand	***	***	***	***	90-100
		The Siam Gypsum Industry (Saraburi) Co. Ltd. Thailand	***	***	***		
		Weighted Average for the Group	***	***	***		
		Any other producer	***	***	***	***	120-130

2.	UAE	M/s Gypsemna Co. (L.L.C.), Dubai	***	***	***	***	10-20
		Any other producer	***	***	***	***	20-30
3.	China PR	All exporters/ producers	***	***	***	***	35-45
4.	Indonesia	All exporters/ producers	***	***	***	***	20-30

I. Miscellaneous Submissions

Miscellaneous Submissions made by domestic industry

53. The following miscellaneous submissions have been made by domestic industry during the course of the investigation:

- i. Authority may kindly disregard any submission made by any party who has failed to provide the information called for by the Designated Authority in the prescribed format. Submissions made by M/s India Gypsum, Cochin or any other party who have not filled the questionnaire response as per the prescribed procedure ought to be rejected outrightly.
- ii. The issue concerning jurisdiction of the Authority was raised before the Hon'ble Bombay high Court in the case of "Hamilton Housewares Pvt Ltd V/s DA" [2012 (276) E.L.T. 191]. The Hon'ble Bombay High Court dismissed the petition vide order dated 14.10.2011.
- iii. The investigation has been initiated by the Authority on the basis of detailed analysis of the injury factors to establish injury, causal link and dumping given by the domestic industry in the application.
- iv. The mere fact that the subject goods may find their application in the infrastructure sector, cannot and has never been a ground for decision-making in anti-dumping matters.
- v. The representative of the Government of UAE submitted a letter to the Designated Authority during the course of the hearing without providing copies to the other interested parties including the Domestic Industry. The contention of the UAE government is completely bereft of merit and is not sustainable in law.
- vi. The belated submissions filed by some of the parties after the expiry of the time limit of 40 days cannot be taken on record and needs to be rejected by the Authority.
- vii. The present Act and the Rules do not permit the Designated Authority to consider public interest as a basis to deny any remedy that is sought to be provided through the present legislation.
- viii. No intimation about change in name or change in structure of Lafarge Boral India Ltd has been placed on record.

- ix. As per the consistent practice of the DGAD, Authority may not take cognizance of the submissions made by an importer who has not filed the prescribed importer's questionnaire response.

Submissions made by the producers/exporters/importers/and other interested parties

54. The following miscellaneous submissions have been made by the producers/exporters/importers/and other interested parties during the course of the investigation:

- i. The subject investigation is without jurisdiction since the person holding the office of the Designated Authority as on the date of initiation of the investigation was of the rank of Additional Secretary to Government of India, whereas as per the Rules, the Designated Authority should have been of the rank of Joint Secretary to the Government of India.
- ii. The investigation has been initiated without examining the adequacy and accuracy of the information provided by the petitioner in the petition.
- iii. Subject goods are concerned with the infrastructure sector. In the interest of macro-economic growth, anti-dumping duty should not be imposed on the imports of the subject goods from the subject countries.
- iv. The petition is intended to create monopoly for the domestic industry in the Indian market at the cost of the consumers.
- v. As regards the contention of the DI that submissions of M/s India Gypsum, Cochin and any other party who has not filed the questionnaire response should be rejected, it is submitted that there is no such practice. Since the Designated Authority has in the past accepted submissions from the interested parties without questionnaire response, the same should be accepted in the present case as well.
- vi. The 40 days' time limit is applicable only for filing of questionnaire responses and not for filing written submissions.

Examination by Authority

55. The miscellaneous submissions made by the interested parties and the domestic industry are addressed by the Authority as under:

- i. As regards the submission made by the interested parties that the subject investigation is without jurisdiction since the person holding the office of the Designated Authority as on the date of initiation of the investigation was of the rank of Additional Secretary to Government of India, whereas as per the Rules, the Designated Authority should have been of the rank of Joint Secretary to the Government of India, the Authority notes that Hon'ble High Court of Mumbai, vide their order dated 14.10.2011, in the WP No. 6791 of 2011 of

“Hamilton Housewares Pvt. Ltd V/s DA” [2012 (276) E.L.T. 191], dismissed a petition with similar prayer.

- ii. The Authority notes that the subject investigation has been initiated by the Authority having been satisfied prima facie with the evidences submitted by the applicant concerning dumping, injury and causal link of the subject goods, originating in or exported from the subject country. The data/information submitted by the domestic industry and the cooperating interested parties have been verified by the Authority to the extent considered necessary.
- iii. As regards the submission made by the interested parties that subject goods are concerned with the infrastructure sector and in the interest of macro-economic growth, anti-dumping duty should not be imposed on the imports of the subject goods from the subject countries, the Authority notes that the argument has no logic under the anti-dumping provisions. The Authority further notes that the intent behind anti-dumping provisions is not to curb imports but rather to create a level playing field for the domestic industry vis-a-vis the dumped imports.
- iv. The copies of the non-confidential version of the responses/submissions made by various interested parties and the domestic industry, including the copy of the letter received from the representatives of Govt. of UAE during the public hearing, have been kept in the public file and the submissions made by the interested parties considered relevant by the Authority have been addressed in this finding.
- v. The submissions made by the interested parties only up to the time limits, as allowed under the rules or as allowed by the Authority on the specific request of any of the interested parties, have been considered by the Authority.
- vi. The contention of the interested parties that the exporters operate in the infrastructure sector and imposition of the Anti-Dumping duty on the subject goods may affect growth of an important sector of the economy is irrelevant. In the present investigation, the Authority has been guided by the provisions of the Anti-Dumping Rules.
- vii. The investigation has been initiated by the Authority on the basis of detailed analysis of the injury factors to establish injury, causal link and dumping given by the domestic industry in the application. Therefore the contention of the interested parties that the investigation has been initiated by the Authority without examining the adequacy and accuracy of the information provided by the petitioner is baseless.
- viii. As regards the contention of the domestic industry that the information that is provided in the application is relevant for the purposes of initiation only and recedes into background once the initiation is done, the Authority notes that the anti-dumping investigation is a continuous process and the information brought before the Authority at each stage of the investigation is important for arriving at a logical and judicious conclusion.
- ix. The information regarding change in name/structure of M/s Lafarge Boral India Ltd, submitted by the concerned party, has been placed in the public file by the Authority.

- x. The intent behind anti-dumping investigation is neither to encourage monopoly by the domestic industry nor to prevent imports. The basic purpose of the anti-dumping investigation is to create a level playing field for the domestic producers of commodity of subject goods vis-à-vis dumped imports.
- xi. The Authority has relied upon the import data received from the DGCI&S source for conducting necessary dumping and injury analysis. Therefore, petitioner's data based upon IBIS source has no relevance.

J. Injury Determination
Domestic Industry

56. The submissions made by the domestic industry with regard to injury and casual link are as follows:

- i. The contention that petitioner is intending to drive competition from the market is misplaced. The basic premise of anti-dumping duty is to protect against unfair practice of dumping. Moreover, there is no enquiry either against the petitioner or with regard to the Product under Consideration by the CCI.
- ii. It is only on the basis of sufficient evidence of dumping, injury and casual link that the Authority initiates investigations. The information in the context of the injury, casual link and dumping has already been provided in the application filed by the domestic industry.
- iii. The contention of the interested parties that injury allegedly suffered by domestic industry is due to increased cost of production caused by excessive production capacity and not because of imports is incorrect. Decisions concerning capacity creation/expansion are made based on the development of the market in terms of size and growth rates of the preceding years, which form the primary basis for the market projections for the future. The domestic market data shows that there has been a steady average growth of 30 - 40% over the years. Therefore, there is no merit in the argument that decisions of the Domestic Industry to increase capacities of production in excess of the demand in the country were misplaced.
- iv. The increase in the cost of production is overwhelmingly due to the increase in the variable cost of production, as increase in the fixed cost per unit is marginal. Thus, the increase in costs has no relation with the increase in capacity.
- v. The impairment costs related to the Chennai plant have not been considered either to calculate the injury related factors nor for the purpose of injury margin.
- vi. The quantity of captive consumption referred in the submissions of the interested parties is in the nature of boards utilized as samples or mock ups. The total quantity in 2009-10 was 45.10 MT which is equivalent to 59 M3 which is 0.03% of total sales during 2009-10. The cost for the same has been considered under the sales promotion expenses.

- vii. Allowing 22% return on capital employed is the consistent and uniform practice of the Authority.
- viii. The methodology for injury margin suggested by the interested parties is contrary to established practices of the Designated Authority and not laid down under the Act or the Rules. Moreover, as far as the issue of excluding the depreciation cost for calculating the NIP is concerned it is submitted that the methodology suggested by the interested parties is not in accordance with the consistent practice of the Authority.
- ix. The respondents have admitted that the injury is suffered by the domestic industry but the cause of injury has been attributed to other factors.
- x. M3 is the only unit of measurement which can take care of the variation in the thicknesses of the boards having a direct impact on the cost and prices of the boards.
- xi. It is true that there is only marginal increase in the imports from the subject countries during the year 2009-10 as compared to 2008-09. But, the pricing decision is taken not only on the basis of the import prices but it depends upon several other injury factors associated and operating at the same time. As the quantum of increase in imports is only marginal and the cost has also increased in 2009-10 as compared to the base year, the domestic industry had increased its prices to a certain extent. Moreover, it is submitted that had the dumped imports not there, then possibly domestic industry could have increased its prices in proportion to the increase in the cost so as to earn a reasonable profit. Evidently, it is undisputed that the level of profit had declined substantially during this period.
- xii. The reduction of price in POI goes to show increase in profits as compared to immediately preceding year (2009-10).
- xiii. The interested parties have themselves accepted the fact that the net selling price of the Boral Gypsum India Pvt Ltd is lower than that of the imported goods. This clearly goes to show that even Boral Gypsum to retain its market share is not in a position to recover prices that are around or equal to import prices.
- xiv. The Designated Authority has already disclosed that this is a fit case in which cumulative assessment is most appropriate in terms of law. The performance viewed in isolation would lead to absurd results as explained above.
- xv. The existence of Lafarge Boral is much prior to the POI and hence it cannot be said that the suffering of domestic industry in the POI is due to inter-se competition. Keeping in view the size of domestic industry, Lafarge Boral is not really in a position to influence market price.

Submissions made by the producers/exporters/importers/and other interested parties

57. The submissions made by the producers/exporters/importers/and other interested parties with regard to injury and casual link are as follows:
- i. The injury allegedly suffered by domestic industry is due to increased cost of production caused by excessive production capacity as compared to demand.
 - ii. The application for imposition of anti-dumping duty is intended to drive away competition from the market. The Competitive Commission of India has already initiated an investigation against the petitioner company in this regard.
 - iii. The subject petition is flawed since the petitioner has failed to establish prima facie that there was dumping, injury and causal link.
 - iv. Amortization of the cost of petitioner's Chennai plant that has discontinued production has caused the alleged injury to the petitioner.
 - v. Advantages gained out of captive consumption have not been analyzed. Any injury caused due to uneconomical usage of internally consumed goods shall not be attributed to the subject imports.
 - vi. NIP of the petitioners should be determined with a reasonable profit margin.
 - vii. The imports are made by a related company of Lafarge Boral in India which incurs all the selling expenses like advertisement expenses, sales promotion expenses, warehousing charges etc. to sell the product. Hence, in order to arrive at a fair comparison, what is to be compared is the net selling price of the trading company in India with the selling price of the petitioner.
 - viii. Imports from subject countries have increased only because of fresh production and resultant exports from UAE. If imports from UAE are excluded, the volume of imports is in the same region.
 - ix. During the period of 2008-09 and 2009-10, the market share of imports decreased. Despite this, market share of the domestic industry declined. At the same time, the market share of the other Indian producer, Lafarge Boral Gypsum India Pvt. Ltd, increased in the same period. This shows that the loss of market share to the Domestic industry is on account of internal domestic competition i.e., Lafarge Boral Gypsum Indian Pvt. Limited and not because of alleged dumping by the subject countries.
 - x. It is submitted that there was a decrease in the production of the petitioner for the period 2008-09 and 2009-10, but the production has in fact increased substantially in the POI. It is also observed that the loss in the production of the petitioner was because of the other Indian producer, which started manufacturing in 2008-09.
 - xi. There is no correlation between the increase in the alleged dumped imports and the alleged injury. In fact, when the imports declined in 2008-09 and 2009-10, the injury

parameters for the petitioner declined too, inter alia, profits, cash profit and return on investment. Therefore, the existence of causal link between the imports and the alleged injury is absent.

- xii. In determining the Non Injurious Price for the petitioner domestic industry, the statute provides for a reasonable rate of return to be included. It is quite unjustified on the part of the petitioner to claim exorbitant rate of return. Therefore, the NIP of the petitioners be determined with a reasonable profit margin of 3 percent which is the reasonable return considering the return earned by the M/s Saint Gobain group.
- xiii. The total capacity of the petitioner during the POI was 412500 M3 as against the total demand of 380279 M3. The production of other Indian producer during the POI was around 58,000 M3. Even, if no imports would have taken place during POI, around 90,000 M3 of capacity with the petitioner would have been unusable. In view of the same, the depreciation cost for the surplus capacity of around 90,000 M3 cannot be taken into account for determination of NIP.
- xiv. The domestic industry has not suffered any injury during the POI. In fact, during the POI, the performance of the petitioner has seen a strong growth. The increase in profitability of 74% per meter cube of board sold coupled with 9% increase in sales volume, profitability in Rupee terms has increased by 64%. This increase in profitability has been due to a fall in cost of production. These figures clearly show that the domestic industry has not suffered any injury during the POI. On the contrary, the financial performance of the petitioner has seen a steady growth.
- xv. The claim of price undercutting made in the petition and noted in the preliminary finding are erroneous and do not show the factual position. Firstly, the price comparison has not been made at the same level of trade. As far as co-operative exporter for Thailand M/s The Siam Gypsum Industry (Songkhla) Co. Ltd. and M/s Siam Gypsum Industry (Saraburi) Co. Ltd. are concerned, while the petitioner sells the products to its distributors directly, M/s Boral Gypsum India Pvt. Ltd imports the subject goods and thereafter re-sells them to the distributors after incurring significant marketing expenses. Therefore, in determining price undercutting, the ex-factory selling price of the domestic industry has to be compared to the re-sale price of M/s Boral Gypsum India Private Limited and not its import price. The price undercutting figure in the petition and the preliminary finding have been arrived at by comparing the ex-works price of the petitioner with the import price of M/s Boral Gypsum India Pvt. Ltd., which is incorrect.
- xvi. Imports from subject countries were at their lowest volume during 2008-09. Despite such low volumes of imports, the petitioner slipped into loss making situation from a healthy profitable situation during 2007-08. The reason for slipping into loss making situation cannot be due to imports of the subject goods from the subject country but rather due to the unsubstantiated capacity addition. Thereafter, with every unsubstantiated capacity addition, losses kept increasing. The fact that the petitioner started incurring losses when the import volumes were at their lowest level clearly shows that the reasons for losses were not imports from subject countries.

- xvii. Other factor that establishes the absence of any link between the imports and the performance of the petitioner is the position during the year 2008-09. During that year, imports of subject goods into India fell by more than 8% compared to the previous year. Even when the imports of subject goods had fallen coupled with an increase in landed value as high as 21%, the petitioner incurred has loss of 32 basis points as against the profit of 100 basis points during the immediately preceding year. This factor clearly shows that the losses being suffered by the petitioner are not due to imports.
- xviii. Where domestically manufactured goods are being sold at a price less than the imported goods, the injury if any is caused only due to domestic competition and not due to imported products. It can also be noted by the Authority that the selling prices of the domestic industry over the injury period have not been moving in tandem with the import prices of the subject goods but have been moving in tandem with the selling prices of the other domestic manufacturer in India.
- xix. The Company has reported capacity on weight basis in its Annual Report. However, the company has reported capacity on Cubic Meter basis in the present petition. Therefore, it is not clear whether and what capacity company has considered for the purpose of present petition.
- xx. Comparison of sales volume of Lafarge & domestic industry profits make it clear that Saint Gobain sales declined in 2008-09 when other producer came in to the market. Imports also declined in this period. Further, in 2009-10, Saint Gobain sales declined with the further increase in the sales of other domestic producers. In the POI, imports increased significantly, despite which Saint Gobain increased its sales and also the other producer sales increased.
- xxi. The domestic industry has significant profits in bought out items. It would also be seen that the annual reports of the company should be showing profits, whereas the petitioner has claimed financial losses.
- xxii. There is no correlation between the increase in the alleged dumped imports and the alleged injury.
- xxiii. The fall in cost of production (by 11.11%) is far higher than the fall in selling price (by 5.36%) during the POI. This clearly shows that the petitioner has not passed on the benefit that accrued to it due to fall in cost of production to its end customers. When the petitioner has been in a position to pass on just half of the fall in cost of production to its end customers, there lays no ground to claim that the price undercutting has impacted the performance of the petitioners.
- xxiv. The petitioner has four manufacturing plants in India – Jind in Haryana, Maharashtra, Chennai and Bangalore. The Company has completely suspended production at its Chennai Plant and has set up a green field plant at Bangalore. The company has not yet dismantled the Chennai plant and it is understood that the plant exist in its books even today. It is not known whether the company has disclosed full facts in this regard to the

Designated Authority and whether expenses and investments at Chennai Plant are included in the injury information and non injurious price information.

- xxv. The petitioner domestic industry has not established in the present case how the conditions for commutation are met in the present case. Unless the same is established, the Designated Authority shall not do cumulative assessment.
- xxvi. At the time of oral hearing on 10th April, 2012, the other domestic producer, Lafarge itself admitted that it was domestic competition which was causing injury to the domestic industry. The rule provides that the Designated Authority shall consider conditions of competition between domestic producers as a possible factor of injury. In the present case, Lafarge itself has admitted existence of domestic competition. It is the domestic competition which is the primary cause for injury.
- xxvii. There are no negative trends in inventories. As a matter of fact the average closing stock declined. This clearly shows that the lead out sales time for stocks is faster as compared to preceding years. Thus there are clearly positive trends in inventory.
- xxviii. The sales value has increased, Wages have increased over the injury period, The ROCE is positive even with negative profit/loss, which shows that the interest incurred by the Domestic Industry is high, Further, the Cash Flow although decreased, but is positive which shows that the depreciation is also high. These factors reflect that the selling price has increased over the period of injury, but the profit/loss is in negative. This is clearly because of the overhead costs which have increased over the period of injury.
- xxix. Between 2007-08 and 2008-09, import price increased by 21% and import volumes declined. Despite this, domestic industry went in financial losses from a situation of profits in 2007-08. Thereafter, between 2008-09 and 2009-10, the import price declined significantly and import volumes increased but were still lower than the level of 2007-08. The losses suffered by the domestic industry, however, increased significantly in 2009-10. Between 2009-10 and period of investigation, import price increased by about 2% despite which the import volumes increased by about 95%. Despite 95% increase in import volumes and increase in import price, the losses suffered by the domestic industry declined in period of investigation.
- xxx. The performance of domestic industry deteriorated with increasing domestic competition. Further, performance of domestic industry improved with increased competition from imports. There is therefore total lack of casual link in the present case.
- xxxi. The petitioner has submitted that there was a steady increase in the demand for the product in India during between 2003 and 2006 due to which it decided to increase its capacity. While the question was regarding the increase in capacity during the injury period which is between 2007 and 2010, the petitioner has referred to the increase in demand between 2003 and 2006. Further, while the past increase in consumption can be

a sign for estimating the future demand, it cannot by itself establish that the market size would increase in the same proportion for the future also. And it is precisely this error, the presumption that market size would increase at the same level forever, which has led to the entire injury to the domestic industry.

- xxxii. As against the expectation of the petitioner for a growth in market size by around 30% during 2008 and 2009, it actually increased by just 3% and 2% in the subsequent two years. This excessive capacity created expecting the market to see a higher growth rate, which did not happen, resulted in increased cost of production (increased overheads, increased interest costs for creating the capacity etc.) which in turn resulted in losses to the petitioner.
- xxxiii. The injury, if any, was only due to domestic competition and not due to imports. The selling price of the boards imported by the respondent importer is higher than the selling price of domestically manufactured boards of Boral Gypsum India Pvt Ltd. Therefore, even if the imported boards had been totally removed from the Indian market, the petitioner would have still suffered 'material injury' due to the domestic competition.
- xxxiv. The computation of NIP by the petitioner is incorrect, as the petitioner has claimed an exorbitant 22% rate of return. The Authority should not allow rate of return more than 3%.
- xxxv. The imported goods from Thailand compete with the domestically manufactured goods only at the level when they are resold in India. Therefore, injury to the domestic industry has to be analyzed based on the re-selling price of the responding importer.
- xxxvi. The NIP determined for domestic industry is very high due to capacity exceeding the demand in the country, use of costlier fuel by domestic industry, inclusion of costs attributable to other products, inclusion of after sales expenses in NIP, expenses incurred during strike, costs incurred on warehouses etc.
- xxxvii. The injury is caused to the domestic industry due to domestic competition from Boral Gypsum India Pvt. Ltd. and not due to the imports from subject countries.
- xxxviii. When the selling and administration expenses of the petitioner are included in determining its NIP, then such expenses incurred by the Respondent related company in India needs to be necessarily included to allow fair comparison.
- xxxix. The injury margin should be determined considering the re-sale price of Boral Gypsum India Pvt Ltd with the NIP of the domestic industry.
- xl. One of the plants of the petitioner had strike and shut down during the period of investigation. The Designated Authority should consider performance of the domestic industry by taking this in to account.

- xli. The petitioner has not established in the present case how the conditions for cumulation are met in the present case. Unless the same is established, the Designated Authority shall not do cumulative assessment.
- xlii. Imports increased significantly in the investigation period. However, profitability of Saint Gobain also improved significantly in this period.

Examination by the Authority

58. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties and considered relevant by the Authority are addressed below:

- As regards considering the resale price of importers in India for determination of landed value for the purpose of injury margin etc is concerned, based on the documents submitted by the exporters M/s Siam Gypsum Industry (Saraburi) Co. Ltd. and M/s Siam Gypsum Industry (Songkhala) Co. Ltd, the Authority notes that it has been contended by the exporters from Thailand that since the exporters and the Indian importers are related entities, the sales price between the two only reflects the transfer price and is not a realistic price reflecting the prevailing market price for the subject goods. In view of the difference in the transfer price and the resale price, an argument has been raised to consider the first independent resale price to the buyers in India i.e. the sales price of M/s Boral Gypsum India Pvt. Ltd. to the independent entities, after considering the elements of selling and distribution expenses and profit margin. In this regard the concerned interested parties submitted a copy of the order No. *** dated *** from the Commissioner of Customs, Chennai. On examination of the said order, the Authority notes that it has been claimed by the concerned interested parties therein that the relationship between the said Indian importer and the said producers/exporters from the subject countries has not influenced the price and therefore the invoice value may be accepted. The Customs Authority has also concluded in the stated order that though the Indian importer and the suppliers are related, that relationship has not influenced the invoice price. The Authority further notes from the stated order of the Customs Authority that the stated producers/exporters from Thailand and the stated Indian importer have related companies/suppliers in other subject countries as well, who are involved in the subject goods, but have not responded in the present investigation. In view of the above facts the Authority considers that the transfer price between the related entities i.e. M/s Siam Gypsum Industry (Saraburi) Co. Ltd., M/s Siam Gypsum Industry (Songkhala) Co. Ltd. and M/s Boral Gypsum India Pvt. Ltd. is completely based on arms length relationship. The Authority, therefore, does not to accept the resale price of the related Indian importer as the basis for comparison with the Non-injurious Price of the domestic industry. The Authority has, therefore, considered the actual sales price of the exports from Thailand to the related entity in India as the basis for determination of landed value for assessment of undercutting, underselling and injury to the domestic industry.

- As regards the contention of the interested parties that the injury to the domestic industry is on account of internal competition caused by the entry of the other domestic producer namely M/s Boral Gypsum India Pvt. Ltd., the Authority notes that while some of the market share of the domestic industry may have shifted to the new entrant, this cannot be considered as the sole reason for the loss of the market share by the domestic industry. On the contrary, the loss of market share by the domestic industry has also been on account of the significant imports of the subject goods from the subject countries. In view of the above, it would not be correct to conclude that the loss of market share by the domestic industry is solely due to the domestic competition posed by M/s Boral Gypsum India Pvt. Ltd. The Authority further notes that the exporters from Thailand and M/s Boral Gypsum India Pvt. Ltd. are related entities. Based on the information furnished and verified by the Authority, it has been substantiated that both the exporters from Thailand i.e. M/s Siam Gypsum Industry (Saraburi) Co. Ltd. and M/s Siam Gypsum Industry (Songkhala) Co. Ltd. have sold the subject goods to India at dumped prices, resulting in injury to the domestic industry.
- The Authority notes that the intent for imposition of anti-dumping duty is not to drive away competition from the market, but rather to create a level playing field characterized by fair competition. The Authority further notes that the interested parties have not furnished any documentary evidence in support of their submission that the Competitive Commission of India has already initiated an investigation against the domestic industry in this regard. The domestic industry has also denied any such investigation by the CCI against their company. Nevertheless, the Authority notes that the investigations initiated by the Competitive Commission of India are beyond the scope of Anti-dumping investigations.
- The Authority notes that the impairment cost relating to the Chennai Plant of the domestic industry has neither been considered for determination of NIP nor for the purpose of injury analysis. Therefore, the submissions of interested parties in this regard are unfounded.
- As regards the captive consumption of some of the boards by the domestic industry, the value of the same is insignificant. Being a part of the samples or mock up expenses, this has been considered as business expenditure for sales promotion.
- As regards return on the capital employed, the Authority notes that the returns on the capital employed has been considered strictly in accordance with the provisions of the Anti-dumping Rules as amended from time to time and in accordance with the consistent practice followed by the Designated Authority. It is further clarified that the returns allowed by the Authority as a percentage of the capital employed not only covers the returns/profit margin of the domestic industry but also covers the financial charges and the element of taxes.

- As regards the determination of the installed capacity based on Cubic Meters, as against the reported capacity in the Annual Report on weight basis, the Authority has considered the capacity on Cubic Meter basis based on standard weight of the Plain Gypsum Plaster Board for the standard width based on representative widths of subject goods being produced by the domestic industry.
- The Authority notes that the annual report of the applicant company represents the financial status of the company for all the activities which includes standard Gypsum Board, Value Added Gypsum Boards, and other products.

59. The specific submissions of the interested parties with regard to trends in various parameters of injury have been appropriately dealt with by the Authority while examining the injury to the domestic industry. In this regard the Authority notes that while some of the injury to the domestic industry could be attributed to factors other than dumped imports, various relevant factors show that the material injury to the domestic industry has also been caused by dumping of the subject goods from the subject countries. The provision of Anti-dumping Rules requires the Authority to recommend lesser of the dumping margin or the injury margin as the anti-dumping duty. The Authority notes that even based on the non-injurious price for the domestic industry (NIP), the injury margin is positive.

60. As regards the submission concerning cumulative assessment of injury, the Authority notes that Annexure II Para (iii) of the Anti-dumping Rules provides that in case imports of the product under consideration from more than one country are being simultaneously subjected to anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

- i. The margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article.
- ii. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles. In this regard the Authority observes that:
 - i. The margins of dumping from each of the subject countries are more than the limits prescribed above;
 - ii. The volume of imports from each of the subject countries is more than the limits prescribed;
 - iii. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:

- a. The subject goods manufactured by the producers from the subject countries inter-se and in comparison to the product manufactured by the domestic industry. In other words, the subject goods supplied from various subject countries and by the domestic industry are inter-se like articles.
- b. There are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product.
- c. The exporters from the subject countries and domestic industry have sold the same product in the same periods to the same set of customers. The sales channels are comparable.
- d. Volume of imports from each of the subject countries is significant.
- e. Consumers make purchase decision on the basis of prices offered by various suppliers.

61. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from China PR, Indonesia, Thailand and UAE on the domestic industry in the light of conditions of competition between imported product and like domestic product. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above.

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

63. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the AD Rules states as follows:

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and

potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments.”

64. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

K. Demand and market share

65. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of domestic industry and other Indian producers have been added to the total imports into India and the same has been summarized below:

	Meter Cube (M3)			
	April 07- March 08	April 08- March 09	April 09 - March 10	POI
Imports of subject goods	54082	49851	54005	106062
Sales of domestic industry	226928	211235	198999	216092
Sales of other producers	-	30000	45000	58125
Total demand	281010	291086	298004	380279
% Share of Subject countries	19.24	17.13	18.12	27.89
Share of other countries	-	-	0.06	0.24
Share of domestic production	80.75	82.87	81.88	72.1
Share of domestic industry (%)	80.75	72.56	66.78	56.82
Share of Others	-	10.31	15.10	15.28

66. The Authority notes from the table above that the total imports of the subject goods from the subject countries during the 2007-08, 2008-09 and 2009-10 were more-or-less stagnant except some decline in the volume of imports during the year 2008-09. It was only in the POI that there is a significant increase in the volume of imports and the imports increased by around 96% over the base year. The Authority further notes that the sales of the domestic producer have more or less remained stagnant throughout the injury period including the POI, whereas the sales of the other producers have increased consistently during the same period.

L. Volume Effects of Dumped Imports

Import Volume and Market Share

67. 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. For the purpose of injury analysis, the Authority

has relied upon the import data procured from DGCI&S source. The volume of imports of the subject goods from the subject countries have been analyzed as under:

Meter Cube (M3)

Particulars	April 07- March 08	April 08- March 09	April 09 – March 10	POI
Imports in absolute terms				
a. Thailand	50027	43525	27486	53645
b. Indonesia	2397	4839	11382	11777
c. China PR	1652	1487	5598	4298
d. UAE		0	9357	35414
Imports from Subject countries	54076	49851	53823	105134
Imports from other countries	6	-	182	928
Total imports	54082	49851	54005	106062
Total Sales PUC (DI)				
	226928	241235	243999	274217
Total Demand	281010	291086	298004	380279
Imports, as % of total imports	23.8	23.2	22.1	38.7
a. Thailand	92.5	87.3	50.9	50.6
b. Indonesia	4.4	9.7	21.1	11.1
c. China PR	3.1	3.0	10.4	4.1
d. UAE	0.0	0.0	17.3	33.4
Subject countries	100.0	100.0	99.7	99.1
Other countries	0.0	0.0	0.3	0.9
Grand Total	100.0	100.0	100.0	100.0
Demand in India	281010	291086	298004	380279
Trend in India	100	104	106	135
Share in demand				
a. Domestic Industry	80.75	72.56	66.78	56.82
b. Other Indian producers	-	10.31	15.10	15.28
c. Total (a+b)	80.75	82.87	81.88	72.1
d. Subject countries	19.25	17.13	18.06	27.66
e. Other countries	-	-	0.06	0.24

68. The Authority notes that:

- i. Imports have increased in absolute terms but have generally remained stagnant during the years 2007-08, 2008-09 and 2009-10 except for a decline in 2008-09 of around 8%. It was only in the POI that there is an increase in volume of imports. The increased in the POI has been as much as 96% over the base year.

- ii. The demand for Plain Gypsum Plaster Board has gradually increased during the injury period and the POI. The increase in the demand till 2009-10 over the base year was around 6%. However, the total demand increased by about 35% in POI as compared to base year. The similar trends have been noted in the volume of imports from the subject countries.
- iii. The share of domestic producers and the imports of subject goods from the subject countries were generally constant till 2009-10. However, due to increase in the volume of imports from the subject countries the share of imports in the demand of the product in India increased from 19% to 27%.
- iv. The Authority notes that the share of domestic industry in the total demand was around 80% till 2009-10. However, there was a decline of around 9% of the total demand during the POI over the base year. This 9% has been taken over by the surge in the volume of imports from the subject countries. A further analysis of the market share of the domestic industry indicates that the domestic industry has also gradually lost a part of its market to the new entrant M/s Lafarge Boral India Pvt. Ltd. While the total demand of the subject goods increased by 99,269 C3 Meters, during the POI over the base year the increase in the share of other domestic producer M/s Lafarge Boral India Pvt Ltd was only 58, 125 C3 Meter during the same period. At the same time while the domestic industry noted a decline in its sales by 10836 C3 Meter, the volume of imports from the subject countries witnesses a surge to the extent of 51980 C3 Meter.
- v. During the course of verification, it was noted by the Authority that one of the plants of the domestic industry was shut down for a period of about *** days during the POI. The Authority notes that this plant accounted for *** % of the installed capacity of the domestic industry. Further, the share of production of this plant in the total production of the domestic industry during the POI was *** %.

M. Price effect of imports

69. With regard to the effect of the dumped imports on prices, 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 the price undercutting, price underselling, price suppression and price depression, if any.

Price undercutting

70. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. Authority has determined net sales realization considering selling price, excluding taxes & duties, rebates, discounts & commissions. Entire sales volumes of the domestic industry have been included in the calculations. Landed price of imports has been determined considering weighted average CIF import price after excluding freight if any from sea port to inland port, with 1% landing charges and applicable basic customs duty. The comparison was done between net sales realization and landed price of imports. The Authority has determined weighted average price undercutting by the dumped imports. It has been argued

by the exporters from Thailand that for the purpose of determination of price undercutting it is the resale price of the related entity i.e. M/s Lafarge Boral India Pvt. Ltd. which is relevant and more appropriate as the same reflects the real price at which the subject goods enters the domestic market. This issue has already been addressed by the Authority in the disclosure statement and in view of the facts as stated by the Authority; the contention of the concerned producer/exporter has not been accepted by the Authority

71. The Authority notes that the landed prices of the subject goods are significantly below the selling price of the domestic industry which suggests significant price undercutting being caused by the dumped imports from subject countries as apparent from the following table.

Rs /Meter Cube (M3)						
Sl. No.	Details	UAE	China	Indonesia	Thailand	Subject countries
1.	Net Sales Realization of domestic industry	***	***	***	***	***
2.	Landed value	***	***	***	***	***
3.	Undercutting	***	***	***	***	***
4.	Undercutting %	***	***	***	***	***
5.	Undercutting % range	25-35	30-40	20-30	40-50	32-42

72. The Authority notes from the above table that the landed value of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting.

Price-underselling

73. From the table given below, the Authority notes that there is positive and significant price underselling effect.

Sl. No.	Details	UAE	China	Indonesia	Thailand	Subject countries
1.	NIP of domestic industry	***	***	***	***	***
2.	Landed value	***	***	***	***	***
3.	Underselling	***	***	***	***	***
4.	Underselling %	***	***	***	***	***
5.	Underselling % range	30-40	40-50	25-35	45-55	35-45

Price suppression/depression

74. In order to determine whether the dumped imports are suppressing or depressing the domestic prices, the Authority determined whether the effect of such imports is to suppress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

<u>R/s Meter Cube (M3)</u>				
	April 07- March 08	April 08- March 09	April 09 - March 10	POI
Selling Price- Rs./ M3	***	***	***	***
Indexed	100	109	108	106
Cost -Rs. / M3	***	***	***	***
Indexed	100	124	121	122

75. The Authority notes from the table above that there have been divergent trends in the sales price and cost of production of the domestic industry. The Authority notes that the performance of the domestic industry has primarily fluctuated with the changes in its cost of production. The cost of production of the domestic industry increased by 24% during 2008-09 and by 21% during 2009-10 over the base year. During the corresponding year the increase in the selling price of the domestic industry was only 9% and 12% respectively.

N. Economic parameters of the Domestic Industry

76. Annexure II to the Anti-dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Anti-dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

77. The various injury parameters relating to the domestic industry are discussed herein below:

i. Production, capacity and capacity utilization of the Domestic Industry

<u>Meter Cube (M3)</u>				
	April 07- March 08	April 08- March 09	April 09 - March 10	POI
Capacity	287500	350000	412500	412500
Total Production	226987	210860	204675	219882
Capacity Utilization %	79%	60%	50%	53%

78. The table as above indicates that the capacity utilization of the domestic industry has declined during the injury period. Although during the POI, the capacity utilization has marginally

increased vis-à-vis immediate preceding year, it has suffered a significant fall in comparison to the base year. However, the Authority notes, that there has been addition to the capacity during the year 2008-09 and 2009-10. It is noted that utilization of new plants added by the domestic industry was at a comparatively lower level. The Authority further notes that in spite of the addition of capacities there is marginal decline in the volume of total production of the domestic industry during the same period, although the volume of production has slightly increased during the POI as compared to the preceding year. During verification of the information submitted by the domestic industry, it was noted that one of the plants of the domestic industry was shut down due to strike during the POI. This plant represented *** % of the total installed capacity of the domestic industry. The Authority notes that but for the strike at this plant during the POI, the actual production and capacity utilization of the domestic industry would have been higher. The production of this plant for the period for which it was in operation accounted for *** % of the total production of the domestic industry for the POI.

ii. Sales Volume & Value

79. The sales volume of the domestic industry has come down by about 5% over the injury investigation period in spite of increase in demand. The decline in the volume of sales of the domestic industry may partly be attributable to the commencement of domestic production by M/s Lafarge Boral India Pvt. Ltd and also due to significant increase in the imports from the subject countries.

	<u>Meter Cube (M3)</u>			
	April 07- March 08	April 08- March 09	April 09 - March 10	POI
Total Sales Volume – Domestic	226928	211235	198999	216092
Indexed	100	93	88	95

iii. Profitability

80. The Cost of sales, Net sales realization and Profit/loss of the domestic industry in respect of the domestic sales of the subject goods for the period from 2007-08 to 2009-10 and POI are given in the following table:

SN	Particulars	Unit	April 07- March 08	April 08- March 09	April 09 - March 10	POI
1	Sales	Rs. Lacs	***	***	***	***
	Index		100	102	98	101
2	Cost of sales (domestic)	Rs. Lacs	***	***	***	***
	Index		100	115	109	116
3	Profit/Loss (domestic)	Rs. Lacs	***	***	***	***
	Index		100	(32)	(14)	(49)

4	Cost of sales (domestic)	Rs./MT	***	***	***	***
	Index		100	124	121	122
5	Sales value(domestic)	Rs/MT	***	***	***	***
	Index		100	109	109	106
6	Profit/Loss(domestic)	Rs/MT	***	***	***	***
	Index		100	-36	-152	-51
7	Depreciation	Rs. Lacs	***	***	***	***
	Index		100	141	164	163
8	Interest Cost	Rs. Lacs	***	***	***	***
	Index		100	451	2980	2571
9	PBIT	Rs. Lacs	***	***	***	***
	Index		100	18	67	22
10	Cash Profit	Rs. Lacs	***	***	***	***
	Index		100	35	55	34
11	Capital employed	Rs. Lacs	***	***	***	***
	Index		100	24	34	9
12	Returns on capital employed	%	***	***	***	***

81. The Authority notes that:

- i. The domestic industry was earning profits in the base year of the injury period. The profits of the domestic industry changed to losses in the year 2008-09. Further, the domestic industry continued to incur losses on the sales of subject goods during the year 2009-10 although the quantum of losses declined marginally. However, the losses of the domestic industry increased once again significantly during the POI.
- ii. The analysis of sales realization of the domestic industry and the cost of production indicates that there has been a significant jump in the cost of production of the domestic industry during the years 2008-09 and 2009-10. The cost of production registered 22 points increase during the POI over the base year. On the other hand, the sales realization of the domestic industry has not increased commensurate with the change in the cost of production. As against an increase in the cost of production of 21% till 2009-10, the increase in the sales realization was only 9%. As a result the domestic industry has incurred financial losses.
- iii. An analysis of cost structure of the domestic industry indicates that there has been substantial increase in the fixed charges of the domestic industry particularly in respect of depreciation cost and the interest expenses.

- iv. During the POI when the volume of imports from the subject countries witnessed a substantial increase, both the sales volume and the production of the domestic industry also increased.
- v. It is further noted from the statistical analysis, as above, that during the injury period and the POI, the domestic industry has constantly earned cash profits although the level of profits over the period has fluctuated substantially. The cash profit of domestic industry has declined significantly during the POI as compared to the immediate preceding year as well as base year.

iv. Employment and Wages

82. The trends in the employment and wages of the domestic industry during the injury period and the POI are summarized below:

	April 07- March 08	April 08- March 09	April 09 - March 10	POI
No of Employeees	***	***	***	***
Indexed	100	99	94	95
Wages Total (Rs. Lacs)	***	***	***	***
Indexed	100	124	130	135

83. **Wages:** The Authority notes from the above table that there is decline of 5% in the number of employees of the domestic industry during the injury period and the POI. On the other hand the total wages of the workers has increased by around 35%.

84. **Inventories:-** The data relating to Inventory of the subject goods are shown in the following table:

	<u>Meter Cube (M3)</u>			
	April 07- March 08	April 08-March 09	April 09 - March 10	POI
Opening stock	***	***	***	***
Closing Stock	***	***	***	***
Average stock	***	***	***	***
Index	100	81	77	98

85. The Authority notes from the above table that the average stocks of the domestic industry declined during the years 2008-09 and 2009-10. However, the stocks of the subject goods increased during the POI although it was marginally lower than the average stocks during the base year.

86. **Productivity:** Data relating to productivity show as follows:

	<u>Meter Cube (M3)</u>			
	April 07- March 08	April 08- March 09	April 09 - March 10	POI
Production	226987	210860	204675	219882

Employees	***	***	***	***
Production per Employee	***	***	***	***
Indexed	100	93	96	102

No significant change in the productivity per employee has been noted during the POI over the base period.

(v) **Magnitude of Dumping**

87. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margin determined against the subject countries are above de minimis and significant.

88. **Ability to raise funds:** The Authority notes that the profitability of the domestic industry from the domestic sales of the subject goods has declined during injury period and POI. However, the Authority notes that the domestic industry has significant amount of turnover and profitability from operations other than the product under consideration. Therefore, their ability to raise funds does not seem to have been affected.

O. **Material injury and Causal Link**

89. There has been a significant increase in the volume of dumped imports from subject countries in absolute terms. The market share of dumped imports in total demand of subject goods has also increased significantly. It is also noted that the dumped imports were undercutting the prices of the domestic industry in the market. It is further noted that the dumped imports have had significant adverse price effect in terms of price undercutting, price suppression and price underselling. Further, the dumping margins from subject countries have been determined and are significant.

P. **Other Known Factors**

90. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry, as follows:-

(a) **Volume and Prices of imports not sold at the dumped prices**

It is noted from import data that 99% of imports of subject goods are from the subject country. Further, the imports from other countries are insignificant. Therefore, the imports from other countries could not have affected the prices in the domestic market.

(b) **Contraction of demand and changes in the pattern of Consumption**

The Authority notes that demand for the subject goods has shown a growth of about 35% during POI as compared to base period. There is also no indication of any change in the consumption pattern.

(c) Developments in Technology

The Authority notes that none of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(d) Trade restrictive practices of and competition between the foreign and Domestic Producers

The Authority notes that the subject goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic production and sales. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

(e) Export performance of the Domestic Industry

The Authority notes that the subject goods have not been exported by the domestic industry during the injury period and the POI. Therefore, the question of the performance of domestic industry being affected on account of exports does not arise.

(f) Productivity of the Domestic Industry

The Authority notes that the productivity of the domestic industry in terms of production per employee has improved in POI as compared to base year. Therefore, possible decline in productivity cannot be a factor causing injury to the domestic industry.

(g) Excess Capacity

It has been argued by some of the interested parties that the installed capacity of the domestic industry has far exceeded the demand for the subject goods and some of the injury to the domestic industry is due to the excess capacities. In this regard the Authority notes that while the installed capacity of the domestic industry during the POI was 4,12,500 cubic meters, the total demand for the subject goods during the POI was 3,80,279 cubic meters. This demand includes the share of the other domestic producer to the extent of 58,125 Cubic Meters. This shows that the domestic industry has excess capacity as compared to the total demand in the country.

(h) Loss of Production Due to Strike

The Authority notes that one of the plants of the domestic industry was shut down for about *** days on account of strike during the POI thereby affecting the production of the domestic industry.

(i) Competition from Domestic Production

The Authority notes that the other domestic producer M/s Lafarge Boral India Pvt. Ltd. commenced the commercial production and sales of the subject goods during the year 2008-09. It was the year 2008-09 that the domestic industry also increased its capacities for production of the subject goods.

The Authority further notes that this may also be one of the reasons that might have affected the performance of the domestic industry.

Q. Magnitude of Injury and Injury Margin

Injury Margin

91. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject countries for determination of injury margin during POI. In this context the Authority examined the submissions made by M/s The Siam Gypsum Industry (Songkhla) Co. Ltd., Thailand and M/s Siam Gypsum Industry (Saraburi) Co. Ltd., Thailand and their related Indian producer/importer M/s Boral Gypsum India Pvt. Ltd, that the resale price of the related importer should be taken as the landed price and be made the basis for injury analysis and determination injury margin by the Authority. The Authority notes from a copy of the Order No. *** dated *** of Commissioner of Customs, Chennai furnished by M/s Boral Gypsum India Pvt. Ltd that the related parties have themselves admitted before the Customs Authority that the relationship between the said Indian importer and the said producers/exporters from the subject countries has not influenced the price and therefore the invoice value may be accepted. The Customs Authority has also concluded in the stated order that though the Indian importer and the suppliers are related, that relationship has not influenced the invoice price. In view of the above, the Authority does not accept the submissions made by M/s Siam Gypsum Industry (Songkhla) Co. Ltd., Thailand and M/s Siam Gypsum Industry (Saraburi) Co. Ltd., Thailand and their related Indian producer/importer M/s Boral Gypsum India Pvt. Ltd to take and adopt their resale price as the basis for injury analysis and determined injury margin as under:-

US \$/Cubic Meter

S. No.	Country	Producer / Exporter	NIP	Landed value	Injury Margin	Injury Margin %	Injury Margin % range
1.	Thailand	The Siam Gypsum Industry (Songkhla) Co. Ltd. Thailand	***	***	***	***	65-75
		The Siam Gypsum Industry (Saraburi) Co. Ltd. Thailand	***	***	***		
		Weighted Average for the Group	***	***	***		
		Any other producer	***	***	***	***	90-100
2.	UAE	M/s Gypsemna Co. (L.L.C.), Dubai	***	***	***	***	40-50
		Any other producer	***	***	***	***	45-55

3.	China	All exporters / producers	***	***	***	***	70-80
4.	Indonesia	All exporters / producers	***	***	***	***	35-45

R. Comments on the Disclosure Statement by the Interested Parties

92. The essential facts of the investigation were disclosed by the Authority vide disclosure statements dated 6th September, 2012 and 4th January, 2013. The comments received post-disclosure from the domestic industry and other interested parties, to the extent considered relevant to the investigation, are summarized below :

Post –Disclosure Comments made by the Domestic Industry

- i. In terms of Paragraph 3(ii) of Annexure I of the Anti-dumping Duty Rules cost adjustments are permitted only if the start-up operation has taken place during the Period of Investigation and has affected the costs of that period. The responding exporter from UAE was set-up in the year 2007 and the commercial production started in June 2009, as is evident from the questionnaire response of the concerned exporter itself. Since it is an admitted fact that the start-up operation did not take place during the POI, the question of making any adjustment on account of start-up operation simply does not arise.
- ii. Normal value on the basis of domestic selling price ought to be rejected for UAE because of existence of particular market situation being caused due to Government intervention in natural gas prices.
- iii. The export price for non-cooperative exporters from the subject countries should be based on lowest CIF price available from the DGCIS data after adjusting the freight and insurance.
- iv. The methodology and final figures of the normal value computed for the non-cooperative exporters should be disclosed.
- v. The technical specifications of the excluded products should be mentioned in the final finding notification.

Post –Disclosure Comments made by other interested parties

- i. The principal cause of the injury to the domestic industry were not the alleged dumped imports but rather (i) internal competition amongst domestic producers, (ii) the incidence of high fixed cost coming out of new production facility which could not be fully optimized; (iii) start up operations; (iv) movements in the costs; and (v) lack of demand to utilize the capacities created in the Country. Therefore the causal link is absent.
- ii. The petitioner has provided no evidence of dual pricing policy in the UAE.
- iii. The anti-dumping duty should be in benchmark form expressed in Indian rupee.
- iv. Since the scope of the product under consideration is ‘Plain Gypsum Plaster Board’, ‘Ceiling Tiles’ that are used in modular ceiling be specifically excluded from the scope of the investigation.

- v. The import prices into India do not have any effect on the prices of the domestic industry. It is only the re-sale price of the related importer in India that impacts the prices of the domestic industry.
- vi. The initiation of the investigation was bad in as much as the person initiating the investigation did not have the jurisdiction as on the date of initiation of the investigation.
- vii. The injury suffered by the domestic industry due to domestic competition should be segregated.
- viii. The costs and Non-injurious Price of the domestic industry should be appropriately adjusted to exclude the additional costs incurred due to unsubstantiated capacity addition and due to the strike.
- ix. The Authority has noted that return on capital employed has been determined as per the AD Rules, but has not stated the rate that has been considered.
- x. In terms of section 21 of Competition Act, any investigation has to be referred to the CCI if the interested parties raise an objection that the decision to be taken would be contrary to the provisions of the Competition Act.
- xi. Both The Siam Gypsum Industry (Saraburi) Co. Limited, and The Siam Gypsum Industry (Songkhla) Co. Limited, exporters from Thailand offer a price undertaking. We request the Authority to inform us the price at which the undertaking is to be given and format, if any, for such an undertaking.
- xii. Authority should disclose the non-confidential version of the DGCI&S data.

Examination by the authority

93. Post disclosure, the domestic industry and other interested parties have mostly reiterated their earlier submissions, which have been addressed in this final finding.
94. The interested parties have submitted that Ceiling Tiles are different from the PUC and beyond the scope of the present investigation. The domestic industry also in its submissions has acknowledged that ceiling tiles are beyond the scope of the PUC and therefore beyond the purview of the present investigation. In view of this, the Authority excludes Ceiling Tiles from the purview of the PUC and the scope of the anti-dumping measures.
95. As regards the post disclosure contention of the domestic industry concerning the relevant provisions in the Anti-dumping Rules relating to adjustments on account of startup operation's cost, the Authority notes that the contention is factually incorrect.
96. As regards the post disclosure submission of the other interested parties that the anti-dumping duty should be in benchmark form expressed in Indian rupee, the Authority has considered all the relevant factors and recommends fixed duty as given herein below.
97. As regards the price undertaking offered by The Siam Gypsum Industry (Saraburi) Co. Limited, and The Siam Gypsum Industry (Songkhla) Co. Limited, the Authority notes that in view of practical difficulties in monitoring price undertakings, the Authority does not consider it appropriate to accept the offer.
98. As regards the provisions of Competition Act referred to by the other interested parties, the Authority notes that the present investigation has been conducted in terms of the Anti Dumping Rules.

S. Conclusions

99. After examining the issues raised and the submissions made by the interested parties and facts made available before the Authority during the course of the investigation, the Authority concludes that:

- i. The subject goods have entered the Indian market from the subject countries below associated normal values, thus resulting in dumping of the subject goods;
- ii. The dumping margins of the subject goods imported from the each of the subject countries are above de-minimis;
- iii. The domestic industry has suffered material injury in respect of the subject goods; and
- iv. The dumped imports of the subject goods from the subject countries have caused material injury to the domestic industry.

T. 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 industry 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 so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti dumping duties, therefore, would not affect the availability of the product to the consumers. 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. The consumers could still maintain two or even more sources of supply.

U. Recommendation

101. The Authority notes that the investigation was initiated and it was notified to all known interested parties. Adequate opportunity was also given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the Anti-dumping Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive Anti-dumping duty is required to offset dumping and injury.

102. Having regard to the lesser duty Rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, anti-dumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed by the Central Government, on all imports of subject goods, originating in or exported from the subject countries.

Duty Table

1	2	3	4	5	6	7	8	9	10
Sl. No.	Sub heading of Tariff item	Description of Goods *	Country of Origin	Country of Export	Producer	Exporter	Duty Amount	Unit	Currency
1	68091100, 68091900	Plain Gypsum Plaster Board	China PR	China PR	Any	Any	32.85	Cubic Meter(M3)	US \$
2	do	do	China PR	Any	Any	Any	32.85	do	US \$
3	do	do	Any	China PR	Any	Any	32.85	do	US \$
4	do	do	Indonesia	Indonesia	Any	Any	24.11	do	US \$
5	do	do	Indonesia	Any	Any	Any	24.11	do	US \$
6	do	do	Any	Indonesia	Any	Any	24.11	do	US \$
7	do	do	Thailand	Thailand	Siam Gypsum Industry (Saraburi) Co. Ltd.	Siam Gypsum Industry (Saraburi) Co. Ltd.	54.46	do	US \$
8	do	do	Thailand	Thailand	Siam Gypsum Industry (Songkhla) Co. Ltd.	Siam Gypsum Industry (Songkhla) Co. Ltd.	54.46	do	US \$
9	do	do	Thailand	Thailand	Any Other Combination other than 7 & 8 above	Any Other Combination other than 7 & 8 above	73.80	do	US \$
10	do	do	Thailand	Any	Any	Any	73.80	do	US \$
11	do	do	Any	Thailand	Any	Any	73.80	do	US \$
12	do	do	UAE	UAE	M/s Gypsemna Co. (L.L.C.), Dubai	M/s Gypsemna Co. (L.L.C.), Dubai	12.30	do	US \$

13	do	do	UAE	UAE	Any Other Combination other than 12 above	Any Other Combination other than 12 above	20.15	do	US \$
14	do	do	UAE	Any	Any	Any	20.15	do	US \$
15	do	do	Any	UAE	Any	Any	20.15	do	US \$

* As the product under consideration in the present investigation is plain gypsum plaster boards of all thicknesses and dimensions, the following products are excluded from the scope of the anti-dumping measures as recommended in the duty table given above:

- Gypsum Boards having water absorption up to and including 5% (Moisture Resistant Boards)
- Gypsum Boards having a minimum breaking load of 24 neutrons in the transverse direction and 50 neutrons in the longitudinal direction per millimeter of thickness (Impact Resistant Boards or Fire Resistant Board)
- Fire Boards
- Fire Heat Boards
- Impact Boards
- Gypsum Ceiling Boards with Moisture Barrier
- ECHO Boards
- Heat Boards
- Anti-mold Boards or Weather Boards
- Thermal Boards
- Gypsum Ceiling Boards with Aluminium Edges Sealed in White Film.
- Ceiling Tiles.

103. Subject to the above, the Authority confirms the recommendations made in the Preliminary Findings issued vide Notification No. 14/45/2010-DGAD dated 19th March, 2012.

104. Landed value of imports for the purpose shall be the assessable value as determined by the Customs Authority under the Customs Act, 1962 and all duties of Customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

105. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(J.S.Deepak)
Designated Authority