To be published in Part-1 Section 1 of the Gazette of India Extraordinary
F. No.6/13/2019-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

NOTIFICATION

(Final Findings)

Dated 11th December, 2020

Sub: Final Finding in Countervailing Duty/Anti-subsidy investigation concerning imports of Textured Tempered Glass whether Coated or Uncoated from Malaysia.

A. BACKGROUND OF THE CASE

File No. 6/13/2019 -DGTR: Having regard to the Customs Tariff Act, 1975, as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time thereof:

1. Whereas, M/s Gujarat Borosil Limited (hereinafter also referred to as the Petitioner or Applicant) has filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules as amended from time to time (hereinafter also referred to as the Rules) for imposition of Countervailing on imports of "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter also referred to as the subject goods or PUC) from Malaysia (hereinafter also referred to as the subject country).

2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the Petitioners, issued a public notice vide Notification No. 6/13/2019 - DGTR dated 12th September, 2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

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

a) The Authority notified the Embassy of the subject country in India about the receipt of the present anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.

b) The Authority invited the Government of Malaysia for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 29th August, 2019 in New Delhi, which was attended by the representatives of the Government of Malaysia.

c) The Authority issued a public notice dated 12th September, 2019 published in the Gazette of India Extraordinary, initiating countervailing duty/anti-subsidy investigation concerning imports of the subject goods.

d) The Authority sent a copy of the initiation notification dated 12th September, 2019 to the Embassy of subject country, known producers/exporters from subject country, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the Petitioner and requested them to make their views known in writing within the prescribed time limit.

e) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassies of subject countries in India in accordance with Rule 7(3) of the Rules supra.

f) The Embassy of subject country in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.

g) The Authority sent questionnaires to the Government of the subject country in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred by the Government. Government of Malaysia filed a questionnaire response, which has also been taken into account.

h) The Authority sent questionnaires to the following known producers/exporters in subject country, in accordance with Rule 7(4) of the Rules:

   i. M/s Xinyi Solar (Malaysia) SDN BHD.
   ii. GAR Lightglass SDN BHD.

i) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response in the prescribed format:

   i. M/s Xinyi Solar (Malaysia) SDN BHD.

j) Pursuant to the initiation notification, apart from the above producers/ exporters from the subject country, Government of Malaysia has also filed the questionnaire response.

k) The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 7(4) of the Rules:

i. M/s Waaree Energies Limited
ii. M/s Alpex Exports Pvt Ltd
iii. M/s Vikram Solar Pvt Ltd
iv. M/s Surana Solar Limited
v. M/s Topsun Energy Limited
vi. M/s Tata Power Solar Systems Limited
vii. M/s Emmvee Photovoltaic Power Pvt Ltd
viii. M/s Navitas Green Solutions Pvt Ltd
ix. M/s Sova Power Limited (Godown)

l) In response, the following importers/users have responded and filed importer's questionnaire response.

i. M/s. Waree Energies Ltd.
ii. M/s. Patanjali Renewable Energy Pvt. Ltd.
iii. M/s. Isolation Energy Pvtl. Ltd.
iv. M/s. Goldi Solar Pvt. Ltd.

m) Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of the following parties during the course of this investigation.

(i) Government of Malaysia
(ii) All India Solar Industries Association

n) The Authority made available non-confidential version of the evidence presented/ submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.

o) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.

p) The Non-Injurious Price (NIP) based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Countervailing duty Rules has been worked out so as to ascertain whether Countervailing duty lower than the subsidy margin would be sufficient to remove injury to the Domestic Industry.

q) Physical inspection through on-spot verification of the information provided by the applicant domestic industry, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present disclosure statement.

r) Verification of the information provided by the producers/exporters and Government of Malaysia to the extent deemed necessary, was carried out by the Authority and such verified information has been relied upon for the purpose of present disclosure statement.

s) The Period of Investigation for the purpose of the present anti-subsidy investigation is from April, 2018 to March, 2019 (12 Months). The injury investigation period has however, been considered as the period 2015-16, 2016-17, 2017-18 and the POI.

t) The Authority held an oral hearing on 26.02.2020 to provide an opportunity to the interested parties to present relevant information orally in accordance with Rule 7 (6). The Authority held 2nd oral hearing also on 24.07.2020 due to change in Designated Authority as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority, in Civil Appeal No. 949 of 2006 on 07-01-2011.The interested parties who presented their views orally at the time of oral hearing were asked to file written submissions of the views expressed orally. The interested parties were provided opportunity to offer rejoinder submissions to the views expressed by other interested parties. The submissions made therein have been duly considered and addressed appropriately.

u) The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present disclosure statement.

v) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this disclosure statement.

w) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

x) Further information was sought from the applicants and other interested parties to the extent deemed necessary.

y) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the disclosure statement on the basis of the facts available.

z) A Disclosure Statement was issued to interested parties on 25th November, 2020 containing essential facts under consideration of the Designated Authority, giving time up to 30th November, 2020 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately in the present final findings.

aa) The exchange rate adopted by the Authority for the subject investigation is 1 USD = ₹70.85

bb) In the final findings, *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

"Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated".

C.1. Submissions made by the Domestic Industry

5. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:

a) The product under consideration in the present application is "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter referred to as the "subject goods" or the "Product under Consideration"). The minimum level of transmission required in the subject good can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid. The glass whether coated or uncoated is tempered / toughened in a tempering furnace, as it is essential for solar applications. The product in the market parlance is also known by various names such as Solar Glass, Low Iron Solar Glass, High Transmission Photovoltaic Glass, Tempered Low Iron Patterned Solar Glass etc.

b) The subject good is used as a component in Solar Photovoltaic Panels and Solar Thermal applications. The glass of thickness 3.2 mm and 4 mm is generally used in Solar 4 Photovoltaic Panels and Solar Thermal applications as per the current trend. The subject goods are classified under chapter heading 70071900. However, it has been claimed by the petitioner that the subject goods are also being imported under various other tariff headings like 70031990, 70051010, 70051090, 70052190, 70052990, 70053090, 70071900 etc.

c) As per the usual practice of the Authority, it is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

C.2. Submissions made by the other interested parties

6. None of the interested parties filed any comments regarding Product under Consideration.

C.3. Examination by the Authority

7. The Authority has noted submissions made by various interested parties with regard to scope of the product under consideration and like article offered by the domestic industry. With respect to the product under consideration, the Authority notes as follows:

a) The product under consideration in the present investigation is "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter referred to as the "subject goods" or the "Product under Consideration"). The minimum level of transmission required in the subject good can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid. The glass whether coated or uncoated is tempered / toughened in a tempering furnace, as it is essential for solar applications. The product in the market parlance is also known by various names such as Solar Glass, Low Iron Solar Glass, High Transmission Photovoltaic Glass, Tempered Low Iron Patterned Solar Glass etc.

b) The subject good is used as a component in Solar Photovoltaic Panels and Solar Thermal applications. The glass of thickness 3.2 mm and 4 mm is generally used in Solar 4 Photovoltaic Panels and Solar Thermal applications as per the current trend. The subject goods are classified under chapter heading 70071900. However, it has been claimed by the petitioner that the subject goods are also being imported under various other tariff headings like 70031990, 70051010, 70051090, 70052190, 70052990, 70053090, 70071900 etc. It is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the Domestic Industry

8. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing are as follows:

a) The applicant is the only producer of the subject goods in India.

b) The applicant has neither imported the subject goods nor is related to any of the importer or exporter.

D.2. Submissions of other interested parties

9. None of the interested parties filed any submission with regard to the scope and standing of the domestic industry.

D.3. Examination by the Authority

10. Rule 2(b) of the Rules provides as follows:

"domestic industry means the domestic producers as a whole of the like article or domestic producers 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 subsidized article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry".

11. The application has been filed by M/s Gujarat Borosil Limited, as domestic industry of the product under consideration. The Authority notes that the applicant is the sole producer of the subject goods in India.

12. The Authority further notes that the applicant has neither imported the subject goods nor is related to any importer or exporter of the subject goods. The Authority holds that the applicant constitutes a major proportion of the production of the subject goods in India. Accordingly, for the purpose of this investigation, the applicant satisfies the standing requirement and constitutes the domestic industry in terms of Rule 2(b) and Rule 6(3) of the Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by domestic industry

13. The following submissions have been made by the domestic industry with regard to confidentiality issues:

a) The applicant has followed the requirements mentioned under Trade Notice No. 10/2018 to the hilt and has provided all the information as required under the said Trade Notice.

b) The contention of the Malaysian exporter with respect to annual account statements and balance sheet of the applicant is incorrect in view of the fact that the annual account statements and balance sheet submitted by the applicant to the Authority includes the account statements and balance sheet with respect to specific PUC as well. While the annual account statements and balance sheet of the applicant at the company level are available at the website of the applicant, the standalone annual account statements and balance sheet pertaining to the PUC is confidential and is not required to be provided to the opposite parties.

c) While the Malaysian exporter has raised issue regarding the applicant not providing a copy of its annual report, the said exporter itself has not provided its annual report.

d) The responses from the Government of Malaysia, participating producer/exporter as well as that of the importer are not in accordance with their obligations under Rule 7 of the Countervailing Duty Rules and the various Trade Notices issued by the Authority in this regard.

e) The names of the schemes availed by the producer/exporter have been claimed as confidential. This cannot be permitted under any circumstances as such withholding of critical information has severely restricted the ability of the Domestic Industry to comment on the response filed by them. Unfortunately, none of the said parties has attempted to make good for the deficiencies in their responses nor was any explanation

provided for claiming such vital information as confidential in their written submissions.

f) The exporter from Malaysia and participating importers have claimed confidentiality even on the narrative portion to the questionnaire response. It is further submitted that quantitative figures also kept as confidential. This claim of excessive confidentiality has severely restricted the ability of the Domestic Industry to assist the Authority.

E.2. Submissions by other interested parties

14. The following submissions have been made by other interested parties with regard to confidentiality issues:

a) The non-confidential version of the petition violates the requirements and standards laid down in in Rule 7 and 8 of the CVD Rules and Trade Notice No 10/2018 issued by the DGTR.

b) The Petition does not comply with Trade Notice no. 10/2018 dated 7th September 2018, which sets standards for disclosure of information in confidential version/non-confidential version of responses filed by the domestic industry and other interested parties with a view to streamline the investigation process.

c) The Non-Confidential Version of the petition is not the exact replica of the Confidential Version as the same is not serially numbered. No index is provided in order to get the overview of the documents submitted with petition.

d) In response to Costing Information of the application, the Domestic Industry has not furnished any information at all. The domestic industry has replied to all the questions as *"Enclosed as Annexure 6"*. However, Annexure 6 has been claimed as confidential without any justification.

e) Annual reports of the petitioner have been claimed as confidential without any grounds of justifications in the petition.

E.3. <u>Examination by the Authority</u>

15. With regard to confidentiality of information, Rule 8 of Anti-Subsidy Rules provides as follows:

"Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 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 authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information 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 subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.

16. The Authority made available the non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection.

17. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality to the extent considered relevant were examined by the Authority and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered 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. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. OTHER MISCELLANEOUS ISSUES

F.1. Submissions by the Domestic Industry

18. The submissions made by the domestic industry are as follows:

i. The submission of the interested parties regarding imports being a necessity and demand-supply gap in the country, it is submitted that the Domestic Industry has been increasing its capacities at regular intervals. As a matter of fact, the interested parties themselves acknowledge this fact in their submissions. Therefore, it is fallacious to state that the imports were a necessity for the importers. The installed capacity has been increased by Domestic Industry from 65700 TPA to 160600 TPA in 2019 by setting up a new facility and also enhancing the capacity of the existing equipment.

ii. The response filed by the Government of Malaysia seems to pertain to some other product instead of the Product under Consideration. Question 5 in section B of the questionnaire response filed by the Government of Malaysia asks for the tariff schedule numbers which correspond to the ITC (HS) classification for the subject country. In response to the said question, the government of Malaysia has provided details relating to float glass and safety glass. No details relating to the subject goods been provided.

iii. In response to question number 7 in section B, the Government of Malaysia has provided the export quantity and value of the subject goods from Malaysia to India for the years 2014, 2015, 2016, 2017 and the POI. It may be noted that the said response

shows extraordinarily large quantities of exports of the subject goods from Malaysia to India in 2017, 2018 and Jan-Jun 2019. The said figures cannot be true for the Product under Consideration as even the total demand of the subject goods in the country is much lower than the volume of exports of subject goods from Malaysia to India mentioned in the response.

iv. In relation to subsidies available to the Domestic Industry, it is submitted that the same is not the subject-matter of this investigation and, therefore, the Domestic Industry is not required to comment on the same. In any case, subsidy (if any) available to the Domestic Industry, does not justify or grant the license to producers in Malaysia to injure the Domestic Industry in India by channeling their subsidized imports into India.

v. The submission of the interested parties that 84% of the imports are happening in SEZ, the Domestic Industry would like to submit that imports in DTA in the POI were around 77% of the total imports from Malaysia in 2018-19. Further, in 2019-20, while the imports have seen a significant spurt, the DTA imports remain to be major portion of the imports from Malaysia at 64%.

vi. The interested parties have tried to relate the injury to furnace condition and quality issues. They have quoted improvement in financial performance for year 2018-19 but failed to relate the decline in profitability evident from the quarterly results for quarter ended on 31st December 2018 and quarter ended March 2019. Moreover, they have wrongly interpreted the comments made in the Annual report for year 2018-19 as relating to performance of first six months of year 2018-19 which actually relate to the period April to August 2019 i.e., after the POI.

vii. With regard to the submissions relating to public interest, it is submitted that the interested parties have failed to provide any reason or instance as to how the levy of anti-subsidy duty will be against public interest. Even though there is no legal basis or obligation for the Authority to look into the public interest issues, the interested parties have miserably failed to demonstrate their claim that the imposition of countervailing duties will not be in larger public interest. On the contrary, the Domestic Industry submits that levy of duty will be in the public interest as it will allow the downstream user industry a continuous and reliable supply of subject goods.

viii. As regards the submissions relating to injury parameters and their accuracy, Domestic Industry humbly submits that they have filed complete information which is true and correct. Therefore, the contention raised by interested parties in this regard is incorrect. It is further submitted that all the injury numbers and costing numbers have already been verified by the Authority from books of accounts of the producers. The detailed analysis of injury parameters is already on record and are not reported herein for the sake of brevity.

F.2. <u>Submissions made by the producers/exporters/other interested parties</u>

19. The submissions made by the other interested parties are as follows:

i. The declaration provided in the petition is not as per the format prescribed by the DGTR. The certificate provided in the petition for the declaration that the applicant

has not imported the subject goods during the period of investigation cannot be taken into consideration by the Authority as the period of investigation mentioned in the certificate is from January 2018 to December 2018 whereas the POI for the current case is April 2018 to March 2019.

ii. Even Indian Government provides several tax and non-tax benefits to business and investors investing in the country. While local jurisdictions, such as states, may also provide tax incentives for businesses, country-wide incentives are most widely applicable, and are broadly organized into four categories: location-based, industry-specific, export-linked, and activity-based.

iii. Levy of anti-subsidy/countervailing duty will be contrary to public interest and would lead to the monopoly of the Domestic Industry.

iv. The petition does not meet the adequacy and accuracy criteria and no initiation should have been contemplated based on such an incomplete petition.

v. The petition contains data separately for Coated and Uncoated Glass at places and at TTG level at some other places. Though the bifurcation is welcome, data combined for the PUC as a whole which is total of coated and uncoated glass also should be given in the Format H. Else the injury cannot be fairly understood for the subject goods as defined.

vi. The petitioner by way of the present petition is apparently attempting to implicate the Malaysian producer of subsidy as they failed to prove the contention of dumping against the said party in the past. We request the Authority to consider this background while evaluating the claims of the petitioners

vii. Imports of PUC were necessitated due to the extraordinary level of demand-supply gap and no CVD should be imposed in such a circumstance.

viii. Apart from capacity constraints, the subject goods produced by the petitioner suffer seriously from quality issues which also make the users dependent on imports.

ix. An important feature of the subject goods is that the same is used by large number of units in the SEZ area. The imports made by such units do not attract ADD/CVD and it is very essential that the imports made in SEZ area should not be considered along with non-SEZ imports for the purpose of injury examination. Imports by the SEZ units are not of any consequence to the petitioner in view of the SEZ Act and the units in the non-SEZ area cannot be penalized for any imports made by the SEZ units. Thus, the Authority should use only imports in the non-SEZ area to examine injury on account of alleged subsidized imports.

x. The finding in the anti-dumping investigation shows that about 84% of the total imports of PUC were made by SEZ units and the remaining 16% were in the non SEZ area. It is submitted that a similar pattern is apparent in the POI of the present investigation also which necessitates segregation of imports by SEZ units and non SEZ units. The units in the non SEZ area should not be made liable to pay CVD based on the imports made by the SEZ units and the segregation of imports is very essential.

F.3. Examination by the Authority

20. As regards the issue raised by the interested parties regarding inconsistencies in the data and certificates provided in the petition, the Authority notes that it has relied upon verified information and data for the purpose of the present disclosure statement. The Authority has also called for additional information wherever required and verified the information furnished by the domestic industry.

21. Regarding the submission that there are subsidies available to the Domestic Industry too, the Authority notes that the subsidies available to the Domestic Industry are not the subject matter of the present investigation.

22. With regard to the submission that levy of anti-subsidy/countervailing duty will be contrary to public interest, the Authority notes that the purpose of the of anti-subsidy/countervailing duty investigation is to address the situation created by subsidizing of the product under consideration. The objective of such investigation is not to block the imports but to provide a level playing field to the domestic industry against the subsidized imports.

23. As regards the submission that the present investigation is an attempt by the Domestic Industry to implicate the Malaysian imports since no contention of dumping against the said party was established in the Anti-Dumping investigation concerning import of subject goods from subject country, the Authority notes that the scope of present investigation is distinct from the Anti-Dumping investigation conducted earlier. It is further noted that the purpose of the present investigation is to investigate as to whether or not the article under investigation is being subsidized and whether imports of such articles in India cause or threaten material injury to the domestic industry.

24. As regards the submission of the interested parties relating to demand-supply gap, the Authority notes that the Domestic Industry has continuously increased its capacities to meet the demand of the subject goods in the country. Moreover, the purpose of the present investigation is not to block imports but to provide a level playing field to the Domestic Industry.

25. Regarding the issue of the quality of the goods manufactured by the Domestic Industry, the Authority notes that the interested parties have not provided any reliable evidence to support their claims in this regard. Also, quality, per-se is not an issue in a countervailing duty investigation.

26. With respect to the submission of the interested parties that most of the imports of the subject goods are happening in SEZ, the Authority notes that more than 75% of the imports from subject country were in DTA. Also, it is important to appreciate that any sales of PUC by SEZ units to DTA would also attract applicable CVD on PUC as per section 30 of the SEZ Act. Therefore, the concerns related to SEZ units both from the perspective of users and domestic industry is appropriately addressed through provisions of relevant rules.

F. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

27. The petition filed by Domestic Industry provided *prima facie* evidence of the existence of countervailable subsidies in the subject country to initiate the instant investigation prior to

initiation of the investigation. Government of Malaysia was invited for consultation on 29th August, 2019 in New Delhi. The producers and exporters from Malaysia were advised to file response to the questionnaire and were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.

28. The following producers/exporters from Indonesia, Malaysia, Vietnam and Thailand including the Governments of Indonesia, Malaysia, Vietnam and Thailand have filed questionnaire responses.

    i. M/s Xinyi Solar (Malaysia) SDN BHD

General overview of the alleged Subsidy Programs

F.1. Submissions made by domestic industry

29. The following submissions have been made by the domestic industry:

i. Response of Xinyi Solar cannot be accepted, as they have not provided the information of their related company situated in Malaysia namely Xinyi Smart. Domestic Industry has further submitted that unless the data of Xinyi Smart is examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Xinyi Solar.

ii. Exporters have stated "not applicable" on most of the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe it would not have benefited under program. Thus, either the company should show absence of eligibility or must demonstrate why it has not availed benefit that is available under the program.

iii. Exporters from Malaysia have only responded with respect to three programs and haven't provided even a single submission for the rest of the 15+ programs alleged by the petitioners.

iv. The response filed by the Government of Malaysia is contradictory to the response filed by Exporters. The Government of Malaysia has stated that they are providing subsidy on gas. However, exporters denied of having any knowledge of any such subsidy.

F.2. Submissions made by other interested parties

30. The following submissions have been made by the other interested parties:

v. Article 11.3 of the SCM Agreement requires an investigating authority to review the accuracy and adequacy of the evidence provided in a petition in order to determine whether it is "sufficient" to justify the initiation of an investigation.

vi. It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable. Further, the petitioner could

not establish the existence of the three elements comprising a countervailable subsidy, i.e. financial contribution by a government or public body; benefit; and specificity.

vii. The GOI's consistent use of a lower standard of assessment and its failure to first determine that the petition provides "sufficient evidence" of subsidization of the subject goods exporting producers and resulting injury to the Indian industry is a fatal error.

F.3. Calculation Methodology

31. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology of determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.

32. Further, the Authority has determined countervailability of any admissible subsidy only once under a countervailable programme and not to undertake a double countervailability

F.4. Examination of the Subsidy programs alleged by the Petitioners

(i) Program No. 1: Subsidies on natural gas

a. Submission of the Domestic Industry

33. The Petitioner submitted that under this program, natural gas is provided at subsidized rate by the gas providing company to manufacturing sector and electricity producers. The Domestic Industry further submitted that this subsidy is available for industries engaged in manufacturing activities as well as to the electricity producers. This, in turn, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. As per the petitioner, the electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. They submitted that Gas and electricity are critical components of manufacturing process in glass industry and thus, this scheme confers benefit upon the Malaysian producers. As per the petitioner, the gas company is compensated by the government to the extent of subsidization.

34. As evidence of existence of the program, Petitioners relied on:
    - Annual report of the Gas company "Gas Malaysia Behrad:"
    - Regulated and unregulated gas prices published by the energy commission of Malysia.

- Securities Analysis of Xinyi Solar published in the CMB international which demonstrates that Xinyi solar had upto 10% lower gas cost in 2018 which was 30% in 2017 but narrowed down after 18% price hike since 2018.
- Investment act, 1986

b. Submission by Government of Malaysia/ other interested parties

35. Prior to the Asian Financial Crisis of 1997-98, the gas price to downstream consumers in Malaysia was based on market value. Contractually, gas prices were linked to a substitute petroleum product. As part of the overall stimulus and recovery package implemented by the Government in response to the crisis, domestic gas prices were subsequently regulated. In October 2002, the Government began regulating the gas pricing for industrial sector where the gas prices for industrial sector were lower than the market price.

36. The price adjustments for industrial sector experienced eleven cycles of price revisions since 2014, with an increase of RM 1.50/million British thermal unit (MMBtu) every six months. As of March 2019, the average gas tariff for industrial sector was RM 32.92/MMBtu. The regulated gas price was expected to reach market price in 2020. In that note, the current regulated gas price is slightly lower than the market price.

37. Currently, there are two categories of gas prices in Malaysia that are collectively referred to as the two-tiered pricing mechanism, namely regulated gas price and market-based LNG-indexed price. Under the regulated gas price regime, which only applies to customers with pre-existing contracts, the Government regulates the price of the gas supplied by PETRONAS and Gas Malaysia Berhad (GMB). On the other hand, LNG indexed pricing is applicable for all new volumes, including additional volumes from customers with pre-existing contracts.

38. In addition, the government has also prescribed the Incentive Based Regulation (IBR) framework which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge.

39. The gas price charged to industrial customers is based on tariff category. All the customers in the same tariff category will be imposed the same price.

40. Since this program is not available for industrial customers, no application process is applicable.

c. Examination by the Authority

41. Authority notes that this program is governed by Gas Supply Act, 1993. The subsidy program allows regulated rates of natural gas prices for industrial sector including the electricity sector. It is noted that the GOM has admitted that subsides are provided to the gas supplying company, which in turn supplies gas to the exporter at reduced rates. The difference is then recovered by the said company from the GOM. Thus, there is a direct financial contribution by the GOM. Further, the response of GoM states that:

"The government has also prescribed the Incentive Based Regulation (IBR) framework, which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 month in January and July. The rate will be either a rebate or surcharge"

42. Regarding the contention of the GOM that the program is not available to the industrial customers, the Authority observes that the GOM has admitted the existence of the subsidy element in the gas pricing mechanism which is supplied to the industrial producers. The Authority notes that it is not necessary for a subsidy to be countervailable that it should be made available to the concerned enterprise directly. In this context, it would be appropriate to refer to the definition of "subsidy" under Section 9(1) of the Customs Tariff Act, 1975.

43. The Authority takes note of the fact that neither the Malaysian Government nor the cooperating producer from Malaysia has made any submission against the countervailibility of this scheme. Nevertheless, the Authority examines the countervailibility of the scheme below:

    i. The response submitted by the GoM states that the gas prices in Malaysia are regulated by the Government.

    ii. The response submitted by the GoM acknowledges that there is a price differential in the market prices of gas and the prices of gas for industrial users.

    iii. Further, the response of GoM also states that the gas price charged to industrial customers is based on tariff category, indicating consumption based tariff system.

44. In view of the aforesaid, the program is noted to be countervailable.

(ii) Program No. 2: The Market Development grant

a. Submission by the petitioners

45. The Petitioner submitted that the scheme is introduced by Malaysian Investment Development Authority (MIDA) for SMEs to promote export promotional activities. The maximum grant for an SME under the MDG program is RM 200,000. The SME should have been incorporated under the Companies Act, 1965 with at least 60% Malaysian equity ownership. The evidence and the legal basis are General Policies, Facilities, and Guidelines for Market Development Grants (MDG)-2016

b. Submission by the Government of Malaysia/ other interested parties

46. It is a continuous program structured under the 11th Malaysia Plan (Rmk11, 2016 - 2020) for increasing the SME's participation in export promotional activities.

47. The MDG provides an opportunity for Malaysian SMEs to apply for a reimbursable grant up to RM200,000 for participation in export promotional activities namely International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas

c. Examination by the Authority

48. The Authority notes that the Market Development Plan (MDP) was introduced in 2002. It is part of the 11th Malaysian Plan (2016-20). It is intended to increase the participation of SMEs in export promotional activities. The MDP provides SMEs with a reimbursable grant up to RM 2,00,000 for their participation in export promotional activities such as International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas.

49. The subsidy program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred to the recipient. The subsidy program is also specific because is contingent on export. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(iii) Program No. 3: Pioneer Status

a. Submission by petitioners

50. The Domestic Industry has submitted that under this program a company granted Pioneer Status will enjoy tax exemption from corporate income tax. The program encourages investments in promoted activities/products in the manufacturing sector that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. Five-year partial exemption is provided from payment of income tax. A company pays tax on 30% of its statutory income, with exemption period commencing from its Production Day. Unabsorbed capital allowances and accumulated losses incurred during the pioneer period can be carried forward and deducted from post pioneer income of company. As evidence of existence of the program, petitioners have relied on:

- Promotion of Investment Act, 1986
- New and full notification pursuant to article xvi:1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
- http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/
- List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986
- Laws of Malaysia Act 327 of Promotion of Investment act, 1986 Part-II Sec 5,6,7, deals with pioneer status
- Web Report: EXIM Bank's Export Credit Refinancing
- US Extruded through Malaysia

b. Submission by the Government of Malaysia/ other interested parties

51. Companies are required to submit the applications for the Pioneer Status program to the Malaysian Investment Development Authority (MIDA), an agency under Ministry of International Trade and Industry (MITI). The company will then be required to get the Pioneer Certificate from MIDA. This is to ensure that the company has complied with the conditions imposed. After MIDA is satisfied that the company has complied with the conditions, MIDA will determine the production date for the company and determine the start and ending date of the program. Later, companies approved with the program submit their claims to the Inland Revenue Board together with their annual tax returns containing the calculation of claim for the tax deductions. The applicants will need to go through the Approval Committee also.

52. The major tax incentives for companies investing in the agricultural and manufacturing sectors are the Pioneer Status and Investment Tax Allowance. These incentives are mutually exclusive. Sections 5-25 Promotion of Investments Act 1986 are evidence of the same. The benefit is an exemption from taxes owed. Also, losses can be carried forward.

53. The eligibility criteria for the Pioneer Status is case such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

c. Examination by the Authority

54. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provides for pioneer status program. The program provides for tax incentives in the form of exemption from income tax. Losses incurred during the exemption period can be carried forward for subsequent years to offset taxable income/net profit. The program is available for a pre-specified list of promoted products/activities.

55. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to promoted activity/product mentioned in the list. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(iv) Program No. 4: Investment Tax Allowance

a. Submission by petitioners

56. The Petitioner submitted that under this program, a company granted Investment Tax Allowance (ITA) is entitled to offset this allowance against the statutory income for each year of assessment. The program encourages investments in promoted activities/products in the manufacturing sector, that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. An allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred is given. Company can offset this allowance against 70% of its statutory income for each year of

assessment. Remaining 30% of its statutory income will be taxed at the prevailing company tax rate. As evidence of existence of the program, Petitioners have relied on:

- Promotion of Investment Act, 1986
- New and full notification pursuant to article xvi:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
- http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/
- List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

b. Submission by the Government of Malaysia/ other interested parties

57. Investment Tax Allowance (ITA) may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia. Promoted activities and promoted products are determined and gazetted by the Minister of International Trade and Industry. Sections 26 – 29 of the Promotion of Investments Act 1986 (Act 327) are evidence of the same.

58. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used for promoted activities or the production of the promoted products. Companies are required to submit the applications for ITA program to MIDA, an agency under MITI. The company will then be required to establish the commencement of ITA period which is on the incurrence of the first capital expenditure duly certified by MIDA. Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claim for the tax deductions.

59. The eligibility criteria for the ITA are value added (VA) percentage and level of technology as measured by the MTS Index.

60. Not all individuals/firms who applied and met all the eligibility criteria are approved. The applicants will need to go through the Approval Committee. The assistance is a deduction from taxable income. The allowance can be carried forward until fully utilized.

61. A company can elect to receive Pioneer Status but not receive the Investment Tax Allowance, or can elect to receive the Investment Tax Allowance, but not Pioneer Status.

c. Examination by the Authority

62. Authority notes that Sections 26 to 29 of the Promotion of Investments Act 1986 provides for Investment Tax Allowance program. Promoted activities and promoted products are granted a capital allowance. Value addition and technological requirements are also to be fulfilled. Out of the total capital expenditure, 60% of the capital expenditure is granted as allowance and can be deducted against 70% of statutory income for 5 years. Remaining income can be taxed at the normal income tax rate. Even for companies that meet the listed

criteria of promoted activity, value addition and level of technology, the Authority retains the discretion to reject the applicant seeking benefit under this program.

63. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific since it is limited to certain enterprises, which meets the promoted product and are approved by the Authority. A company that has received income tax exemption from Pioneer Status cannot avail benefit under this program. The Authority has already determined that countervailing duty should be imposed for exemption from income tax under Pioneer Status. Therefore, the Authority notes that no additional countervailing duty should be imposed against this subsidy program.

(v) Program No. 5: Accelerated Capital Allowance

a. Submission by Petitioners

64. The Domestic Industry has submitted that under this program a special allowance, where the capital expenditure is written off within 3 years, i.e. an initial allowance of 40% and an annual allowance of 20%, is given. After the 15-year period of eligibility for Reinvestment Allowance, companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance. Applications have to be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted activities/products. As evidence of existence of the program, Petitioners have relied on:

i. Promotion of Investment Act, 1986
ii. http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/
iii. List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

b. Submission by Government of Malaysia/other interested parties

65. Accelerated Capital Allowance (ACA) provides allowances to write off the capital expenditure within two years, i.e., an initial allowance of 20 percent in the first year and an annual allowance of 40 percent. This program is available to all companies and the IRB applies objective criteria in granting ACA. Program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available. The assistance is an accelerated capital allowance to be deducted from taxable income. The allowance can be carried forward. Generally, to be eligible for accelerated capital allowance (ACA), a person must meet the following conditions:

- He was carrying on a business during the basis period
- He has incurred qualifying expenditure in the basis period
- The asset was used for purposes of a business, and
- At the end of the basis period, he was the owner of the asset and the asset was in use

66. The companies under investigation will be eligible to claim ACA if they fulfil the criteria and government doesn't exercise discretion as to which firm is eligible to benefit.

c. Examination by Authority

67. Authority notes that the program provides for capital allowance to write off the total capital expenditure within two years, i.e., an initial allowance of 20 per cent in the first year and an annual allowance of 40 per cent.

68. Authority notes that the program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is available to certain enterprise carrying out a promoted activity that qualifies for using this allowance and does not qualify for re-investment allowance on account of expiry of 15 years period of eligibility. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(vi) Program No. 6: Double deduction for promotion of Malaysian brand

a. Submission by Petitioners

69. The Domestic Industry has submitted that under this program, expenditure incurred on advertising local brand products domestically is allowed double deduction i.e. expenses incurred on certain activities can be set off twice as against taxable profits. The local brand must be owned more than 50% by the registered proprietor of the Malaysian brand name which should be owned by a company that's locally incorporated with at least 70% Malaysian owned and registered in Malaysia or overseas. The deduction can only be claimed by one company in a year of assessment. As evidence of existence of the program, Petitioners have relied on

- Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- Inland Revenue Board of Malaysia Public Ruling No.1/2013
- Malaysian External Trade Development Corporation

b. Submission by Government of Malaysia/other interested parties

70. Expenditure for qualifying advertisements in advertising Malaysian brand name goods is eligible for a double deduction in arriving at adjusted income from a business. Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002 are given in evidence. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred within Malaysia for advertising Malaysian brand goods. The original supporting documents must be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the fiscal year (basis period) in which the expenditure is incurred. The companies under investigation will be eligible to claim the deductions if they fulfill the criteria. The assistance is a deduction from taxable income. The deduction can be carried forward.

71. No changes are anticipated to the program.

c. Examination by the Authority

72. The Authority notes that this program is governed by Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002. Under this program, expenditure incurred in advertising Malaysian brand is eligible for double deduction from business income. To qualify for this double deduction, the company must have 70% Malaysian equity and the brand name should be of goods of export quality.

73. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to an enterprise that incurs expenses on advertising Malaysian brand. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(vii) Program No. 7: Drawback on Import duty, Sales tax and Excise duty

a. Submission by petitioners

74. The Domestic Industry has submitted that under this program, drawback on import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export within a year based on conditions stipulated in the acts. As evidence of existence of the program, Petitioners have relied on

- Section 99 of the Customs Act 1967
- Section 29 of the Sales tax Act 1972
- Section 19 of the Excise Act 1976

b. Submission by the Government of Malaysia/ other interested parties

75. Program provides for Duty Import Refund on imported goods that are subsequently re-exported. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). No changes are anticipated to the program. Companies are required to submit the applications for Drawback under sections 93, 95, 99 of Customs Act 1967 to Royal Malaysian Customs Department (RMCD). Then the companies are required to provide proof of import/export declaration and relevant import/export documents. RMCD will verify the documents before refund is made or disapprove.

c. Examination by the Authority

76. Authority notes that the program is administered by the Royal Malaysian Customs Department. The program provides import duty refund on goods that are subsequently re-exported. It is however, noted that the Government of Malaysia has not indicated the mechanism of providing duty drawback.
77. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(viii) Program No. 8: Sales Tax Exemption

a. Submission by the Domestic Industry

78. The Domestic Industry has submitted that in order to reduce cost of doing business and enhance competitiveness the government has exempted the sales tax. This program is approved and administrated by RMCD and established in 1.9.2018. The Domestic Industry has submitted that under this scheme manufacturers with an annual sales turnover of less than RM 100,000 are exempted from licensing and are thus exempted from paying sales tax on their output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on their inputs instead.

b. Submission by Government of Malaysia/other interested parties

79. The program provides exemption from payment of sales tax on importation and purchase of locally manufactured goods under Sales Tax (Person Exempted from Payment of Tax) Order 2018. Exemptions are classified into three (3) schedules.

c. Examination by Authority

80. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, to persons or manufacturers who meet the eligibility criteria and conditions. This exemption is on import of plant and machinery and also on sales of subject goods in the domestic market. The benefit is in the form of exemption of Sales tax to the exporters which is otherwise due. The program is also specific because it is available to certain enterprise who meet the eligibility criteria. Therefore, this program is noted to be countervailable.

(ix) Program No. 9: Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities

a. Submission by Domestic Industry

81. The Domestic Industry has submitted that under this program, to reduce cost of doing business and enhance competitiveness, import duty and sales tax exemption are given to Malaysian brands with at least 60% Malaysian equity who outsource manufacturing activities. Import duty and sales tax exemption on raw materials and components used in manufacturing of finished products by their contractual manufacturers locally/abroad and import duty and sales tax exemption on semi-finished goods from their contract manufacturers abroad to be used by their local contract manufacturers to manufacture finished products are available. As evidence of existence of the program, Domestic Industry have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

82. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. Section 14(2) Customs Act 1967 is given as evidence. All manufacturers which meet the eligibility criteria will benefit from scheme and the authorities do not exercise discretion. No changes are anticipated to the program.

83. This program is not countervailable since it conforms with the provisions of Annex I, II and III of the SCM Agreement (Exception to the subsidy definition).

84. To qualify for the exemption,

- Imported raw materials and components which are used to manufacture finished products with nil import duty.
- Semi-finished products which are imported from contract manufacturers abroad and are used in the manufacture of finished products by local contract manufacturers.

c. Examination by the Authority

85. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by the Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semifinished products for outsourcing manufacturing activities. Raw materials which are used in the production of the exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption.

86. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(x) Program No. 10: Exemption from Import Duty and Sales Tax on Spares and Consumables

a. Submission by the Domestic Industry

87. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on spares and consumables used directly in manufacturing process where import duties are nil process and not produced locally, tax exemption-Revenue forgone is given where imported spares and consumables are taxable but not available locally. Full exemption is given on import duty and sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

88. The program provides import duty exemption on spares and consumables to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The program involved evaluating import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

c. Examination by the Authority

89. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on spares and consumables. The program is

administered by Malaysian Investment Development Authority (MIDA). The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is subject to fulfilment of certain criteria.

90. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xi) Program No. 11: Exemption from Import Duty and Sales Tax on Machinery and Equipment

a. Submission by the Domestic Industry

91. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on machinery and equipments used directly in manufacturing process and not produced locally, tax exemption-Revenue forgone is given where imported machinery and equipment are taxable but not available locally. Full exemption is given on import duty and sales tax. For locally purchased machinery and equipment full exemption is given on sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

92. The program provides import duty exemption on machinery and equipment to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The manufacturer then claims for exemption. To qualify for the exemption, the machinery and equipment must be new, unused and directly used in the manufacturing process of the finished product at the approved manufacturer's premise(s). All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

93. The companies under investigation conformed with the eligibility criteria which are under MIDA's purview.

c. Examination by the Authority

94. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on new and unused machinery and equipment to qualified manufacturer. There is no exemption from sales tax during the POI because Sales Tax Act 1972 [Act 64] was repealed with the enactment of the Goods and Services Tax Act 2014 [Act 762] entered into force 1 July 2014. The program is administered by the Malaysian Investment Development Authority.

95. The program provides a financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity.

96. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xii) Program No. 12: Exemption from Import Duty on Raw Materials/Components

a. Submission by the Domestic Industry

97. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

98. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on raw material and components. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD and MIDA. All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The companies under investigation conformed with the eligibility criteria which are under MIDA's purview.

c. Examination by Authority

99. Authority notes that the program is governed by Section 14(2) of Customs Act 1967. The program provides for import duty exemption to the qualified manufacturer on raw materials / component that are not locally available.

100. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to an enterprise that uses raw material that are not locally available.

101. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xiii) Program No. 13: Double Deduction for Promotion of Exports

a. Views of the Domestic Industry

102. The Domestic Industry has submitted that under this program tax deduction is given to exporters for expenses which are aimed at promoting exports and supply of goods overseas, cost of maintaining office overseas for purpose of promotion of services, publicity and advertisements in any media outside Malaysia for promotion of export of services and Page 59 of 139 export market research. As evidence of existence of the program, Petitioners have relied on

- Section 41 of Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- WT/TPR/S/292
- WTO-Notification-G/SCM/N/3/MYS-1995
- US carbon steel wire rod from Malaysia

b. Submission by Government of Malaysia/other interested parties

103. The program which is provided under section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) read together with rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986 is applicable to all resident trading, manufacturing or agricultural companies in respect of expenses incurred in the basis period primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand for the export of Malaysian manufactured goods or agricultural products. There are no anticipated changes to the program. The deduction can be carried forward.

104. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred overseas for advertising, travelling and related export promotional expenditure. The original supporting documents must be retained by the company for audit purposes by the IRB.

105. In the case of participation in an international trade fair, companies are required to get a letter of approval from MATRADE.

c. Examination by the Authority

106. Authority notes that the program is governed by Section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) & Rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986. Under this program double deduction from income to enterprise involved in manufacturing, trading and agricultural activities is available for expenses incurred for promotion of export. Expenses incurred by a company for increasing demand for exports are allowed for double deduction.

107. The Authority notes that the program provides for financial contributions the form of revenue foregone, which is otherwise due, and benefit is thereby conferred. The benefit is the difference between the amount of income tax paid after double deduction and the amount of income tax that would have been payable in absence of such double deduction. The program is also specific because it is contingent on export performance and is limited to an enterprise engaged in export promotion activity.

108. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xiv) Program No. 14: Double Deduction for Promotion of Export Cargo

a. Submission by the Domestic Industry

109. The Domestic Industry has submitted that under this program an exporter may make a deduction from taxable income for premium insurance on export cargo and regional tax deduction for tax insurance. As evidence of existence of the program, Petitioners have relied on

- Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- Tax incentives for Companies
- Other Authority findings

b. Submission by Government of Malaysia/Other interested parties

110. A double deduction is allowed to a person who incurs premium on the insurance of cargo exported from Malaysia provided that the risks are insured with an insurance company incorporated in Malaysia. The premium paid must be in accordance to section 33 of Income Tax Act 1967. The assistance is a deduction from taxable income. The deduction can be carried forward.

111. This program has been revoked since 2016. Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 is given as evidence.

c. Examination by the Authority

112. The Authority notes that the program was governed by Income Tax (Deductions Of Insurance Premiums For Exporters) Rules 1995 and is revoked by Income Tax (Deductions Of Insurance Premiums For Exporters) (Revocation) Rules 2012 since 2016.

(xv) Program No. 15: Allowance for Increased Export

a. Submission by the Domestic Industry

113. The Domestic Industry has submitted that this program is a form of tax incentive granted to companies under section 154(1) of Income Tax Act 1967 and Rule 3 of Income Tax (Allowance for increased exports) Rules 1999 and Income Tax (Allowance for increased exports) amendment Rules 2003. An exporter can avail 70% tax deduction from taxable income for increased exports. Also, if the said allowance is not used during the earned year that can be forwarded to the following assessment year. As evidence of existence of the program, Petitioners have relied on:

- Promotion of Investment Act, 1986
- Income tax act 1967
- Customs Act 1967
- Sales tax Act 1972
- Excise Act 1976
- Free zones act 1990

b. Submission by Government of Malaysia/other interested parties

114. A resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The

assistance is an exemption from taxable income. The allowance can be carried forward. There are no anticipated changes to the program. Income Tax (Allowance for Increased Exports) Rules 1999 is given in evidence. The Rules contain the following definitions:

a. agricultural produce means fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish, frozen raw prawn or shrimp, frozen cooked and peeled prawn and frozen raw cattle fish and squid;
b. export means direct exports not including sales to Free Industrial Zones and Licensed Manufacturing Warehouses; Page 62 of 139
c. value added means the sale price of goods at ex-factory price less the total cost of raw materials; and
d. value of increased export means the difference of the Free-On-Board (FOB) value of products exported in the basis period and that of the immediately preceding period. FOB value will exclude the freight charges and insurance cost.

115. The allowance is determined as follows:

a. Manufactured products

- 10% of the value of increased exports of the manufactured products by the company where the products exported attained at least 30% of value added;

- 15% of the value of increased exports of the manufactured products by the company where the products exported attained at least 50% of value added.

b. Agricultural products

- 10% of the value of increased exports of agricultural produce by the company.

116. The allowance will be given against seventy per cent of statutory business income of the company. Any export allowance not set off would be carried forward to be set-off against seventy per cent of the statutory income in future years.

c. Examination by Authority

117. Authority notes that a resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The allowance is equivalent to 10% or 15% of the value of increased exports of the manufactured products by the company. Allowance will be given against 70% of the statutory business income.

118. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xi) Program No. 16: Tariff Related Incentive

a. Submission by the Domestic Industry

119. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

120. The subsidy program is same as program No. 13. **(Double Deduction for Promotion of Exports)**

c. Examination by the Authority

121. The Authority notes that the program is administered by Director General of Customs. The program provides import duty exemption on raw material / component to qualified manufacturer. Exemption is granted when the raw materials / components are not locally available and used directly in the production of the finished product at the approved manufacturer's premise(s).

122. The Authority notes that the program provides financial contribution in the form of revenue foregone, which is otherwise due. The program does not qualify to be permissible duty remission program because it provides exemption from import duty for raw material used in all kinds of manufacturing activities and not only for raw materials used in exported products, as provided in footnote 1 of the SCN Agreement and Section 9B(b) of the Customs Tariff Act. The program is specific because it is limited to enterprise that use raw materials that are not available locally.

123. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xvii) Program No. 17: Allowance for plants and Machinery

a. Submission by petitioners

124. The Domestic Industry has submitted that Capital allowance is to give relief for wear and tear of fixed assets for business. It is further submitted that the expenditure must be capital in nature and used for business purpose. Costs of assets used in business such as plants and machinery, office equipment, furniture, fittings, motor vehicles etc.

125. Under this scheme initial allowance is fixed at 20% based on the cost of the asset at the time when the capital expenditure is incurred. Annual allowance is a flat rate given every year based on the original cost of the asset and varies accordingly.

b. Submission by the Government of Malaysia/ other interested parties

126. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment

and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method on the basis of a prescribed rate of allowance. All companies that meet the eligibility criteria can claim the CA. This program is available to all companies and the IRB applies objective criteria in granting CA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available

c. Examination by the authority

127. Authority notes that capital allowance provides deductions for qualifying expenditure on machinery or plant. It is given to enterprise that incurs the qualifying expenditure. It is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method based on a prescribed rate of allowance.

128. Authority notes that this program does not provide countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight line method to all enterprise. Therefore, the Authority holds that no countervailing duty should be imposed against this subsidy program.

(xviii) Program No. 18: Export Credit Refinancing

a. Submission by the Domestic Industry

129. The Domestic Industry has contended that this scheme is in the form of export credit. It is a short term and post shipment financing to direct and indirect exporters. Exporters can obtain financing up to 95% of the value of their export order.

b. Submission by Government of Malaysia/other interested parties.

130. Export Credit Refinancing (ECR) scheme is used to promote Malaysia's exports and international trade in the form of Pre-shipment and Post-shipment financing. ECR is available to all companies incorporated in Malaysia and involved in export activity.

131. The operational procedure of the ECR Scheme is governed by the ECR Guideline which is issued by EXIM Bank.

c. Examination by the Authority

132. The Authority notes that the program is administered by Export-Import Bank of Malaysia (EXIM Bank). Export credit refinancing program provides loan to enterprise to finance export of products. The program is governed by Export Credit Refinancing guideline issued by the Bank, which provides for eligibility criteria including eligibility of product (negative list of products which is maintained by bank) for the purpose of the program. The subsidy program is not restricted to any particular sector and is available to all companies incorporated in Malaysia.

133. EXIM Bank is a government-owned Development Financial Institution. It is a wholly owned subsidiary of the Minister of Finance Incorporated (Inc.). As an agency under the purview of the Ministry of Finance, EXIM Bank's mandated role is specified by the

Government. It is to provide credit facilities to finance and support exports and imports of goods, services and overseas projects with emphasis on non-traditional markets, providing export credit insurance services, export financing insurance, overseas investments insurance and guarantee facilities.

134. The Authority determines that EXIM Bank is a public body because it is owned by Government and is vested with the Government Authority to carry out governmental functions. Accordingly, the loan provided by EXIM Banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by the EXIM bank and the amount of interest charged by the comparable commercial loan.

135. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xix) Program No. 19: Buyer Credit Guarantee

a. Views of the Domestic Industry

136. The Petitioner submitted that under this program the overseas buyers are backed by EXIM Bank's unconditional and irrevocable guarantee in which lending bank is guaranteed repayment of due and interest amount. Malaysian exporter can help the overseas buyer to secure a long-term financing with a lender using the BCG. Malaysian exporter is paid as if he has a cash contract, whilst the overseas buyer has time to pay the contract through financing secured from the lender which is backed by EXIM Bank's guarantee. The evidence given is Buyer Credit Insurance by EXIM Bank. The loan amount under this program must be minimum value of RM 2mn in support of a cash contract and the repayment period should be at last 2 years and maximum 15 years.

b. Submission by Government/other interested parties

137. Bankers Trade Credit Takaful (BTCT) is a Credit Takaful designed to protect the Islamic Financial Institutions (IFIs) against risk of non-payment by their exporters arising from Page 45 of 139 default by the overseas buyers. It's available against a trade finance facility on trade terms such as Open Account, Documentary Collection and/or Letter of Credit.

c. Examination by Authority

138. The Authority notes that the program is administered by Exim Bank. There is no law or legal regulation governing the program.

139. The Authority has already determined that EXIM Bank is a public body. Under this program, EXIM Bank provides guarantee to financial institutions against risk of non payment by their exporters (customers) because of default arising from overseas buyers. The program provides for financial contribution in the form of potential direct transfer of funds and benefit is thereby conferred. The benefit conferred on the recipient is equivalent to (i) the difference between the fee paid by the recipient for availing guarantee from EXIM Bank and the fee that would have been paid to any other commercial bank for such guarantee and (ii) the difference between the loan repayment

to the lending bank in question (owing to less than normal commercial interest rate because of EXIM bank guarantee) and the amount that would have been payable in absence of such guarantee (based on normal commercial interest rate). The subsidy program is also specific because it is contingent on export.

140. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xx) Program No. 20: Licensed Manufacturing Warehouse (LMW)

a. Views of the Domestic Industry

141. This program was disclosed through the questionnaire response of the exporter as well as the supplementary response of GoM. The petitioner has not made any submission with respect to this plan.

b. Submission by Government/other interested parties

142. Section 65 of the Customs Act 1967 provides for storage of dutiable goods and Section 65A of the Customs Act 1967 provides for manufacturing process to be carried out in licensed warehouses. Licensed Manufacturing Warehouses (LMW) can be set up in Principal Customs Area (PCA) i.e. any part of Malaysia excluding a free zone, Labuan and Langkawi. Manufacturing operations therein are subjected to customs procedures.

143. Exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for export or local market from the initial stage of manufacture until the finished products. This includes packaging materials and casings. Further, only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax.

144. Machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax regardless of whether the finished products are meant for export or local market.

c. Examination by Authority

145. The Authority notes that the program is administered by Royal Malaysian Customs Department. The program is governed by Section 65 and Section 65A of the Customs Act, 1967.

146. The Authority notes that under this program exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products. It is noted from the responses of the cooperating exporter and GoM that only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax under this program. Further, machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax.

147. The Authority notes that this program provides exemption of customs duty and Sales tax on all raw materials/components used directly in the manufacturing process of approved products. The subsidy program is also specific because it is contingent on product/enterprise. Xinyi Solar (Malaysia) SDN BNHD has also admitted receiving benefit under this program. Therefore, this program is noted to be countervailable.

(xxi) Program No.21: Investment Tax Allowance under the Income Tax Act, 1967

a. Submission by the Domestic Industry

148. This program was disclosed through the questionnaire response of the exporter as well as the supplementary response of GoM. The petitioner has not made any submission with respect to this plan.

b. Submission by Government of Malaysia/other interested parties

149. Investment Tax Allowance (ITA) may be granted to any company. The incentive will be given based on merits of certain case such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

c. Examination by Authority

150. The Authority notes that the program is administered by Malaysian Investment Development Authority (MIDA). The program is governed by Section 65 and Section 65A of the Customs Act, 1967. Xinyi Solar (Malaysia) SDN BNHD has also admitted receiving benefit under this program. Therefore, this program is noted to be countervailable.

Producers/Exporters from Malaysia

M/s Xinyi Solar (Malaysia) SDN BHD.

151. M/s Xinyi Solar (Malaysia) SDN BHD is a producer/exporter of subject goods in Malaysia. M/s Xinyi Solar (Malaysia) SDN BHD filed questionnaire response and provided information regarding the subsidy programs availed by them.

152. Authority has verified the information provided by M/s Xinyi Solar (Malaysia) SDN BHD and determined subsidy margin for program no. 1, 8, 20 and 21 for which benefit was received or accrued during the POI. Authority holds that these subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. The Authority further notes that with respect to Program no. 1, no claim on receipt/non receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, M/s Xinyi Solar (Malaysia) SDN BHD provided documents which showed that the company is availing subsidy benefits.

153. The Authority also noted the international import price of Liquified Natural Gas in Malaysia. However, the co-operating exporter has stated that gas being supplied to them is natural gas and not the liquified gas. Accordingly, the Authority has determined the benefit under Program No. 1 for Xinyi Solar (Malaysia) SDN BHD on the basis of desk verification of data filed by the exporter duly correlated with the submissions filed by the Government of Malaysia on modalities of grant and availability of subsidies.

154. As regards Program No. 8, Xinyi Solar (Malaysia) SDN BHD has not claimed any benefit under the program. However, during the desk verification, the company presented documents which showed that the company is availing the said subsidy.

155. The table below provides name of the subsidy programs, and the corresponding subsidy margin.

Program No.	**Name of the grant program**	**Brief Description/Comment**	**Subsidy margin %**	**Subsidy Margin Range %**
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 8	Sales Tax Exemption	Exemption from payment of sales tax for specific person on acquisition of raw materials, components and packaging material to be used solely and directly in manufacture of taxable goods	***	0-10
Program No. 20	Licensed Manufacturing Warehouse	Exemption from custom duties and sales tax to all raw materials/components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for exports or local market from the initial stage of manufacture until the finished products	***	0-10
Program No. 21	Investment Tax Allowance	Exemption of 100% on capital expenditures. The total investment cost on production facilities incurred within the period of ten (10) years from February 2015 can be used to offset the taxable profit incurred since year 2015 till the accumulated ITA is fully utilised.	***	0-10
Total			***	0-10

Total (after considering interest)		***	0-10

156. The Authority has determined the subsidy margin for all other producers/exporters from Malaysia on the basis of export price of the cooperating exporter and international import price of Liquified Natural Gas in Malaysia.

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submission made by the Domestic Industry

157. The submissions made by domestic industry are as follows:

a. Imports of the product under consideration from the subject country have shown massive increase over the years with a significant increase in POI. Imports have also shown increase in relation to production and consumption in India.

b. Market share of the subject country in demand has been continuously increasing while there is a significant decline in the market share of the Domestic Industry. Further, the market share of the imports from other countries has also declined.

c. Domestic industry prices reflect the effect of the prices that are being offered by the exporters in the domestic market.

d. The market share, production, sales and capacity utilization of the Domestic Industry has been adversely affected by the dumped imports from subject country.

e. The price underselling, price undercutting is positive and substantial. Further, the Domestic Industry is suffering from price depression as they are not able to increase its prices to reasonable terms.

f. Performance of the domestic industry has steeply deteriorated in terms of profits. In fact, the losses of the Domestic Industry have increased significantly in the injury investigation period and the period of investigation.

g. The decline in profitability of the domestic industry was due to significant increase in the subsidized import from the subject country at non-remunerative prices.

h. There has been decrease in selling price despite increase in cost of production and thus the subsidized imports from the subject country are creating price suppression effect on the domestic industry.

i. The domestic industry has suffered material injury in connection with subsidized imports of subject goods from the subject country. Further, the domestic industry is threatened with continued injury, should the present condition continue.

H.2. Submission by other interested parties

158. The submissions made by other interested parties with regard to injury and causal link, are as follows:

a) The petition does not contain adequate evidence of injury to justify the initiation of this investigation.

b) The imports from the targeted country have at no point in time during the period considered put any sort of volume pressure on the sales of the petitioner. The quantum of imports from Malaysia is very less and constitutes only 29.03% share of the total imports whereas the imports from other countries constitutes 70.65% of the total imports. The demand of the subject goods in India has been increased by more than 3 times, however, imports from subject countries constitutes a very nominal share of the same.

c) Petitioner is increasing its capacity every year during the injury period and POI. Capacity has increased from 100 during the base year 2015-16 to 227 during the period of investigation. Accordingly, production of product under consideration has also increased sharply during the POI to 130 and 207 of uncoated and coated respectively from 100 during the base year 2015-16.

d) Purported injury, if any, is mainly caused to the Domestic Industry because of undue/unjustified capacity. Domestic industry is not able to stabilize its capacity which results into negative impact on the overall performance of the petitioner and the capacity utilization % declined. In case, the petitioner had not increased the capacity so frequently, it must be operating on optimum capacity utilization. Such inappropriate decisions of increasing the capacity every year have caused injury to the petitioners not the imports from subject countries.

e) The reason for the decline in the domestic selling price is not the continuous price pressure from the subject country as mentioned in the petition but the dumping of the goods from the other countries and other issues which are provided in the Annual Report of 2018-19 and 2017-18.

f) Wages have increased during the POI with the decrease in number of employees. During the POI, the no. of employees declined from 100 to 90 as compared to the base year 2015-16, however, wages have increased substantially from 100 to 139. From the trend given by the petitioner, they are unable to understand as to how wages can increase so substantially with the decline in no. of employees.

g) It is submitted that for the calculation of injury and causal link, the injurious effects of the subject imports must be segregated from other factors that cause injury pursuant to Article 15.5 of the SCM Agreement and Annexure I of the Anti-Subsidy Rules.

H.3. Examination by the Authority

159. In consideration of the various submissions made by the interested parties and the domestic industry in this regard, the Authority has examined injury to the domestic industry on account of subsidized imports from the subject countries.

160. Rule 13 of the Subsidy Rules deals with the principles governing the determination of injury which provide as follows:

> *13. Determination of injury-*
> *(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.*
> *(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the casual link between the subsidized import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.*
> *(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –*
> *(i) there is a concentration of subsidized imports into an isolated market, and*
> *(ii) the subsidized imports are causing injury to the producers of almost all of the production within such market.*

I. Volume Effect of subsidized imports and Impact on domestic Industry

i. Assessment of Demand

161. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of all Indian producers and imports from all other countries. It is seen that demand has increased over the injury period. For the purpose of injury analysis, the Authority has relied on the DGCI&S import data. The demand so assessed is as follows-

S. No	Year	2015-2016	2016-2017	2017-2018	POI
1	Domestic Industry sales (MT)	***	***	***	***
2	Sales of other domestic producers (MT)	0	0	0	0
3	Total domestic sales	***	***	***	***
4	Imports from Subject countries (MT)	1	4297	37279	41789
5	Imports from other countries (MT)	30718	85529	64190	100596
6	Total Imports (MT)	30719	89826	101469	142385
7	Total demand (MT)	***	***	***	***
8	Trend	100	227	265	349
9	Market share of Domestic sales in demand	30-40	10-20	20-30	10-20
10	% Share of Subject countries in demand	0	0-10	20-30	20-30
11	% share of other countries in demand	60-70	70-80	40-50	50-60

162. It is noted from the above that:

a. The demand of the subject goods has increased by around 3.5 times.

b. The share of the subject country in demand has increased from almost negligible in the base year to around *** in the POI.

c. The market share of the Domestic Industry in demand has decreased from *** in the base year to around *** in the POI.

d. The market share of the other countries in demand has decreased from *** in the base year to around *** in the POI.

ii. Imports volumes and share of the imports from subject country

163. With regard to volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subsidized imports either in absolute terms or relative to production or consumption in India. The volume of imports of the subject good from the subject country to both DTA and SEZ units has been analyzed as under-

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	1	4297	37279	41789
2	Imports from other countries (MT)	30718	85529	64190	100596
3	Total Imports (MT)	30719	89826	101469	142385
4	Trend	100	292	330	464
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	118	156	157
9	Total demand (MT)	***	***	***	***
10	Trend	100	227	265	349
11	Share in imports				
12	Imports from Subject countries (MT)	0%	5%	37%	29%
13	Imports from other countries (MT)	100%	95%	63%	71%
14	Share in Demand				
15	Market share of Domestic sales in demand	30-40	10-20	20-30	10-20
16	% Share of Subject countries in demand	0	0-10	20-30	20-30
17	% share of other countries in demand	60-70	70-80	40-50	50-60

164. After segregating the imports by SEZ units and non-SEZ units, the imports of PUC in non-SEZ units are as under:

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	0	348	6218	21521
2	Imports from other countries (MT)	16261	44241	34843	32912
3	Total Imports (MT)	16261	44589	41061	54433
4	Trend	100	274	253	335
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	155	224	218
9	Total demand (MT)	***	***	***	***
10	Trend	100	223	240	285
11	Share in imports				

12	Imports from Subject countries (MT)	0%	1%	15%	40%
13	Imports from other countries (MT)	100%	99%	85%	60%
14	Share in Demand				
15	Market share of Domestic sales in demand	40-50	30-40	40-50	30-40
16	% Share of Subject countries in demand	0	0-10	0-10	20-30
17	% share of other countries in demand	50-60	70-80	50-60	40-50

165. Based on actual export data submitted by the cooperating exporter/producer, the above data is modified as under:

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	0	348	6218	24352
2	Imports from other countries (MT)	16261	44241	34843	32912
3	Total Imports (MT)	16261	44589	41061	57264
4	Trend	100	274	253	352
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	155	224	218
9	Total demand (MT)	***	***	***	***
10	Trend	100	223	240	295
11	Share in imports				
12	Imports from Subject countries (MT)	0%	1%	15%	43%
13	Imports from other countries (MT)	100%	99%	85%	57%
14	Share in Demand				
15	Market share of Domestic sales in demand	40-50	30-40	40-50	30-40
16	% Share of Subject countries in demand	0	0-10	0-10	20-30
17	% share of other countries in demand	50-60	70-80	50-60	30-40

166. It is noted that there has been an increase in the absolute volume of imports from subject country in POI as compared to the previous years.

167. The share of subject country in total imports has increased from almost negligible in 2015-16 to 30% in the POI, whereas for non-SEZ units, the same has increased from negligible to 43% in the POI. Similarly, the market share of imports from subject country in total demand for non-SEZ units has increased from 0% in 2015-16 to ***% in the POI, whereas the share of domestic industry sales in total demand for non-SEZ units has decreased from ***% in 2015-16 to ***% in POI. Thus, volume of imports from the subject country have increased in absolute terms in relation to imports made only to non-SEZ units whereas the sales of domestic industry has decreased.

J. Price effect of subject imports and impact on domestic industry

168. With regard to the effect of subsidized imports on prices, the Authority has considered whether there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in India, or whether the effect of such subsidized imports is otherwise to depress prices to a significant degree or prevent price

increase, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the Cost of Production, Net Sales Realization (NSR) and the Non-injurious price (NIP) of the domestic industry have been compared with the landed cost of imports from subject country. This analysis, is however, limited to imports of subject goods by non-SEZ units and Domestic Industry sales also to non-SEZ unit.

iii. Price Undercutting

169. Price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry for the investigation period. The price undercutting has been determined separately for each PCN produced by the domestic industry and thereafter for the product under consideration as a whole.

Particulars - Total PUC	**Unit**	**2015-2016**	**2016-2017**	**2017-2018**	**POI**
Landed price of imports	Rs/MT	30132	32993	32593	36484
Net selling price	Rs/MT	***	***	***	***
Price undercutting	Rs/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	40-50	30-40	20-30	10-20

170. The Authority notes that the price undercutting is positive throughout the injury investigation period including the period of investigation.

iv. Price underselling / Injury Margin

171. The Authority has worked out non-injurious prices of the subject goods and compared the same with the landed values of the imported goods to arrive at the extent of price underselling. The price underselling/ injury margin has been determined separately for each coated and uncoated glass and thereafter for the product under consideration as a whole.

Price underselling	**Unit**	**POI**
NIP	Rs/MT	***
Landed price of imports	Rs/MT	36484
Price underselling	Rs/MT	***
Price underselling	**%**	***
Price underselling	**Range**	10-20

172. It is noted from the above table that the price underselling/ injury margin is positive, indicating that the imports have entered the market at injurious prices.

v. Price suppression and depression

173. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority has examined the changes in the landed price of imports, and costs & prices of the domestic industry over the injury period.

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Cost	Rs. /MT	***	***	***	***
2	Trend	*Indexed*	100	100	97	100
3	Selling price	Rs./MT	***	***	***	***
4	Trend	*Indexed*	100	102	99	101
5	Landed Price	Rs./MT	30132	32993	32593	36484
6	Trend	*Indexed*	100	109	108	121

174. It is seen that the cost of the Domestic Industry has remained more or less same during the injury investigation period. However, there has been a decline in the selling price of the Domestic Industry. The Domestic Industry has stated that the low priced subsidized imports from the subject country have prevented the Domestic Industry from increasing their prices. It is noted that the landed price of imports from the subject country have remained below the cost and selling price of the Domestic Industry. This shows that the imports are suppressing the prices of the domestic industry and are preventing the price increases, which otherwise would have occurred.

K. Economic parameters relating to the domestic industry

175. The Rules require 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 Rules further provide that the examination of the impact of the 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, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, performance of the domestic industry has been examined over the injury period.

i. Production, capacity, capacity utilization and sales

176. The position of the domestic industry over the injury period with regard to production, capacity, capacity utilization, domestic sales and export is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Capacity	MT	***	***	***	***
2	Production	MT	***	***	***	***
3	Capacity Utilization	%	***	***	***	***
4	Domestic Sales	MT	***	***	***	***
5	Capacity Utilization	*Indexed*	100	117	77	73

177. The Authority notes that-

a. To keep up with the demand, the Domestic Industry has continuously increased its capacity throughout the injury investigation period.

b. The capacity utilization of the Domestic Industry has declined in the POI.

c. The production of the domestic industry has increased over the injury period. The domestic sales of the domestic industry have also increased in the POI.

ii. Market Share

178. The details of imports (non SEZ units), domestic sales and market share of the domestic industry is as below:

SN	Market Share	Unit	2015-2016	2016-2017	2017-2018	POI
1	Sales of Domestic Industry	%	40-50	30-40	40-50	30-40
2	Sale of Other Producers	%	0	0	0	0
3	Subject Countries	%	0	0-10	0-10	20-30
4	Other Countries	%	50-60	70-80	50-60	40-50
5	Total Demand	%	100%	100%	100%	100%

179. It can be seen that the market share of the domestic industry and other countries in demand have declined whereas share of subject country import has increased significantly.

iii. Profit or loss, cash profits and return on capital employed

180. The profit position of the domestic industry in terms of profit or loss, cash profits and return on investment is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Cost	Rs./MT	***	***	***	***
2	Selling price	Rs./MT	***	***	***	***
3	Profit/(Loss)	Rs./MT	***	***	***	***
4	Profit/(Loss)	Rs. Lacs	***	***	***	***
5	ROCE	%	***	***	***	***
6	ROCE	*Indexed*	-100	-83	-106	-111

181. The Authority notes that:

a. The losses of the Domestic Industry have increased in the POI.

b. Profit and return on capital employed of the domestic industry have followed the similar trend.

iv. Inventories

182. The data relating to inventories of the subject goods is as follows-

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Average Stock	MT	***	***	***	***
2	*Trend*	*Indexed*	100	18	20	184

183. It is noted that the average inventories have increased in the POI as compared to the previous years.

v. Employment, wages and productivity

184. The situation of the domestic industry with regard to employment, wages and productivity during the injury period is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Wages	Rs	***	***	***	***
2	Wages	*Indexed*	100	117	105	139
3	Employment	Nos	***	***	***	***
4	Employment	*Indexed*	100	94	101	90

185. It is seen that the number of employees has declined over the injury period with an increase in wages and the productivity per employee and per day.

vi. Growth

186. There was negative growth of the domestic industry in terms of sales, production, profits, cash profit as well as ROI despite significant increase in demand. The Domestic industry has contended that they were not able to achieve positive growth due to the presence of the subsidized imports.

vii. Factors affecting domestic prices

187. The Authority notes that the imports are undercutting the prices of the domestic industry. The market share of subject imports has increased over the period, whereas that of the domestic producers has declined. This shows that the imports are penetrating the market with low prices.

viii. Ability to raise capital investment

188. It is seen that the domestic industry has enhanced capacity for the subject goods over the period, making capital investment. However, despite increase in demand, the capacities are lying significantly underutilized.

189. It is noted that the volume parameters of the domestic industry have shown growth. However, they have not been able to keep up with increase in demand. Further, there has been deterioration in price parameters. The profits, cash profit and return on capital employed have also shown a significant decline over the injury period. The profitability of the domestic industry has declined over the injury period.

L. Conclusions on Injury

190. The Authority notes that the imports have increased significantly in absolute terms as well as in relation to production and consumption in India. The imports are undercutting the prices of the domestic industry and have had a suppressing effect on the prices of the domestic industry. The price underselling is also positive. While the market share of subject imports has increased significantly, that of domestic producer has declined. The capacity utilization of the domestic industry has declined. Even though performance of the

domestic industry has improved in terms of production and sales, the same was not proportionate to the increase in demand. Further, domestic sales and capacity utilization have declined; it is seen that the domestic industry is suffering from underutilized capacities. Further, the losses of the domestic industry have increased and its cash profits, PBIT and return on investment have followed the same trend. The Authority takes note of the fact that apart from the cooperating exporter, anti-dumping duties are in place against the subject goods from subject country. However, the subject goods continue to be imported at injurious prices. Accordingly, the Authority concludes that the domestic industry has suffered material injury.

M. Causal Link

191. The Authority has examined whether other known factors could have caused injury to the domestic industry as follows:

a. Volume and prices of imports from third countries

192. Imports of the product under consideration from each country other than Malaysia and countries already attracting anti-dumping duty in the POI are below 3% of the total imports.

b. Contraction of demand and changes in the pattern of consumption

193. The Authority notes that there is no contraction of demand. On the contrary, overall demand for subject goods has shown significant increase over the injury period. Further, there have been no changes in the pattern of consumption which could have caused injury to the domestic industry.

c. Trade restrictive practices of and competition between the foreign and domestic producers

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

d. Developments in technology

195. None of the interested parties has furnished any evidence to demonstrate any change in the technology that could have caused injury to the domestic industry.

e. Export performance of the domestic industry

196. The injury information has been considered separately for domestic and exports, to the extent the same could be segregated.

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

197. The Authority has considered data only in relation to the product under consideration.

N. Factors relevant for causal link

198. The authority notes as under:-

a. The imports of subject goods in the country are at lower prices than the domestic industry prices.

b. Subsidized imports from subject country are coming into India in substantial volumes.

c. The imports are undercutting the prices of the domestic industry which lead to the decline of the selling price of the domestic industry as the imports are suppressing the prices of the domestic industry and prevented price increases, which otherwise would have occurred.

d. There is decline in market share of domestic producers due to the positive price undercutting.

e. Consequent impact of subsidized imports on the domestic industry has been significantly adverse.

O. Post Disclosure Comments

199. The Authority issued a disclosure statement on 25.11.2020 disclosing essential facts of the case and inviting comments from all the interested parties. The post-disclosure submissions have been received from the interested parties. Majority of the issues raised have already been raised earlier and also addressed appropriately. Additional submissions to the extent deemed relevant have been examined as under.

Submissions made by Domestic Industry

200. The Authority proposes to grant individual subsidy margin to the cooperating exporter despite the fact that the disclosure statement itself categorically reveals that information with regard to the availing of certain subsidy programs was not revealed either by the exporter or the Government of Malaysia.

201. The Authority invariably rejects the response that are found to be deficient or incomplete in respect of important information. It may be pertinent to point out that in the recent final finding issued by your good self [Anti-dumping investigation concerning imports of "New pneumatic radial tyres of rubber for buses and lorries, with or without tubes and/or flaps" (F.No. 6/30/2019-DGTR dated 27.11.2020], they were found to be deficient, in this case where there is absolutely no doubt about the wilful suppression of facts and falsification of information by the Malaysian exporter as well as the Government of Malaysia, the disclosure statement appears to be inclined to accept their responses.

202. The disclosure statement further suggests that the so-called cooperating exporter may be granted individual subsidy margin which shall be contrary to the legal position as well as the established practices of the DGTR. Further, this undue benefit proposed to be given to them in the disclosure statement despite such conduct would tantamount to denial of the legitimate interests of the Domestic Industry.

203. As regards program no. 1 (Gas Subsidy); both, the Government of Malaysia (GoM) and the so-called cooperating exporter had declined that the said subsidy is available to the industrial users in Malaysia. The response of GoM though admits that the gas prices for Industrial users are regulated in Malaysia. Later, the verification reveals that the invoices of the exporters themselves state the existence of gas subsidies. The Authority has recognized the fact that the GoM and the exporter has wilfully tried to suppress information regarding this subsidy in its examination under paras 42, 114 and 115. Further, the Authority proposes to grant benefit to the Malaysian exporter by using the half-baked information submitted by the said exporter instead of a benchmark price which is uninfluenced by government intervention. While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the GoM, undue benefit is proposed to be given to them by not rejecting the responses of the said parties. The disclosure statement further suggests that the so-called cooperating exporter may be granted individual subsidy margin which shall be contrary to the legal position as well as the established practices of the DGTR.

204. As regards subsidized electricity due to gas subsidy; there is absolutely no information/submission either by the GoM or the cooperating exporter with respect to the benefit received by electricity companies in the form of gas subsidies which in turn leads to cheaper electricity cost and prices. While the Authority has recognised the submission of the Domestic Industry in para 33, in its examination, the Authority has not dealt with the submission of the Domestic Industry nor even mentioned the impact of gas subsidies on the cost of electricity. The subsidy on natural gas, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. The electricity so produced at cheap rates leads to substantial overall cost reducing the cost reduction. Therefore, it was obligatory for the interested parties to have provided the relevant information to the Authority, in the absence of which their responses ought to be rejected.

205. As regards program no. 8 (Sales Tax Exemption); both, the GoM and the cooperating exporter had declined that the said subsidy is available to the industrial users in Malaysia. It was only after the lies of the exporter were caught during verification, some document was provided by the exporter thereby admitting that benefit had indeed been received by them. Till date, there is no response of GoM on the said subsidy scheme nor have they provided information to certify that information provided by the exporter is correct. The Authority has recognised the fact the GoM and the exporter has suppressed information regarding this subsidy in its examination under the following para; *154. As regards program No. 8, Xinyi Solar (Malaysia) SDN BHD has not claimed any benefit under the program. However, during the desk verification, the company presented documents which showed that the company is availing the said subsidy.* While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the GoM, undue benefit is proposed to be given to them by not rejecting their response. Further, without there being confirmation from the GoM that the information given by the cooperating exporter is correct, the Authority could not have accepted the information supplied by the cooperating exporter. The response of the Malaysian exporter and the GoM should have been rejected on this ground alone.

206. As regards acceptance of the responses of the GoM and the Malaysian exporter; the Authority while clearly noted the falsification suppression of information in the responses of GoM and Malaysian exporter and has proposed to accord the Malaysian exporter

individual dumping margin contrary to its own past practices and the expressed provision of law. Further, the Authority has recognised the fact that the GoM and the exporter had not provided the information regarding two subsidy schemes in its examination under paras 42, 114, 115 and 154. The Authority, despite clear findings regarding falsification and suppression of information by GoM and Malaysian exporter has proposed to accord the Malaysian exporter individual dumping margin country to its own past practices and the expressed provision of law. This is contrary to the consistent approach of the Authority to reject the responses of the parties who have either not provided complete information or have provided incorrect information.

207. Domestic Industry is not provided with the names of the schemes under which the foreign exporter has availed benefits.

208. It may be noted that while the Authority was able to identify the active lies of the exporter with respect to program 1 and 8, there still is no response of either the Malaysian exporter or the Government of Malaysia with respect to such schemes.

209. The examination of the Authority in an anti-subsidy investigation cannot be reduced to a "ball-chasing" event where the Authority is required to make sure that all the benefits received by the exporter has indeed been correctly reported in the response of the relevant exporter and the Government

210. The Domestic Industry further submits that to determine countervailibility of a particular program or the benefit received under such program, it is imperative for the Authority to have complete information from the producer/exporters of the subject country and the Government of the subject country. It is for this very reason that the Authority has consistently refused to grant individual subsidy margin to the producers/exporters when no/incomplete response is received from the Government of such country.

211. The Government of Malaysia as well as the responding exporter has consciously and proactively provided false information to the Authority and have suppressed vital information and, that there is no response of Government of Malaysia to back-up the information provided by the responding exporter with respect to Program No. 1 and Program No. 8.

212. Even in anti-dumping duty investigation, the same responding exporter provided incorrect information with respect to their related party information. The same was found to be incorrect and at the fag-end of that investigation, the responding exporter changed its stance on insistence of Domestic Industry and after direct evidence was provided by the Domestic Industry clearly indicating that the information provided by the responding exporter was incorrect.

213. Responding Malaysian exporter, Xinyi Solar has not disclosed the existence of their related company in Malaysia. However, there is absolutely no discussion of this issue in the disclosure statement. As the Authority is aware that certain benefit received by subsidies are fungible and can be easily utilized by the group companies and, therefore, it is of utmost importance that the analysis of all the related companies is carried out appropriately.

214. In the countervailing investigation, initiated against India, Indian exporters face strict scrutiny about related party transactions and benefit availed by them. Even Government

of India's response is rejected on finding small discrepancy in their data. We humbly request that if not more, at least the same level of scrutiny should be made against the exporters of subject goods from Malaysia. Surprisingly, we propose to reward such behaviour of the Government of Malaysia and the so-called cooperating exporter.

- **Comments on specific subsidy schemes**

Program No. 1: Subsidies on natural gas

215. Having recognised that the price of natural gas in Malaysia itself is distorted, the import price of natural gas in Malaysia cannot and should not be used for setting the benchmark prices of natural gas for the purpose of subsidy computation. It is submitted that once the Authority has reached the conclusion that the price of natural gas in Malaysia itself is distorted, there is every reason to consider the import prices in Malaysia also as distorted on account of distorted domestic market prices. In such a situation and in the absence of any information from either the Government of Malaysia or the exporter, the Domestic Industry humbly requests the Authority to kindly set the benchmark prices at *** USD/MMBtu on the basis of the unsubsidized domestic prices in India as such prices are neither subsidized nor influenced by the Government intervention.

216. The Domestic Industry has not been provided with any information with respect to the benchmarked prices used for computing subsidy margin for non-cooperating Malaysian exporter. Such a benchmark price cannot be kept confidential from the Domestic Industry as the same is based on international import prices in Malaysia and does not pertain to confidential information provided by any party.

217. The Domestic Industry reiterates that the subsidy on natural gas, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. The electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. Gas and electricity are critical components of manufacturing process in glass industry. Around 54% of the Malaysia's electricity generation comes from thermal sources with 54 percent of total generation coming from gas-fired plants.[1] Having found that natural gas pricing is distorted in Malaysia on account of government subsidization, the Authority should have also examined the impact of gas subsidies on the electricity provided to the Malaysian exporter. However, no such exercise has been carried out by the Authority.

Program No. 8: Sales Tax Exemption

218. While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the Government of Malaysia with respect to this program, undue benefit is proposed to be given to them by not rejecting the responses of the said parties. Further, without there being information from the Government of Malaysia that the information given by the cooperating exporter is correct, the Authority could not have accepted the information supplied by the cooperating exporter.

Program No. 17: Allowance for Plant & Machinery

[1] https://www.export.gov/apex/article2?id=Malaysia-Energy

219. With respect to Program No. 17, the Authority has found that this scheme is not countervailable. However, the said findings of the Authority are based on incorrect and misleading information submitted by the Government of Malaysia and the responding exporter. In this regard, the Government of Malaysia on page 106, point (f) of their submission has clearly stated that "government does not exercise discretion as to which firm is eligible to benefit". However, contrary to the said submission of the Government of Malaysia, para 80 and 81 of schedule 3 of Income Tax, Act of Malaysia provides absolute discretion to the Minister to grant benefit under the scheme to any person who is otherwise to eligible to get benefit under this scheme. Such an absolute and unguided discretion to the Minister leads to making the present program countervailable subsidy in terms of Article 2.1(c) of the SCM Agreement.

220. The detailed computation of NIP provided to the Domestic Industry reveals that the NIP of the Domestic Industry has been computed on the basis of optimized capacity utilization of the Domestic Industry. However, the total capacity of *** MT taken for this purpose is the total tempering capacity of the Domestic Industry. The Domestic Industry submits that the Product under Consideration is manufactured by tempering Annealed glass. The production capacity of the Domestic Industry is limited to the production capacity of Annealed Glass. Therefore, instead of taking the tempering capacity of *** MT, the Authority should have taken the production capacity of Annealed glass which is *** as the Domestic Industry cannot manufacture the subject goods beyond the production of Annealed glass.

221. The Domestic Industry requested for the certain essential information from the Authority through its email dated 26.11.2020 and 27.11.2020. However, apart from point Detailed NIP, no response has been received from the Authority.

Views of Other Interested Parties

222. Xinyi Solar submitted that although the Government of Malaysia (GoM) has admitted Gas prices are regulated by Government, the gas price offered to Malaysian users is higher than in other Asian markets and India as well.

223. In determination whether the Gas Program is countervailable, the DGTR has evaded talking about the specificity of the programs. The GoM has stated in the Questionnaire response that the industrial users of gas in Malaysia are charged based on tariff category and enterprises within the same category will be charged same price. Therefore, Program No.1 is not specific and thus cannot be regarded as countervailable.

224. Under Gas Cost Pass-Through (GCPT) mechanism, gas pricing is adjusted every 6 months in order to match with market price and is expected to reach market price in 2020. In fact, GCPT mechanism has ended at the end of 2019. The gas supplier, Gas Malaysia Berhad has made company announcement regarding the change of gas price.

225. Xinyi Solar submitted that no subsidy was granted to Gas suppliers in Malaysia since January 2020. Starting from January 2020 the gas bill no longer has GCPT section or **"Government subsidies" ("Subsidi Oleh Kerajaan Persekutuan" in Malay)** which proved that GCPT mechanism has ended and the assistance has been cancelled since then.

226. Xinyi Solar has submitted that the "Program No. 8- Sales Tax Exemption is not applicable because LMW has eased the process of claim back import duty & sales tax, draw back action not required".

227. During the most recent tax audit carried out by Malaysia Tax Authority, it has been concluded that Xinyi Solar has failed to meet one of the conditions. As a result, Malaysia Tax Authority had decided to withdrawn the ITA benefit and impose a tax payable for year of assessment 2018 amounting to MYR 17,072,972.88 attached with penalty amount MYR 2,560,945.93. One of the important conditions for availing ITA benefit was that the applicant should not have employed more than 20% of unskilled foreign workers.

228. The adoption of 8 year as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP

229. The notional interest on gas subsidy and sales tax/customs duty and investment tax allowance shall be based on average of the POI i.e. 6 months and not one year. It is submitted that the average interest rate applicable during the POI was 4.06%, but the Authority has applied a notional interest cost on total subsidy worked out @ 6.5%. which is incorrect.

230. Based on the confidential version of the computation of Subsidy Margins, it has been observed that DGTR has considered impact of Investment Tax Allowance twice for the period of investigation. First impact has been considered based on actual utilization of ITA during the POI, the other one is by adding impact of notional impact of ITA by dividing closing balance of ITA as on 31st December 2018. The notional impact has been worked out by dividing the closing balance of ITA by AUL i.e. 8 years. When the ITA for the poi has been duly absorbed/utilized and accounted for computation of subsidy, there is no logic for working out additional impact of ITA on notional basis for the poi again in respect of closing balance of ITA. This accounts for double counting and should be rectified.

231. The Disclosure does not show that the DI has suffered any material injury during the POI on account of alleged subsidized imports of PUC from Malaysia;

232. Imports in the present case are primarily due to very significant demand supply gap and quality issues at the end of the petitioner. Alleged subsidy is not the reason for increase in imports as alleged;

233. Imports made by SEZ unit needs to be segregated for both volume and price parameters while conducting injury examination which is done only for volume parameters now.

234. Thus, the Disclosure does not show any concrete evidences of countervailable subsidy and consequential injury to the domestic industry in the export of PUC from Malaysia which should lead to the termination of the present investigation

P. <u>Examination by the Authority</u>

235. The Authority notes that the various cases referred to by the Domestic Industry for rejection of an incomplete response by an exporter including the recent case of *New pneumatic radial tyres (AD investigation)*. The participating exporter in the pneumatic tyre anti-dumping case had not provided many appendices pertaining to data. In the instant CVD case, the producer/exporter in the questionnaire response provided details of subsidies as availed by them. The Authority had also obtained response from the Government of Malaysia. The recently cited case of AD investigation on rejection of participating exporter is in fact materially different from the present case. Any CVD case needs to be investigated by referencing both the responses of the producer/exporter and the Government of the exporting country. In case some data of benefit of subsidy travelling to the producer/exporter is not provided in producers/exporters response, which may be on account of non-availability of the pertinent information with him but may be countervailable as a subsidy, the Authority in that event is obligated to correlate the same with the response of the Government. In the instant case, the information provided by the Malaysian Government and the producer/exporter has been correlated during the process of investigation to compute the countervailable subsidy margin. Therefore, it may happen in certain cases that the data provided by the producer/exporter may alone not be adequate and may require supplementation by the response of the Government to ensure that quantum of countervailable subsidy could be properly assessed. This is important since some subsides could be computed directly on the basis of exporter's data while in some cases the pass through effect may need to be gauged.

236. The Authority notes that the Government of Malaysia in its response to schemes had specifically highlighted details of eligibility criteria and whether a benefit was received by the company under investigation among other details. In this regard the Government of Malaysia stated that the benefit was received by the exporter/producer under investigation on schemes Nos. 11,17,20 & 21 as stated Para 31 onwards of this finding. Further, the comments of the Government of Malaysia on other schemes including natural gas are specifically stated in Part F4 of this finding.

237. With regards to the submissions regarding certain specific subsidy schemes, the Authority notes the following -

Investment Tax Allowance (ITA)

238. The Authority notes the claim made regarding ITA by the cooperative producer/exporter on the Average Useful Life (AUL). The claim of the producer/exporter based on company as a whole and further with the audit report wherein the AUL is demonstrated between 10 and 15 years has been noted. In this regard the Authority notes that in the exporter questionnaire instructions (section C, Program Specific Questions, para 4), the indicative AUL has been mentioned as 10 years. The Authority therefore has not considered the exporter's claim of 10-15 years but has adopted the AUL of 10 years.

239. The Authority notes the post disclosure submission of the producer/exporter stating rejection of their ITA claims and its consequential refund along with penalty to the Government of Malaysia (GoM). The Authority holds that the claim of refund is not verifiable at this stage for reasons of its non admissibility or its restoration to the producer/exporter later. The Authority notes that the cooperating exporter has also post filing of their comments to the disclosure have in continuation of their earlier comments submitted an ITR return of 2019 and copies of relevant cheques to confirm that ITA has

been discontinued to them. Therefore, this aspect may be filed by producer/exporter later under a review in accordance with relevant rules. The Authority has held ITA countervailable as has been stated in the disclosure statement and by considering the actual and the notional annualised allowance on the basis of AUL. The producer/exporter has also submitted that the interest rate adopted for various computations as 6.5% needs to considered as 4.06% for which evidence has been furnished. The Authority has considered the same.

Licenced Manufacturing Warehouse (LMW)

240. The Authority notes that as regards the countervailability of Licenced Manufacturing Warehouse (LMW), there is no double counting as was clarified in the disclosure statement and also in the aforestated relevant paras. The Authority reiterates that under this scheme the Custom duty foregone on import of plant and machinery has been countervailed and sales tax foregone both on plant and machinery and on domestic sales has been captured in the Program 8.

Sales Tax

241. The Authority notes that while input sale tax on plant/machinery/other inputs has already been addressed in the disclosure, the output sales tax pertaining to sales in the domestic Malaysia market has also been considered as countervailable. The Authority has therefore noting the submissions by various interested parties has also evaluated the subsidy available on account of exemption of GST on domestic sales during the POI and included in the total quantum of subsidy.

Natural Gas Subsidy

242. The Authority notes the submissions of the domestic industry, the cooperative exporter and the Government of Malaysia regarding the availability quantification including mechanism of subsidy granted on natural gas to various entities.

243. The Government of Malaysia has provided the mechanism of gas pricing in their response. They have claimed that currently the regulated gas price is slightly lower than the market price. The participating exporter during desk verification has explained that subsidy for the Federal Government shown in the invoice raised by the gas supplying company is the gas price difference between the export price of gas from Malaysia and the gas price for their domestic customers. The Authority notes that the invoices raised by the Gas company to the exporter the amount of subsidy from the Federal Government is depicted. While examining the annual report of the gas supplying company, it has been found that a further grant has also been given by the Government to this company. The same has also been considered as part of the subsidy. The Authority notes the submissions made by the domestic industry, stating that since the exporter filed the questionnaire response falsely, his response should be rejected. The Authority has dealt with this issue in the foregoing paras. As regards, domestic industry's submission that the import price of LNG into Malaysia is the appropriate benchmark for quantification of subsidy, the Authority notes that this claim on benchmarking is not be appropriate as it is not an apple to apple comparison and that the HS Code of LNG and NG are also different. However, for the non-cooperative/residual producers/exporters the Authority has adopted this benchmark approach, keeping in view adverse fact approach.

244. During the course of data verification of the producer/exporter it emerged that natural gas was sourced from the gas company by M/s Xinyi Energy Smart (Malaysia) Sdn. Bhd., a related entity of M/s Xinyi Solar. It was then invoiced by M/s Xinyi Energy Smart to M/s Xinyi Solar at the same price. The Authority noting the relationship between the two companies has included the subsidy applicable to M/s Xinyi Solar in the quantum of subsidy evaluated for M/s Xinyi Solar.

245. In this regard the Authority also notes submission of the domestic industry regarding analysis of related companies of the cooperating exporter. The Authority therefore confirms that while computing the amount of subsidy in natural gas availed by the cooperating exporter, the Authority has in fact considered the subsidy accorded to its related company i.e. M/s Xinyi Energy Smart (M) Sdn Bhd and has adopted the same for M/s Xinyi Solar Malaysia SDN BHD.

246. The Authority notes that that the Non confidential version of the exporter questionnaire response did not have names of subsidy schemes availed by the cooperating exporter. The Authority after due examination has addressed the concerns in the disclosure statement by providing the same.

247. The Authority notes the submission of the domestic industry regarding willful suppression of the facts and providing false information to the Authority and has addressed these concerns in the foregoing paragraph.

248. NIP has been worked out by optimising the capacity of Textured Tempered Glass by following due procedure as laid down vide Annexure III of CVD Rules.

249. As regards submissions of the domestic industry regarding data pertaining to SEZ and non SEZ units the Authority notes the same has been provided in the disclosure statement and is also contained in this final finding.

Q. Conclusions

250. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that:

i. The product under consideration has been exported to India from subject countries at subsidized prices

ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.

iii. The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject countries.

R. Indian Industry's Interests And Other Issues

251. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization 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 countervailing duty

would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

252. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

S. RECOMMENDATION

253. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal links in favour or against thereof. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject country in the form and manner described hereunder.

254. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive countervailing duty as mentioned in Col No.7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of the subject goods from the subject country.

Duty Table:

S.no.	Heading/Sub-heading	Description of Group	Country of origin	Country of export	Producer	Duty Amount as % of CIF value
1.	70071900	Textured Tempered Glass whether Coated or Uncoated	Malaysia	Malaysia	Xinyi Solar (Malaysia) Sdn. Bhd.	9.71

2	-do-	-do-	Any country other than Malaysia	Any	Xinyi Solar (Malaysia) Sdn. Bhd.	10.14
3	-do-	-do-	Any country other than Malaysia	Any country other than Malaysia	Any other than Sl no. 1 above	10.14

255. Landed value of imports for the purpose of this Notification shall be the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

T. Further Procedure

256. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(B.B. Swain)
Special Secretary & Designated Authority