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**F. No. 6/23/2020 - DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies**

Dated 28th June, 2021

NOTIFICATION

FINAL FINDINGS

Case No. CVD-04/2020

Subject: Anti-subsidy investigation concerning imports of 'Aluminium Wire/Wire Rods above 7mm dia' originating in or exported from Malaysia.

Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on subsidized Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as 'the Rules' or 'CVD Rules') thereof.

A. BACKGROUND OF THE CASE

1. Vedanta Limited and Bharat Aluminium Company Limited (hereinafter also referred to as the "Applicants" or "domestic industry" or "DI") jointly filed an application before the Designated Authority (hereinafter also referred to as the "Authority"), on behalf of domestic industry, in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the "Act") and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred to as 'the Rules' or 'CVD Rules') for initiation of anti-subsidy investigation concerning imports of "Aluminium Wire/Wire Rods above 7 mm dia" (hereinafter also referred to as "subject goods" or "product under consideration" or "PUC"), originating in or exported from Malaysia (hereinafter also referred to as the "subject country").
2. Based on the duly substantiated application with prima facie evidence filed by the Applicants, the Authority initiated an anti-subsidy investigation vide Notification No. 6/3/2020 – DGTR dated 30th June, 2020, published in the Gazette of India, in accordance with Rule 6 of the Rules to determine existence, degree and effect of alleged subsidy and to

recommend 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 below has been followed by the Authority with regard to the investigation:
 - i. The Authority notified the embassy of the subject country in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.
 - ii. Consultation was held on 29th June 2020 and was attended by the officials of the Government of Malaysia. The Government of Malaysia denied existence/ applicability of certain programs and non-availment of some of the programs by producers/exporters of the product under consideration. Accordingly, program nos. 14, 20 and 22 were taken out from the purview of the investigation.
 - iii. The Authority issued a Notification dated 30 June 2020, published in the Gazette of India Extraordinary, initiating anti-subsidy investigation concerning imports of the subject goods from the subject country.
 - iv. The Authority sent a copy of the initiation notification to the Embassy of the subject country in India, known producers/exporters from the subject country, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicants and requested them to make their views known in writing within 30 days from the receipt of notice in accordance with Rule 7(4) of the Rules.
 - v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the Embassy of the subject country in India in accordance with Rule 7(3) of the Rules. Also, in view of the global pandemic and physical inaccessibility, request was made to all the interested parties to share the non-confidential version of their submissions with other interested parties via email.
 - vi. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject 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.

- vii. The Authority also sent questionnaire to the Government of the subject country in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit have been conferred by the Government. The Government of Malaysia filed a questionnaire response, which has also been taken into account.
- viii. The Authority sent exporter's questionnaire to the following known producers/ exporters in the subject country, whose details were made available by the applicants, to elicit relevant information in accordance with Rule 7(4) of the Rules:
 - a. M/s. Press Metal Sarawak Sdn. Bhd.
 - b. M/s. Press Metal Bintulu Sdn. Bhd.
- ix. The following producers/exporters from the subject countries filed exporter's questionnaire response:
 - a. M/s. Press Metal Bintulu Sdn. Bhd. ("PMBTU")
 - b. M/s. Press Metal Aluminium Rods Sdn. Bhd. ("PMAR")
- x. Pursuant to the initiation notification, apart from the abovementioned producers/exporters from the subject country, the Government of Malaysia has also filed questionnaire response.
- xi. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 7(4):
 - a. M/s Polycab India Pvt. Ltd.
 - b. M/s. Prem Cables Private Limited
 - c. M/s. Electrolead (PUNE) Private Limited
 - d. M/s. KEI Industries Limited
 - e. M/s. Dynamic Cables Limited
 - f. M/s. Oswal Cables Private Limited
 - g. M/s. Anvil Cables Private Limited
 - h. M/s. Necon Power & Infra Limited
 - i. Aluminium Association of India
 - j. All India Non-Ferrous Metal Exim Association
 - k. Indian Electrical & Electronics Manufacturers' Association
- xii. The following importers/users/user associations have filed submissions or questionnaire responses in the present investigation.
 - a. M/s. Lumino Industries Limited

- b. M/s. Oswal Cables Private Limited
- c. M/s. Prem Cables Private Limited
- d. M/s. Dynamic Cables Limited
- e. Indian Electrical and Electronics Manufacturers Association ("IEEMA")

- xiii. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- xiv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xv. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Later on, due to inaccessibility of hard copy of public file in the wake of the COVID-19 global pandemic, all interested parties were asked to share the non-confidential versions of all their submissions with all other interested parties via emails.
- xvi. The Period of Investigation (POI) for the purpose of the present investigation has been considered from April 2019 to December 2019 (9 months). The injury investigation period will, however, cover the periods 2016-17, 2017-18, 2018-19 and the POI. The period of investigation proposed by the applicants was considered appropriate in the present case in view of increase in imports, decline in the import price, and consequent adverse effect on the domestic industry during the period.
- xvii. Verification of the data provided by the domestic industry and producers/exporters was conducted to the extent considered necessary for the purpose of the investigation.
- xviii. The Non-Injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules. It 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.
- xix. Information obtained from the Directorate General of Commercial Intelligence and

Statistics (DGCIS) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned into India.

- xx. In accordance with Rule 7(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing conducted via video conference on 24th May, 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- xxi. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in these final findings.
- xxii. 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 these final findings on the basis of the facts available.
- xxiii. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 18th June, 2021 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- xxiv. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxv. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US\$= ₹71.24.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 4. The product under consideration in the present investigation was defined in the notice of initiation as "Aluminium "Wire/Wire Rods above 7 mm dia". The scope of the product under consideration includes both alloyed and non-alloyed wire/wire rods. The major raw material used for manufacturing the product under consideration is alumina. The product under consideration is produced and obtained by casting primary aluminium hot metal obtained from smelting of alumina. Wire/ Wire rods can also be produced by melting of scrap. Wire rod produced through scrap is beyond the scope of the product under consideration.

5. The product under consideration is primarily used in electrical industry, steel industry and others. The product is classified under the Chapter 76 of the Customs Tariff Act, 1975 (51 of 1975) under customs heading 76011040, 76012040, 76041010, 76042920, 76051100 and 76052100. The Customs classification is only indicative and not binding on the scope of this investigation.

C.1. Submissions made by the Domestic Industry

6. The domestic industry has submitted as follows with regard to product under consideration and like article:
 - i. The product under consideration includes alloyed and non-alloyed Aluminium wire rod in coil form having cross sectional diameter exceeding 7 mm, Aluminium wire having cross sectional diameter exceeding 7 mm, and Aluminium Rod in coil form having cross sectional diameter exceeding 7 mm.
 - ii. The product under consideration excludes Aluminium Wire rod not in coil form, i.e., wire rod in bar/straight form, Aluminium rod not in coil form, i.e., rod in bar/straight form, and Aluminium wire in coil form having cross sectional diameter below 7 mm.
 - iii. There is no difference in the subject goods produced by the petitioning domestic industry and exported from subject country.
 - iv. The product manufactured by domestic industry is like article to the product imported from subject country.

C.2. Submissions made by the other interested parties

7. The following submissions have been made by other interested parties with regard to the product under consideration and like article:
 - i. The PUC in the petition is stated as "Aluminum wire rods" which is classified under Custom Tariff Headings 7604 and 7601. But in the Initiation Notification the PUC is changed to add "Aluminum wire above 7mm dia" under the Customs Tariff heading 7605.
 - ii. The tariff classifications and the definitions under the relevant chapters show they are different products.

- iii. As per information on the website of the Applicants, the Domestic Industry only produces Aluminum wire from 9 mm to 12.5 mm dia. Hence, the wire of less than 9 mm and more than 12.5 mm should be excluded from the scope of PUC. The import volumes of PUC into India should also include Aluminum wire of dia 9 mm to 12.5 mm only. Para 3.10 of the Manual of Operating Practices supports the same. This was also consistently observed in several ADD investigations.
- iv. Wire rods produced through scrap was intended to be kept beyond the scope of PUC.
- v. Aluminium wire and Aluminium wire rods are two different product types in the sense that bars and rods are not in coils while wires are in coils, as can be seen from customs tariff classifications.
- vi. Aluminium wire and wire rods differ in production process, form, flexibility, end-uses, diameter and length, and thus not technically and commercially interchangeable.
- vii. Aluminium wires are suitable for manufacturing cables and conductors while wire rods are not.
- viii. Scope of product under consideration should exclude Aluminium wire with a diameter less than 7.6 mm as the petitioner has excluded them in import data analysis.
- ix. Products not manufactured by domestic industry should be excluded from product under consideration and practice followed in anti-dumping investigations is equally applicable to countervailing duty investigations as well. Reference has been made to Oxo Alcohols Industries Association v. Designated Authority where Hon'ble CESTAT held that products not manufactured by DI cannot be PUC as no injury can be caused.
- x. In case of inclusion of wire rods, the PUC must be separated into two different categories and revised data should be called for.

C.3. Examination by the Authority

8. 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. The very first step in an investigation is to identify the product under consideration. The product under consideration is the imported product which is allegedly causing injury to the domestic industry. On the basis of submissions made by various interested parties and the examination of import statistics, the Authority notes that the subject goods have been imported in coil form only from subject country. Accordingly, the Authority holds that the product under

consideration in the present investigation is "Aluminium Wire in coil form/Wire Rod in coil form having diameter ranging from 9 mm to 13 mm". The product under consideration includes both alloyed and non-alloyed aluminium wire. The major raw material used for manufacturing the product under consideration is alumina. The product under consideration is produced and obtained by casting primary aluminium hot metal obtained from smelting of alumina. Aluminium wire can also be produced by melting of scrap. Aluminium wire produced through scrap is beyond the scope of the product under consideration.

9. The product is classified under the Chapter 76 of the Customs Tariff Act, 1975 under customs tariff heading 76011040, 76012040, 76041010, 76042920, 76051100 and 76052100. The customs classification is indicative only and in no way binding upon the product scope. Aluminium Wire produced by the domestic industry is a like article to the Aluminium Wire imported from the subject country. The Authority holds that there is no difference in the subject goods produced by the domestic Industry and that exported from the subject country. Subject goods produced by the domestic industry and imported from subject country are comparable, collectively and cumulatively, in terms of product characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The Authority holds that product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from subject country in accordance with the Anti-Subsidy Rules.

D. DOMESTIC INDUSTRY AND STANDING

D.1. Submissions made by the Domestic Industry

10. Following submissions have been made by the domestic industry with regard to standing and scope of the domestic industry:
 - i. The Applicants account for "a major proportion" of Indian production of PUC and satisfy the requirement of standing and constitute "Domestic Industry" within the meaning of the Rules.
 - ii. Sterlite Power Transmission Limited ("SPTL") has not imported the product under consideration during the period of investigation from the subject country or any other country.
 - iii. The Applicants are not related to the exporters of the alleged subsidized article, or like article from other countries or are themselves importers.

D.2. Submissions made by other interested parties

11. The following submissions have been made by other interested parties with regard to the standing and scope of the domestic industry:
 - i. The Authority is requested to examine if Vedanta Ltd. and BALCO are domestic industry within the meaning of Rule 2(b) of the CVD Rules.
 - ii. If the PUC is "Aluminium wire above 7mm dia" then the standing of Vedanta Ltd. And BALCO as "domestic industry" should be assessed afresh.
 - iii. A vague estimate of the production of other domestic producers is unreliable. The Authority should request information from other two big producers and examine if the DI's share is more than 50% (after excluding SEZ unit of Vedanta from the total production).
 - iv. The Authority is requested to examine the reasons due to which Hindalco and NALCO, who are major producers of the PUC have not supported the petition.
 - v. In the Appellate Body report in *US-Lamb*, the need for 'representativeness' of domestic industry considering requirement of 'major proportion' under Safeguards Agreement was explained. Domestic industry under Article 4(c) of Safeguard Agreement is *pari materia* with domestic industry under Article 16.1 of the ASCM. Hence, the need to ensure representativeness is applicable in CVD investigations as well.
 - vi. Non-participation by major producers in India led to the termination of ADD investigation on seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel.
 - vii. Vedanta Limited is related to an importer, namely, SPTL. The petition is silent about imports by Vedanta from other countries, imports by SPTL from Malaysia or any other country during the injury period.
 - viii. The petition does not clarify whether the Domestic Industry or SPTL (related importer of Vedanta) imported the PUC from any other country during the injury investigation period including the POI. In case there are imports, such domestic producer should be excluded from the scope of the domestic industry. Complete information regarding the same should be provided.

- ix. The petition does not disclose the total production or the exact share of the petitioners, and neither has range been provided.
- x. Imports of product under consideration from Malaysia by SPTL could also have resulted in shielding the domestic industry from any ill-effects of the alleged subsidies by benefitting from the purchase, use and sale of the allegedly subsidized goods.

D.3. Examination by the Authority

12. The application has been filed by Vedanta Limited and Bharat Aluminium Company Limited (hereinafter also referred to as "BALCO").
13. As per the evidence available on record, production of the Applicants account for ****% of the total domestic production. Further, as per the available information, it is noted that:
 - a. The Applicants have not imported the subject goods from subject country or any other country
 - b. The Applicants are not related to any producer/exporter of subject goods in subject country or any other country
 - c. The Applicants are not related to any importer in India who has imported the subject goods from any country
 - d. SPTL, which is related to Vedanta Limited, has not imported the subject goods from any country in the POI.
14. Considering the information on record, the Authority holds that the production of the Applicants account for a major proportion of the domestic production of the like article and the applicants are eligible domestic industry within the meaning of Rule 2(b) of the Rules. The application satisfies the criteria of standing in terms of Rule 6(3) of the Rules.
15. With regard to the claim that two major producers of the subject product, Hindalco Industries Ltd. and National Aluminium Co. Ltd., have not participated in the investigation and have not provided any information, the Authority notes that there is no requirement for all domestic producers to participate as constituents of domestic industry in an anti-subsidy investigation. In accordance with Rule 2(b) of the Rules, the domestic producers constituting major proportion in the total domestic production can be considered as domestic industry. In the present case, production of the Applicants account for ****% of the total domestic production and accordingly they satisfy the requirement of major proportion under Rule 2(b)

of the Rules.

E. CONFIDENTIALITY

E.1. Submissions made by the domestic industry

16. Following submissions have been made by the domestic industry with regard to confidentiality:

- i. Questionnaire responses filed by the users are in gross violation of the trade notice as information has been claimed confidential without even providing a reasonable summary or disclosing reasons for withholding information available in the public domain.
- ii. The domestic industry was not informed about the supplementary information requested by the Authority. The responding producers/exporters should not be allowed to submit a deficient questionnaire response and then subsequently fill up the deficiencies confidentially, since it would be prejudicial to the interests of the Domestic Industry.
- iii. All supplementary information filed by the exporters should be rejected, if the exporters prefer to not file NCV of the same.
- iv. Press Metal Bintulu Sdn Bhd (PMBTU) has claimed confidentiality regarding channel of distribution, volume and value of raw materials purchased from domestic sources and program 23. Press Metal Aluminium Rods Sdn Bhd (PMAR) has claimed confidentiality regarding history of company ownership and channel of distribution. Format C and production process of PMAR's response violates Trade Notice 10/2018.

E.2. Submissions made by other interested parties

17. Following submissions have been made by other interested parties with regard to confidentiality-

- i. Domestic industry has disregarded trade notices and failed to show any good cause for such excessive confidentiality. The computation of NIP and the final NIP has been claimed confidential deliberately as the import price is higher than NIP. Hence, DI must produce revised petition with necessary information.

E.3. Examination by the Authority

18. With regard to confidentiality of information, Rule 8 of the CVD Rules provides as follows:

“Confidential information-

(1) Notwithstanding anything contained in sub-rule (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 19 copies of applications received under sub-rule (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 non-confidential 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 summarisation is not possible.

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

19. A list of all interested parties was uploaded on DGTR’s website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic.
20. 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. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions made by the domestic industry

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

- i. Questionnaire response filed by the Government of Malaysia (GOM) is incomplete and inadequate and calls into question the level of cooperation that can be expected from GOM. GOM should be directed to submit replies to the entire questionnaire, and if not, the response should be rejected.
- ii. The GOM has only responded to Program No. 5 (Pioneer Status), Program No. 8 (Accelerated Capital Allowance), Program No. 11 (Industrial Building Allowance), Program No. 12 (Allowance for Plants and Machinery), and Program No. 23 (Less Than Adequate Remuneration for Land & Electricity).
- iii. GOM has not replied to the standard questionnaire response and the relevant annexures for the exemption on sales tax, despite two determinations by the Authority in the past establishing such exemption where the producer benefits twice – exemption on raw material purchased and exemption on sales made, and is also relevant in the present case as the exporting producers have benefitted from the program.
- iv. The obligation lies on the GOM to disclose any programs in force even if they consider the program to be non-countervailable and to respond fully to the questionnaire.
- v. GOM has restricted its response only to the responding producers/exporters and not country wide producers/exporters of the subject goods.
- vi. The Authority should ensure that the information regarding acquisition of capital assets provided by the GOM and exporters is for the entire useful life (AUL) period and whether any such benefits are flowing into the period of investigation. An AUL of 15 years for plant and machinery may be considered as per Schedule II (section 123) of the Companies Act, 2013.
- vii. Information for AUL period should be called for Program Nos. 8: Accelerated Capital Allowance, Program No. 11: Allowance Industrial Building/ Industrial Building Allowance (IBA), Program No. 12: Allowance for Plants and Machinery, Program No. 17: Exemption from Import Duty and Sales Tax on Machinery and Equipment and Program No. 18: Exemption from Import Duty on Raw Materials/Components, and any failure to provide such data should be considered non-cooperative.
- viii. The questionnaire responses filed by producers/exporters are insufficient.

- ix. A substantial amount of benefit is received at the stage of smelting. PMAR does not have an integrated plant for smelting and thus either purchases inputs from PMBTU or Press Metal Sarawak Sdn. Bhd (PMS). Any benefit received by PMS should also be included in the product. PMS is non-cooperative in the present investigation and therefore, the response of PMAR should also be rejected.
- x. Duty exemption on all machinery and other components imported by PMBTU during the AUL period should be quantified and any subsidy received during POI should be quantified.
- xi. PMAR has disclosed that they were approved for benefit under Program 17 (Exemption on import duty and sales tax on machinery and equipment) in 2014 and availed it on 2015, thereby extending it to the POI. The Authority should ascertain why such benefit has only been disclosed by one group company. As PMS would also have received the benefit but did not co-operate, facts available should be applied for quantification.
- xii. Neither PMBTU nor PMAR has provided information on any programs other than those enlisted by the Applicants in the Application, despite having the obligation to do so, thereby showing their lack of willingness to cooperate fully with the Authority. The interested parties have resorted to hiding facts.
- xiii. The GOM has not provided information regarding annexures to the questionnaire response, functioning and objectives of government institutions providing financial contribution to companies.
- xiv. No reason for availing program 1, 3, 4, 10, 15-18 has been provided by PMBTU and PMAR. No reply has been provided to standard questions annexures for programs 1-4, 6-7, 9-10 and 13-22. No allocation annexures have been provided for program 5 and information for AUL period has not been provided for programs 8, 11 and 12.
- xv. Raw material consumed is not available in the exhibit. No reason for availing programs 1-7, 10 and 15 has been provided. No reply has been provided for programs 8, 11 and 12 and to standard questions annexures for programs 1-7, 9-10, 13-16, and 19- 23. Information for AUL period has not been provided for programs 8, 11, 12 and 17.

F.2. Submissions by other interested parties

- 22. The following miscellaneous submissions have been made by the other interested parties:

- a. Authority has not requested information regarding the AUL period for any of the programs.
- b. Information for AUL period is required only for the programs for which one time benefit is received and such benefit is required to be allocated over the AUL period. Information is provided in the questionnaire response of PMBTU and PMAR regarding the AUL period, wherever applicable.
- c. Domestic industry has assumed that information is not provided regarding the programs for AUL period when PMAR and PMBTU has not admitted that they have received benefit. Domestic industry has not indicated what evidence can be provided to support claim regarding non-use of subsidy programs. It is not possible to provide evidence regarding non-use of subsidy programs in all cases.
- d. PMS is not engaged in manufacturing or exporting PUC. PMBTU and PMAR do not procure any raw material from PMS for manufacturing PUC.
- e. PMAR and PMBTU has provided information regarding import duty exemption, if any, on all machinery and components imported by PMBTU and PMAR during the AUL period.
- f. GOM has provided complete information in response to the questionnaire. Absence of information in the questionnaire response of GOM is not relevant as PMAR and PMBTU have provided full information regarding the legal basis and also the amount of benefit received under the programs, if any.

F.3. Examination by the Authority

- 23. The Authority has noted all the arguments and counterarguments of the interested parties and has examined all aspects of the submissions made.
 - a. As regards the claim concerning specific subsidy programs, the Authority has noted its examination while examining each subsidy program.
 - b. As regards the claim concerning inadequate information for all alleged subsidy programs by Government of Malaysia, Authority notes that Government of Malaysia provided information in the questionnaire response regarding the legal basis of the programs used by the participating producers/exporters from Malaysia and the same has been taken into consideration while examining each subsidy program. Authority has relied on the

information provided by the domestic industry regarding the legal basis of programs for which no information was provided by Government of Malaysia.

- c. As regards claim concerning information for AUL period, the Authority has information from the responding producers/exporters for AUL period for the relevant programs. Authority notes that information for AUL period is not required for Program Nos. 8: Accelerated Capital Allowance, Program No. 11: Allowance Industrial Building/Industrial Building Allowance (IBA), Program No. 12: Allowance for Plants and Machinery and Program No. 18: Exemption from Import Duty on Raw Materials/Components because the programs are recurring in nature.
- d. As regards claim concerning absence of information from producers/exporters about other subsidy programs not alleged in the Petition, Authority notes that it has examined additional subsidy programs alleged by the domestic industry based on the information provided by the domestic industry in its written submission, even though such information was provided by the domestic industry belatedly and was not supported by relevant legal and factual details. Authority has also taken into consideration information provided by other interested parties, the provisions of the WTO SCM Agreement, the Act and the Rules while examining these subsidy programs in these final findings.
- e. As regards the claim concerning non-participation of related party (PMS) of participating producers/exporters, Authority notes that PMS is not engaged in manufacturing of PUC. Also, it is noted that PMBTU and PMAR do not procure any raw material from PMS for manufacturing PUC. Therefore, there is no requirement for PMS to file exporters questionnaire response in the present investigation.

F. EXAMINATION OF SUBSIDY PROGRAMS

F.1. Program No. 1 – The Market Development Grant

24. Submissions by the domestic industry

- a. The Petitioners submitted that the scheme is administered by Ministry of Finance, Malaysia, Ministry of International Trade and Industry, and Malaysia External Trade Development Corporation. The scheme offers grants to Malaysian SMEs for participating in export promotional activities, such as international trade fairs. The maximum grant for an SME under the MDG program is RM 200,000. The scheme identifies three types of eligible entities: (1) The SME should have been incorporated under the Companies Act, 2016 with at least 60% Malaysian equity ownership and exporting products made in Malaysia; (2) Professional service providers incorporated under the Registration of Business Act (1956) or

registered under respective statutory bodies for professional service providers, should have at least 60% Malaysian equity ownership and exporting Malaysian services; and (3) Trade and industry Associations should be registered with the Registrar of Society or Associated Professional Authority.

- b. The evidence and the legal basis are Guidelines for Market Development Grants -2020 as well as the determination by the Authority in anti-subsidy investigation concerning imports of Continuous Cast Copper Wire Rods.

25. Submissions by Government of Malaysia/other interested parties

- a. Neither PMAR, nor PMBTU availed, used, or benefitted from Program No. 1 during the POI.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

26. Examination by the Authority

- a. The Authority notes that Market Development Grant (MDG) is intended to increase participation of SMEs in export promotional activities. The MDG provides SMEs 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-Malaysia Products in supermarkets, hypermarkets or retails centers overseas.
- b. 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 it is contingent on exports.
- c. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

F.2. Program No. 2 – Business/Industry Excellence Award

27. Submissions by the domestic industry

- a. The Petitioners submitted that the award is administered by the Ministry of International Trade and Industry (MITI) to recognize outstanding Malaysian companies and to encourage continuous improvement in products and services rendered. The company should be incorporated in Malaysia under the Companies Act, 1956; be in operation for at least 3 years continuously; and submit audited financial statements for past 3 consecutive financial years.
- b. The award includes cash prizes, training programs, consideration of financing, and access to design activities, among other benefits, depending upon the categorization of manufacturing and service sector.

28. Submissions by Government of Malaysia/other interested parties

- a. PMAR and PMBTU, the two participating producers/exporters from subject country did not avail, use, or benefit from the Industry Excellence Award during the POI.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

29. Examination by the Authority

- a. The Authority notes that Business/Industry Excellence Award is granted to Malaysian companies by MITI to recognize their improvement in the quality of products/services offered. The award is in the form of cash prizes, training programs, access to design activities etc.
- b. 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 it is limited to certain enterprises that fulfill the eligibility criteria.
- c. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

F.3. Program No. 3 – Export Credit Refinancing

30. Submissions by the domestic industry

- a. Petitioners submitted that the ECR scheme is administered by the Malaysia Industrial Development Authority, Central Bank of Malaysia and Export-Import Bank of Malaysia Berhad, and provides short-term pre- and post-shipment financing to direct or indirect exporters. Malaysian enterprises engaged in manufacturing and/or trading and exporting goods can avail export credit, and the exporters can obtain financing up to 95% of the value of their export order.

31. Submissions by Government of Malaysia/other interested parties

- a. Neither PMAR nor PMBTU availed, used, or benefitted from this program.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POL.

32. Examination by the Authority

- a. 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.
- b. 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.
- c. 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 on a comparable commercial loan. The program is also specific because it is contingent on export.

- d. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

F.4. Program No. 4 – Buyer Credit Guarantee

33. Submissions by the domestic industry

- a. The Petitioners 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 have 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 2 million in support of a cash contract and the repayment period should be at least 2 years and maximum 15 years.

34. Submissions by Government of Malaysia/other interested parties

- a. Neither PMAR nor PMBTU availed, used, or benefitted from this program.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

35. Examination by the Authority

- a. The Authority notes that the program is administered by EXIM Bank. There is no law or legal regulation governing the program.
- b. 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.

- c. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

F.5. Program No. 5 – Pioneer Status

36. Submissions by the domestic industry

- a. The Petitioners submitted that a company granted Pioneer Status will enjoy tax exemption from corporate income tax. The program encourages investments in promoted activities/products which are of national and strategic importance to Malaysia. 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:
 - i. Promotion of Investment Act 1986
 - ii. Promotion of Investments (Promoted Activities and Promoted Products) Order 2012
 - iii. Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”.
 - iv. 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 dated 5th October 2017 [WT/TPR/S/292]
 - v. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>

- vi. <https://www.treasury.gov.my/index.php/en/tax/item/1160-promotion-of-investment-act-1986.html>
- vii. US Extruded Rubber through Malaysia and US-Certain Frozen Warmwater Shrimp
- viii. Annual Report, Press Metal, Pioneer Status, Page 164

37. Submissions by Government of Malaysia/other interested parties

- a. Pioneer Status may be granted to any company intending to participate in a promoted activity or to produce a promoted product which are determined by Minister of Finance and Minister of International Trade and Industry. The promoted products and activities cover all sectors including manufacturing, agricultural and services. The major tax incentives for companies investing in the agricultural and manufacturing sectors are the Pioneer Status and Investment Tax Allowance. Companies can enjoy either one of the incentives as these incentives are mutually exclusive.
- b. Article 11.2 of the SCM Agreement requires sufficient evidence on existence of a subsidy. Petitioners have not fulfilled the requirements of Article 11.2 and other relevant provisions of the SCM Agreement. The evidence provided by Petitioners is also irrelevant to the Pioneer Status program.
- c. The assistance under the Pioneer Status program is in the form of exemption from taxes owed. If a company is in a tax loss situation, the losses can be carried forward.
- d. Pioneer Status program is not specific to any enterprise or group of enterprises, or to any industry or group of industry because the eligible promoted products or activities are too wide, diverse, broad and widespread to be considered specific. Pioneer Status program is also not limited to any geographical area within Malaysia.
- e. Industries should produce sufficiently similar products in order to be considered as a group of industries (US-Softwood Lumber IV). The number of categories, industries, sectors, products or activities eligible for Pioneer Status program are too diverse to be considered a "group of industries". Industries should be definite and specific to certain industries to be considered as limited number of persons engaged in production.
- f. If subsidy is broadly available and widely used throughout the economy, then it is not specific (US-Upland Cotton).
- g. PMAR did not avail, use or benefit from this program. PMBTU was awarded pioneer status in 2013, which entitled PMBTU to a tax exemption for a period of 5 years from 1 January

2013 to 31 December 2017. An additional 5 years exemption was granted upon expiry of the first 5 years. In December 2017, PMBTU had applied for the 5-year extension till 31 December 2022.

- h. Pioneer Status program offers income tax exemption between 70% to 100% of statutory income for a tax relief period between 5 to 15 years.
- i. Rule 11 of CVD Rules requires the Authority to examine if subsidy has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article. Annexure II, Paragraph (1)(a) & (b) of the CVD Rules provides that subsidy is considered as being conferred on a limited number of persons engaged in the manufacture or production of an article when granting authority either explicitly limits or in fact limits access to a subsidy to certain enterprises.
- j. Pioneer Status company can be fully for domestic, fully for export or a combination of both. It can be located within any state in Malaysia, operating in either the primary, manufacturing or services sector spread out across multiple industries. In fact, within the manufacturing sector, Pioneer Status is available to 11 out of 13 manufacturing industries listed under the Ministry of International Trade and Industry's website.

38. Examination by the Authority

- a. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provide 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 pre-specified list of promoted products/activities.
- b. 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 eligibility list. Questionnaire response filed by PMBTU shows that benefit has been received by them under this program (100% of income tax exemption) during the POI. Therefore, Authority holds that countervailing duty should be imposed against this subsidy program for PMBTU. PMAR has not availed, used or benefitted from this program during the POI. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR. Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia except PMAR.

F.6. Program No. 6 – Investment Tax Policies/Allowances

39. Submissions by the domestic industry

- a. The Petitioners submitted that 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 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:
 - i. Promotion of Investment Act, 1986
 - ii. 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
 - iii. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - iv. 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

40. Submissions by Government of Malaysia/other interested parties

- a. Neither PMAR, nor PMBTU availed, used, or benefitted from this program.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

41. Examination by the Authority

- a. Authority notes that Sections 26 to 29 of the Promotion of Investments Act 1986 provide for Investment Tax Allowance program. Promoted activities and promoted products are granted 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 normal income tax rate. Even for companies that meet the listed criteria of promoted activity, value addition and level of technology, Malaysian government retains discretion to reject the applicant seeking benefit under this program.

- b. 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 meet the criteria of promoted product/activity and are approved by the Authority. A company that has received income tax exemption from Pioneer Status cannot avail benefit under this program. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. The Authority also notes that it has already countervail the Pioneer Status program for all other producers/exporters from Malaysia. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program for all other producers/exporters from Malaysia.

F.7. Program 7: Reinvestment Allowance

42. Submissions made by the domestic industry

- a. The Petitioners submitted that under this program, Reinvestment Allowance (RA) is given to existing companies in manufacturing activities that reinvest for the purposes of expansion, automation, modernization or diversification of its existing business into any related products within the same industry on condition that such companies have been in operation for at least 36 months effective from the Year of Assessment 2009.
- b. A company or a person resident in Malaysia is granted RA if the business has been in operation for not less than thirty-six months; or the company or person has incurred in the basis period for a year of assessment, capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project. RA is given at the rate of 60% on the qualifying capital expenditure incurred by the company and can be offset against 70% of its statutory income for the year of assessment. Any unutilized allowance can be carried forward to subsequent years until fully utilized. A company can offset RA against 100% its statutory income for the year of assessment if the company attains a productivity level exceeding the level determined by Ministry of Finance. The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made.
- c. As evidence of existence of program, the Petitioners have relied on:
- i. Promotion of Investment Act, 1986
 - ii. Income Tax Act 1967
 - iii. Anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods"
 - iv. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - v. Annual Report, Investment Tax Allowance, Page 163

43. Submission by Government of Malaysia/other interested parties

- a. Neither PMAR, nor PMBTU availed, used or benefitted from this program.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

44. Examination by the Authority

- a. Authority notes that a company or a person resident in Malaysia is granted Reinvestment Allowance if the company is in operation for 3 years and has incurred capital expenditure on factory, plant and machinery for qualifying project. Deduction is granted from 70% of statutory income for 60% of such capital expenditure. Re-investment allowance can be claimed for 15 years beginning from the year of assessment in which a claim is made. Inland Revenue Board is responsible for administration of this program.
- b. The program provides for financial contribution in the form of revenue foregone, which is otherwise due, and benefit is thereby conferred. Even though the subsidy program is not limited to promoted activity, the subsidy program is also specific because it is available to enterprise that has been in operation for at-least 3 years and are undertaking qualifying project (expanding, modernizing or automating its existing business in respect of manufacturing). The Authority has recommended in program nos. 5 & 8 that income tax exemption and deduction from statutory income by way of allowance is countervailable. Therefore, the Authority holds that no additional countervailing duty is required to be imposed against this subsidy program.

F.8. Program 8: Accelerated Capital Allowance

45. Submissions by the domestic industry

- a. 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. After the 15-year period of eligibility for Reinvestment Allowance, companies that reinvest in the manufacture of promoted products are eligible to apply for ACA. Applications have to be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted activities or products.
- b. As evidence of existence of the program, Petitioners have relied on:
 - i. Promotion of Investment Act, 1986

- ii. Public Ruling No. 4/2013
- iii. Anti-subsidy investigation concerning Continuous Cast Copper Wire Rods
- iv. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts>

46. Submissions by Government of Malaysia/ other interested parties

- a. ACA provides allowances to write-off the capital expenditure within four years, i.e. an initial allowance of 20 percent in the first year and an annual allowance of 20 percent thereafter. All companies that meet the eligibility criteria can claim the ACA. This program is available to all companies and the Inland Revenue Board applies objective criteria in granting ACA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available. Further, the amount of ACA is part of the Capital Allowance claimed by any company.
- b. The allowance can be carried forward. Generally, to be eligible for ACA, a person must meet the following conditions:
 - They were carrying on a business during the basis period
 - They have 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
- c. The claiming of capital allowances, including ACA is mandatory under relevant tax law.
- d. The program covers capital expenditure incurred by a Malaysian resident in the basis period for a year of assessment from a source consisting of his business in relation to (i) the purchase of any information and communication technology equipment as listed in the Schedule of PU(A)156/2018, and (ii) the development cost for customized computer software as defined in PU(A)274/2019, used for the purpose of that business.
- e. The deductions permitted are not more than the actual expense. The timing of claiming is accelerated when compared to the normal timing of capital allowances. This is a form of tax depreciation.

47. Examination by the Authority

- a. Authority notes that the program provides for capital allowance i.e. deduction of capital expenditure from statutory income to promoted activity after the expiry of 15 years of re-investment allowance period. Authority notes that program provides for writing-off the capital expenditure within five years, i.e. an initial allowance of 20 percent in the first year and an annual allowance of 20 percent thereafter.

- b. 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 incurring expenditure towards specified capital expenditure. Benefit under this program is equivalent to the amount of interest accrued on the tax saved by deducting expenditure at an accelerated rate. PMAR and PMBTU have availed, used and benefitted from this program during POI. Therefore, Authority holds that countervailing duty should be imposed against this program.

F.9. Program 9: Group Relief

48. Submissions by the domestic industry

- a. Group Relief is available to all locally incorporated resident companies subject to the terms and conditions as provided under Section 44A of Income Tax Act 1967. The provision of Group Relief allows a company in group to surrender (referred to as surrendering company) a maximum of 70% of its adjusted loss in the basis period for a year of assessment to one or more related companies (referred to as claimant company) within the same group. Effective from the year of assessment 2009, Group Relief was increased from 50% to 70% of the current year's unabsorbed losses to be offset against the income of another company within the same group.
- b. The claimant and the surrendering companies each have a paid-up capital of ordinary shares exceeding RM 2.5 million. As evidence of existence of the program, Petitioners have relied on:
- Section 44A, Income Tax Act 1967
 - Promotion of Investment Act, 1986
 - Anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods"

49. Submissions by Government of Malaysia/other interested parties

- a. During the POI, none of the companies under investigation applied for, accrued or received benefit under the Group Relief program.
- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

50. Examination by the Authority

- a. Authority notes that the program is governed by Section 44A of the Income Tax Act. The subsidy program allows to set off not more than 70% of its loss incurred by a company in a group against profit of one or more related companies within the same group. All companies that meet the eligibility criteria can claim the Group Relief.
- b. 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 limited to enterprise having related companies. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption up to 100% from income tax under Pioneer Status Program. The Authority therefore holds that no additional countervailing duty to be imposed for this subsidy program.

F.10. Program 10: Tariff Related Incentives

51. Submissions by the domestic industry

- a. The program provides for full exemption from import duty on raw materials/components, regardless of whether the finished products are meant for the export or domestic market. To qualify for the exemption, 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).
- b. Where the finished products are for the export market, full exemption from import duty on raw materials/components is normally granted, provided the raw materials/components are not produced locally, or where they are produced locally, are not of acceptable quality and price.
- c. As evidence of evidence of the existence of program, Petitioners have relied on:
 - Section 14(2) of Customs Act 1967
 - Anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods"
 - Malaysian Investment Development Authority, Incentives in Manufacturing Industry available at <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>

52. Submissions by Government of Malaysia/other interested parties

- a. During the POI, none of the companies under investigation applied for, accrued or received benefit under the Tariff Related Incentives program.

- b. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

53. Examination by the Authority

- a. 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).
- b. 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. The Authority holds to countervail this subsidy program.
- c. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. Authority has determined that exemption from import duty on raw material is countervailable under program No. 18. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

F.11. Program 11: Allowance for Industrial Building/Industrial Building Allowance (IBA)

54. Submissions by the domestic industry

- a. IBA is available to a person who has incurred capital expenditure on the construction or purchase of an industrial building which is used for the purpose of the business of that person. IBA is deducted against adjusted income to arrive at statutory income. IBA is generally available to all companies, both resident and non-resident companies; and unincorporated businesses such as sole proprietorships. The initial allowance under the program is 10% and an allowance is 3%. The expenditure can be written off in 30 years.

- b. IBA is granted to companies incurring capital expenditure on the construction or purchase of an industrial building that is used for specific purpose carried on by the company, including manufacturing, agriculture, mining etc.
- c. The evidence of the program relied upon by Petitioners are:
 - Schedule 3 of the Income Tax Act, 1967
 - Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”
 - Malaysian Investment Development Authority, Incentives in Manufacturing Industry, available at <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - Inland Revenue Board of Malaysia, Qualifying Expenditure and Computation of IBA, Public Ruling No. 3/2018

55. Submissions by Government of Malaysia/other interested parties

- a. IBA is available to a person who has incurred capital expenditure on construction or purchase of an industrial building which is used for the purpose of the business of that person. IBA is a one-time benefit in the form of tax depreciation.
- b. IBA is a capital allowance given for expenses incurred on industrial building under Schedule 3 Income Tax Act 1967. IBA comprises of Initial Allowance (IA) and Annual Allowance (AA) or AA only at the rate prescribed for each type of industrial building. In general, the rate for IA is given at 10% of the qualifying business expenditure (QBE) and the rate of AA is 3% of QBE unless it is states specifically at a different rate.
- c. Export is not a criterion for granting IBA. IBA is granted to all buildings notwithstanding the use of the building. As such, IBA is also applicable to buildings which are used as warehouses for storage of goods for export or for storage of imported goods which are to be processed and distributed or re-exported.
- d. All companies that meet the eligibility criteria can claim the deductions. This program is available to all companies and the Inland Revenue Board applies objective criteria in granting IBA. Thus, this program does not constitute a countervailable subsidy because it is not specific.
- e. PMAR has used and benefitted from IBA. QBE is incurred by PMAR on the construction/purchase of building used as industrial building for the purposes of the business which made it eligible to claim IBA as deduction to reduce its taxable income over a period of 30 years.

- f. PMBTU has also used and benefitted from IBA. PMBTU is eligible to claim IBA as deduction to reduce taxable income over a period of 30 years on 100% of QBE incurred by PMBTU on construction/purchase of building used as industrial building for the purpose of its business.

56. Examination by the Authority

- a. Authority notes that industrial building allowance (IBA) is available to an entity which has incurred capital expenditure on the construction or purchase of an industrial building which is used for the purpose of the business of that entity. IBA is deducted against adjusted income to arrive at statutory income.
- b. Authority notes that the program does not provide any countervailable benefit because it provides for normal deduction of depreciation on building to all enterprises. Therefore, Authority holds that no countervailing duty should be imposed against this program

F.12. Program 12: Allowance of Plant and Machinery

57. Submissions by the domestic industry

- a. Capital Allowance (CA) is a deduction for qualifying expenditure on machinery or plant i.e. relief for wear and tear of fixed assets for business. CA is given only in respect of a business source and the person who incurs the qualifying expenditure and hence 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. Initial allowance is fixed at 20% based on the cost of 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. The evidence relied upon by Petitioners includes:
- Schedule 3 of the Income Tax Act, 1967
 - Anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods"
- c. Following is the eligibility to receive benefits:
- i. Carry on a business
 - ii. Incurs capital expenditure on plant and machinery
 - iii. The plant and machinery must be used in that business
 - iv. Owner of the plant and machinery at the end of the basis period

58. Submissions by Government of Malaysia/other interested parties

- a. Neither PMAR, nor PMBTU have applied for, used or benefitted from this program.
- b. There is no Allowance for Plant and Machinery under Income Tax Act. Instead, allowance in the form of CA is given for plant and machinery under Schedule 3 of Income Tax Act.
- c. All companies that meet the eligibility criteria can claim the CA. 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.
- d. The IRB applies an objective criterion in granting CA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and is generally available.
- e. PMAR and PMBTU had used and benefitted from the program for Allowance for Plant and Machinery/CA. CA is a form of tax depreciation (i.e. deduction of qualifying capital expenditure incurred by PMAR and PMBTU from their taxable incomes). It is a one-time benefit.
- f. The qualifying expenditure incurred by PMAR on capital expenditure for the purposes of the business which made it eligible for PMAR and PMBTU to claim CA as deduction to reduce taxable income over a period of between 4 to 8 years.

59. Examination by the Authority

- a. Authority notes that the allowance for plant and machinery 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 on the basis of a prescribed rate of allowance.
- b. Responding producers/exporters PMBTU and PMAR have claimed allowance on plant and machinery.
- c. Authority notes that the program does not provide any countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight-line

method to all enterprises. Therefore, Authority holds that no countervailing duty should be imposed against this program.

F.13. Program 13: Double deduction for promotion of exports

60. Submissions by the domestic industry

- a. The Petitioners submitted that under this program, expenditure incurred on advertising local brand products domestically is allowed double deduction (expenses incurred on certain activities can be set off twice against taxable profits).
- b. To be eligible, the local brand must satisfy the following criteria:
 - i. The company must be owned more than 50% by registered proprietor of Malaysian brand name
 - ii. The deduction can only be claimed by one company in a year of assessment
 - iii. Brand name is owned by a company which is locally incorporated with at least 70% Malaysian owned
 - iv. Brand name is registered in Malaysia or overseas
 - v. Brand name product must achieve export quality standards
 - vi. Expenditure incurred in advertising must be incurred in Malaysia
 - vii. Expenditure incurred on professional fees must be incurred in Malaysia.
- c. The benefit under this program is export specific, in that the incentives available to manufacturing and agricultural companies producing 'promoted products' or engaged in 'promoted activities.' As evidence of the existence of program, Petitioners have relied on:
 - Section 41, Promotion of Investment Act 1986
 - Rule 4(2) of Income Tax (Promotion of Exports)
 - Anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods"
 - WTO-Notification -G/SCM/N/3/MYS/1986
 - US Carbon Steel Wire Rod from Malaysia
 - WT/TPR/292

61. Submissions by Government of Malaysia/other interested parties

- a. The correct legal basis of the program is:
 - Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002 as amended by Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) (Amendment) Rules 2007
 - Section 33 Income Tax Act 1967 (Revised 1971)

- b. Neither PMAR, nor PMBTU has availed, used or benefitted from this program during POI.
- c. Petitioners have not given any evidence of benefit conferred on PMAR or PMBTU during POI.

62. Examination by the Authority

- a. 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.
- b. The Authority notes that the program provides for financial contribution in the form of revenue foregone, which is otherwise due, and benefit is thereby conferred.
- c. The benefit is the difference between the amount of income tax paid after double deduction and the amount 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 enterprise engaged in export promotion activity. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed for this subsidy program for all other producers/exporters.

F.14. Program 14: Incentives for manufacturing and manufacturing related services in East Coast Economic Corridor

- a. As mentioned in the initiation notice, the program no. 14 has been taken out from the purview of this investigation. Accordingly, this program is not being examined.

F.15. Program 15: Drawback on import duty, sales tax and excise duty

63. Submissions by the domestic industry

- a. The Petitioners submitted that 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.
- b. Legal basis relied upon by the Petitioners include:
 - Sections 93, 95, 99 of Customs Act 1967
 - Section 29, Sales Tax Act 1972
 - Section 19 and 19A of Excise Act 1976
 - Findings of the Authority in anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”

64. Submission by Government of Malaysia/other interested parties

- a. Neither PMAR nor PMBTU used or benefitted from the program.

65. Examination by Authority

- a. Authority notes that the program is administered by the Royal Malaysian Customs Department. The program provides for refund of import duty levied on inputs that are used in manufacture of goods exported. .
- b. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. Authority has determined that exemption from import duty on raw material is countervailable under program No. 18. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

F.16. Program 16: Exemption from import duty and sales tax for outsourcing manufacturing activities

66. Submissions by the domestic industry

- a. The Petitioners submitted that this program involves evaluating import duty exemptions on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. This program exists to reduce the cost of doing business and enhance competitiveness for owners of Malaysian brand with at least 60% Malaysian equity ownership who outsource manufacturing activities for certain benefits. 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 are available.

- b. Petitioners relied on Section 14(2) of Customs Act, 1967 and anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”

67. Submission by Government of Malaysia/other interested parties

- a. Neither PMAR nor PMBTU used or benefitted from the program.

68. Examination by Authority

- a. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. Raw materials which are used in the production of exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption.
- b. PMAR and PMBTU, the two participating producers/exporters from subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU. Authority has determined that exemption from import duty on raw material is countervailable under program No. 18. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

F.17. Program 17: Exemption from import duty and sales tax on machinery and equipment

69. Submissions by the domestic industry

- a. This program involves evaluating import duty exemption on machinery and equipment to qualified manufacturer. To qualify for the exemption, the machinery and equipment must be new, unused and directly used in manufacturing process of finished product at the approved manufacturer’s premise(s). In cases where the 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. The Petitioners relied on Customs Duties (Exemption) Order 2017.

70. Submissions by Government of Malaysia/other interested parties

- a. The last duty exemption on importation of raw materials used by PMAR was approved in April 2016 and was valid for 3 years until March 2019. Apart from this exemption, PMAR did not avail, use or benefit from this program, including during the POI.
- b. PMBTU did not avail benefit from this program.

71. Examination by Authority

- a. 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 Malaysian Investment Development Authority.
- b. Responding producer/exporter PMAR has reported the details of capital goods on which benefit under this program has been availed during the AUL period. 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 certain enterprises that import new machinery and equipment for manufacturing activity. The Authority holds that countervailing duty should be imposed against this subsidy program for PMAR. Responding producer/exporter PMBTU has not received any benefit under this program during the AUL period.

F.18. Program 18: Exemption from import duty on raw materials/components

72. Submissions by the domestic industry

- a. Under this program, where finished products are for the export market, full exemption from import duty on raw materials/components is normally granted, provided the raw materials/components are not produced locally, or where they are produced locally, are not of acceptable price and quality. Where the finished products are for the domestic market, full exemption from import duty on raw materials/components that are not produced locally can be considered. Full exemption can also be considered if the finished products made from dutiable raw materials/components are not subject to any import duty. Petitioners relied on Section 14(2) Customs Act 1947 as the legal basis for this program.

73. Submissions by Government of Malaysia/other interested parties

- a. This program is an exemption from payment of customs duties and sales tax. Raw materials imported by PMAR were zero rated imports and therefore PMAR was not required to apply for duty exemption. PMAR did not apply, use or benefit from this program during POI. PMBTU did not apply for, use, or benefit from the program.

74. Examination by the Authority

- a. 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/components that are not locally available. Benefit under this program has not been availed by the participating producers PMAR and PMBTU. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR and PMBTU.
- b. 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 materials that are not locally available.
- c. Therefore, Authority holds to impose countervailing duty against this program for all other producers/exporters from subject countries.

F.19. Program 19: Double deduction for promotion of exports

- a. This program is similar to program No. 13, which has already been examined by the Authority.

F.20. Program 20: Double deduction for promotion of export cargo

- a. As mentioned in the initiation notice, program no. 20 has been taken out from the purview of this investigation. Accordingly, this program is not being examined.

F.21. Program 21: Allowance for increased export

75. Submissions by the domestic industry

- a. Petitioners submit that this program is in the form of a tax incentive granted to companies under Section 154(1) of Income Tax Act 1967 and Rule 3 Income Tax (Allowance for increased exports) Rules 1999 and Income Tax (Allowance for increased

exports) (Amendment) Rules 2003 whereby an exporter can avail 70% tax deduction from taxable income for increased exports.

b. The allowance will be determined as follows:

Manufactured products

- i. 10% of the value of increased exports of the manufactured products of the company where the products exported attained at least 30% of value added;
- ii. 15% of the value of increased exports of manufactured products where products exported attained at least 50% of value added

Agricultural products

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

76. Submissions by Government of Malaysia/other interested parties

a. Neither of the Respondents availed or benefitted from the program. Income Tax (Exemption) (No. 6) Order 2019 mandates the qualifying company to be at least 60% held directly by Malaysian citizen. PMAR is held by PMBTU which is a company, not an individual.

77. Examination by the Authority

- a. 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.
- b. 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. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed against this program.

F.22. Program 22: Tax exemptions for exporters in Free Trade Zones

78. In the initiation notice, the Authority has noted that program no. 22 has been taken out from the purview of this investigation. Accordingly, this program is not being considered in the present case.

F.23. Program 23: Less than adequate remuneration for land and electricity

79. Submissions by the domestic industry

- a. The Petitioners submitted that the Group secured a long-term power purchase agreement at a less than adequate remuneration. Unlike smelters which are dependent on coal-fired or gas-fired power plants, the Group is not subjected to coal and gas price fluctuations. A company can avail special additional incentives for manufacturing projects based in Sarawak. The incentives can be availed by submitting applications to Ministry of Industrial Development.
- b. The Petitioners relied upon the following as evidence of the program:
 - Sarawak Government, Investment Incentives available at https://www.sarawak.gov.my/web/home/article_view/214/229/
 - Sarawak Industrial Estate Development by MID: https://www.sarawak.gov.my/web/home/article_view/213/228/
 - Annual Report, Page 9 available at http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=193979&name=EA_DS_ATTACHMENTS
 - News Report, available at <https://www.nst.com.my/business/2019/07/508803/press-metal-secures-more-power-expansion>
- c. PMBTU is in Samalaju Industrial Park. As per the official portal of Sarawak, industries which are located in that region enjoy 30% discount for land premium if the project is completed and operations commence within 36 months from the date of land alienation.

80. Submissions by Government of Malaysia/other interested parties

- a. There is no program for sale of bulk power in Sarawak. Sarawak Energy Berhad (SEB) sells power through arms-length commercial negotiations on a willing buyer, willing seller basis. The relevant contract is known as 'Power Purchase Agreement' (PPA). The sale of electricity to bulk users in Sarawak is conducted on a contractual basis governed by Malaysian law.

- b. SEB is a corporation, governed by an independent Board of Directors and professionally managed by expert staff. Management is mandated to negotiate PPAs with bulk power customers from power intensive industries, including, but not limited to, aluminium. Demand for bulk power typically exceeds SEB's capacity to supply and power is allocated to those customers that offer the greatest commercial and strategic advantage to SEB.
- c. SEB has also entered into PPA negotiations with potential foreign customers in Sarawak, eg. Japan, Korea, China, Australia, India, among others and with diverse industries (including aluminium, ferro-alloys, polysilicon, copper film etc.) and export of power to neighboring jurisdictions like Indonesian Kalimantan, Brunei and Sabah.
- d. The electricity providers across Malaysia are:

States	Sole Electricity Provider
Peninsular Malaysia (11 states)	Tenaga Nasional Berhad (TNB)
State of Sabah (located in East Malaysia)	Sabah Electricity Sdn. Bhd.
State of Sarawak (located in East Malaysia)	Sarawak Energy Berhad (SEB)

- e. SEB is the sole electricity supplier in Sarawak and the alleged subsidy is available to any person who requires electricity load greater than 5 MW throughout the state of Sarawak. The review of the following terms of PPA indicates that there is no provision of electricity at less than adequate remuneration:
 - i. PMBTU contracted for a long-term commitment of 25 years to purchase electricity from SEB at a certain committed level of consumption;
 - ii. The terms of the purchase of electricity include, inter alia, a 'take or pay' term where PMBTU is obliged to consume or pay (even if not consumed) 90% of the committed consumption level;
 - iii. SEB has the right to increase the tariff by way of a Commodity Price Adjustment clause subject to the price of aluminium published in the London Metal Exchange;
 - iv. SEB has escalation clause to enable SEB to increase its tariff by 1.5% on an annual basis. This has also been exercised in fact;

- v. PMBTU is not entitled to any rebate from SEB in the event the consumption exceeded the committed level;
 - vi. In event of power outage caused by SEB, PMBTU has the right to claim liquidated damages from SEB;
 - vii. PMBTU has borne the cost of constructing the towers and power transmission lines of approximately 7 kilometres outside the premises of PMBTU for last mile connection from SEB's substation;
 - viii. In the event of termination, the party at default will have to pay the other party liquidated damages.
- f. There is no preferential rate of electricity prescribed for any region or industry by Government of Malaysia.
- g. Regarding allegation of supply of electricity to PMAR at less than adequate remuneration, it is submitted that there is no separate agreement by PMAR with TNB for supply of electricity. Electricity tariff prescribed for industrial units by TNB based on consumption is applicable to PMAR.
- h. There is no separate program of Government of Sarawak for provision of land at LTAR. PMBTU is located in Sarawak region. As PMBTU completed the erection of the building on the Land and commenced operation of the approved industrial activity within 5 years, PMBTU got eligible for the refund/waiver of the 4th and 5th instalments of premium of the Land.
- i. Provision of land at LTAR is not specific because it is not limited to certain enterprise and eligibility is not discretionary. Eligibility is based on objective criteria which are neutral and horizontal in application.
- j. The alleged discount on land premium is applicable to all lessees of industrial land in Sarawak, provided that criteria such as commencement of operation or erection of buildings within stipulated time set by LSDS are met.
- k. PMBTU has entered into an agreement for provisional lease of state land with Land and Survey Department Sarawak (LSDS), under state of Sarawak from 2011 to 2071. Such discount is applicable to all lessees of industrial land, given the objective criteria set by LSDS are met.

1. Any allegation on provision of land at LTAR does not even apply to PMAR. PMAR purchased land from private entities and not government entities or entities linked/related to the government.

81. Examination by Authority

- a. Authority notes that allegation of provision of electricity at less than adequate remuneration (LTAR) and provision of land at less than adequate remuneration are required to be examined separately.

Provision of electricity at LTAR

- b. Sarawak Energy Berhad (SEB) is an energy development company in the state of Sarawak. The company is a public limited liability company. The controlling shareholder of the company is State Financial Secretary, Sarawak, a statutory corporation established under State Financial Secretary (Incorporation) Ordinance of Sarawak. SEB is the sole electricity supplier in the Sarawak. SEB enters into Power Purchase Agreement (PPA) with entities in Sarawak with electricity load requirement greater than 5MW. Individual concessional tariff rates are negotiated for entities with load requirement greater than 5MW.
- c. SEB is wholly owned by the Sarawak state government through the State Financial Secretary and provides electricity to entities in Sarawak. SEB is a public body because it is owned by Government and is vested with the Government Authority to carry out governmental function.
- d. Upon review of PPA between PMBTU and SEB (or its wholly owned subsidiary), it is noted that the tariff charged under PPA is not market driven on account of following reasons:
 - i. Standard industrial tariff rates are prescribed by SEB for entities having consumption requirement of upto 5 MW. But, for entities with load requirement of more than 5 MW, SEB (or its wholly owned subsidiary) enters into a separate PPA with each such entity at substantially lower tariff.
 - ii. There are no defined guidelines for determination of tariff rate under PPA and there is no uniformity in the rates offered to various entities entering into PPA with SEB (or its wholly owned subsidiary).
 - iii. In the PPA entered into between PMBTU and SEB (or its wholly owned subsidiary), there is a pre-defined/fixed annual escalation clause. But this annual

escalation is not linked to the movement in input prices and/or to the inflation, thereby implying that tariff rates under PPA are not market driven and element of subsidisation is built into such tariff.

- iv. Government of Malaysia has, either directly or through SEB (or its wholly owned subsidiary), not provided any evidence to demonstrate that the prices charged by SEB (or its wholly owned subsidiary) under the PPA are remunerative i.e., permitting recovery of complete cost incurred.
- e. Authority also notes that Economic Research Institute for ASEAN and East Asia (ERIA) Research Project Report 2015 titled "Economic Impact of Removing Energy Subsidies in Malaysia" has noted existence of energy subsidies in Malaysia, particularly in supply of electricity. The Report notes that energy demand is largely driven by the stable economic growth and the intentionally low energy prices due to the energy subsidy policy on electricity. The Report further notes that although the share of electricity and transport fuel subsidy is currently declining, the energy subsidy in Malaysia in 2010 accounted for 4.1 percent of the total GDP, with per-capita subsidy amounted to US\$200 (IEA, 2015).
- f. Authority therefore notes that preferential tariff for electricity supplied by SEB (or its wholly owned subsidiary) through PPA is a financial contribution by the public body in the form of provision of goods or services at less than adequate remuneration. The amount of benefit is equal to the tariff rate charged under PPA and the normal tariff rate applied to other entities outside the PPA arrangement. Questionnaire response filed by PMBTU shows that PMBTU has received benefit under this program because it has entered into PPA with SEB (or its wholly owned subsidiary). The Authority holds to hold that countervailing duty should be imposed against this subsidy program for PMBTU. However, PMBTU is subject to several terms and conditions under the PPA for availing the applicable tariff including the need to incur additional cost for last mile connection. Expenditure incurred by PMBTU pursuant to PPA allocated to the POI is to be deducted while calculating the amount of benefit. Authority has considered both peak and off-peak electricity tariff provided on SEB website while deciding the comparable benchmark tariff rate. It is noted that PMBTU has not specified exact share of off-peak consumption of electricity in its total consumption. Authority has determined the benchmark rate by considering that one-third of electricity consumed by PMBTU is during off-peak hours and the remaining two-third consumption during peak hours.
- g. PMAR is not located in Sarawak and has not availed, used or benefitted from this program during the POI. PMAR has not entered into a separate Agreement/PPA with TNB for supply of electricity. Electricity tariff prescribed for all industries is applicable to PMAR. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR. Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia except PMAR.

Provision of land at LTAR

- h. Authority notes that alienation of land in the Sarawak including determination lease, premium payment, conditions of land use etc. falls within exclusive jurisdiction of the Sarawak State Government. Conditions and restrictions on land in Sarawak are imposed by the Land and Survey Department of Sarawak (LSDS). LSDS grants discount on land premium by way of refund of premium paid or waiver of premium payable upon any lessee meeting certain conditions stipulated in the land lease such as commencement of operation or erection of building/facilities/factories within a stipulated time frame.
- i. Waiver of premium by State Government of Sarawak amounts to financial contribution through provision of goods or services at less than adequate remuneration. The amount of benefit is equal to the difference between the land premium payable by entity and the land premium actually paid after discount/waiver of premium instalment.
- j. Questionnaire response filed by PMBTU shows that PMBTU benefited from this program. The Authority holds that countervailing duty should be imposed against this subsidy program for PMBTU. PMAR has not availed, used or benefitted from this program during the POI. Thus, Authority holds that no countervailing duty should be imposed against this program for PMAR. Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia except PMAR.

G. ADDITIONAL SUBSIDY PROGRAMS CLAIMED BY DOMESTIC INDUSTRY DURING THE COURSE OF THE INVESTIGATION

G.1. Exemption on sales tax on raw material aluminium hydroxide or alumina

82. Submissions by the domestic industry

- a. Sales tax is normally levied on goods imported into Malaysia at a rate of 10%. An order was issued in Malaysia in 2018 exempting aluminium hydroxide or alumina from the levy of sales tax.
- b. Since aluminium hydroxide or alumina are inputs for the product under consideration, benefit is required to be countervailed. The product under consideration is produced in Malaysia after importing alumina without payment of sales tax.
- c. Petitioners are not aware of other inputs that have been imported by Press Metal Group under this scheme or any other scheme where similar benefit has been availed.

83. Submissions by Government of Malaysia/other interested parties

- a. Sales Tax Order 2018 prescribes 0% sales tax on alumina and aluminium hydroxide. Sales tax is an indirect tax on the products. Rates of sales tax on products are decided by Government of Malaysia.
- b. Rate of 0% sales tax is not specific to any company or entity but on the products themselves. All entities procuring these raw materials will be subject to 0% rate. Deciding tax rates on products is an inherent and sovereign function of Governments in all countries. There is no requirement under the SCM Agreement that all products should be uniformly taxed at equal rates and if a product is taxed lower than other products, it amounts to subsidy for enterprise procuring goods subject to lower tax. This is also recognized in Article 2.2 of the SCM Agreement.

84. Examination by the Authority

- a. Authority notes that sales tax rate on alumina and aluminium hydroxide is prescribed at 0% vide Sales Tax Order 2018. The same rate is applicable on the products in Malaysia for all entities. The sales tax rate prescribed by Government of Malaysia is generally applicable to all entities requiring alumina and aluminium hydroxide. Tax rates prescribed by Government on import or procurement of product does not amount to subsidy because Article 2.2. of the SCM Agreement specifically provides that setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy. Therefore, Authority holds that no countervailing duty should be imposed against this program for producers/exporters from Malaysia.

G.2. Benefit of subsidised natural gas through state owned electricity suppliers

85. Submissions by the domestic industry

- a. Tenaga Nasional Berhad (TNB) is the sole supplier of electricity in Peninsular Malaysia and provides electricity to PMAR. TNB has 8 wholly owned power plants; 2 majority owned plants and 1 minority owned power plant operating on gas. SEB, which provides electricity to PMBTU, also owns 3 power plants operating on gas. Hence, both exporters are beneficiaries of subsidised natural gas.
- b. The prices of natural gas, which is the primary source of power in Malaysia, are statutorily regulated for electricity sector. Power is thus available to exporters at less than

adequate remuneration. This program, therefore, provides financial contribution in the form of revenue foregone that is otherwise due and benefit is conferred.

86. Submissions by Government of Malaysia/other interested parties

- a. There was no allegation of subsidy for electricity supplied by TNB in the Petition filed by domestic industry. No investigation can be initiated on such new subsidy allegations.
- b. For TNB, only 31% of electricity is generated using natural gas. There is no separate agreement by PMAR with TNB for supply of electricity.
- c. Even if gas prices in Malaysia are presumed to be subsidised, Petitioners have wrongly presumed pass-through of benefit of such subsidised prices to exporters. WTO Appellate Body in US- Softwood Lumber observed that when raw material supplier receiving the benefit of countervailable subsidies, supplies raw material to another unrelated entity, pass through of benefit of subsidies in favour of unrelated purchaser of raw material cannot be presumed without conducting pass-through analysis. TNB and SEB are not related to exporters and no presumption of pass through of benefit to exporters can be made.

87. Examination by the Authority

- a. Authority notes that TNB is the sole electricity provider in Peninsular Malaysia. Electricity is generated by TNB through natural gas as well as other sources including hydro power, coal etc. Majority of the electricity generated by TNB is through these other sources and not natural gas. PMAR is situated in Peninsular Malaysia and received electricity from TNB.
- b. Authority also notes subsidy program of provision of electricity at less than adequate remuneration has been examined by the Authority. Subsidization of natural gas and procurement of subsidized natural gas by electricity suppliers in Malaysia is not subsidy program under investigation. Even if the natural gas received by these entities is subsidized, there cannot be any presumption of pass through of benefit to entities receiving electricity is absence of further evidence. Authority notes that domestic industry raised new allegation regarding subsidy belatedly and also sufficient information was not provided to support the allegation that benefit of subsidized natural gas by Tenaga Nasional Berhad (TNB) is passed on to entities procuring electricity from TNB during the POI. Therefore, Authority holds that no countervailing duty should be imposed against this program for producers/exporters from Malaysia.

G.3. Indirect subsidy on carbon anode received from Government of China PR

88. Submissions by the domestic industry

- a. Press Metal Group together with Sunstone Development Co. Ltd. established a joint venture in China, namely Shandong Sunstone & PMB Ltd. Co. (Sunstone). Sunstone is engaged in the production of pre-baked carbon anode which is a primary raw material for the production of the PUC. 50% requirement for carbon anode of Press Metal is met through imports from Sunstone.
- b. Sunstone has availed various subsidies provided by the Government of China PR to the tune of Yuan 8,645,896,50. These subsidies enabled Sunstone to produce carbon anode at subsidized rate, benefit of which has flown to PUC.

89. Submissions by Government of Malaysia/other interested parties

- a. New subsidy allegations cannot be investigated by the Authority. PMAR does not use carbon anode for production of PUC.
- b. Subsidies, if any, received by Sunstone from Government of China PR are not subsidies by Government of Malaysia or any other state governments, which is the Government in the country producing and exporting PUC to India.
- c. There can be no presumption of subsidization in favour of Sunstone when China PR is not even included as a country under investigation and no questionnaire response was issued to the Government of China PR.

90. Examination by the Authority

- a. Authority notes that the allegation of subsidization of raw material carbon anode used for the production of PUC is against producers/exporters in China PR and Government of China PR. However, no evidence has been furnished to substantiate this claim. Therefore, Authority holds that no countervailing duty should be imposed against this program for producers/exporters from Malaysia.

Producers/Exporters from Malaysia

Press Metal Aluminium Rods Sdn Bhd (“PMAR”) (producer/exporter) and Press Metal Bintulu Sdn Bhd (“PMBTU”) (producer/exporter)

91. PMAR is 100% owned by PMBTU. PMAR produces and sells the subject goods in Malaysia and other countries including India. PMBTU is a subsidiary of Press Metal Aluminium Holdings Berhad and Bunga Raya Aluminium Sdn Bhd is a minority shareholder in PMBTU. PMBTU produces and sells the subject goods in Malaysia and other countries including India.

92. Authority has verified the information provided by Press Metal Aluminium Rods Sdn Bhd and Press Metal Bintulu Sdn Bhd and determined subsidy margin for program nos. 5, 8, 17 & 23 for which benefit was received or accrued during the POI. Authority determined that the subsidy programs 5, 8, & 17 resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due and benefit was thereby conferred. Authority determined that subsidy program 23 resulted in provision of financial contribution in the form of provision of goods or services at less than adequate remuneration by public body and benefit was thereby conferred.

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

PMAR

Program No.	Name of the program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 5	Accelerated Capital Allowance	Accelerated deduction of capital expenditure from taxable income	***%	0-10%
Program No. 17	Exemption from Import Duty and Sales Tax on Machinery and Equipment	Exemption on customs duty and sales tax on import of machinery and equipment	***%	0-10%
Total			***%	0-10%

PMBTU

Program No.	Name of the grant program	Brief	Subsidy margin	Subsidy Margin
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		Description/Comment	%	Range %
Program No. 5	Accelerated Capital Allowance	Accelerated deduction of capital expenditure from taxable income	****%	0-10%
Program No. 8	Pioneer Status	Exemption from income tax	****%	0-10%
Program No. 23	Provision of Land at less than adequate remuneration	Discount on land premium	****%	0-10%
Program No. 23	Provision of Electricity at less than adequate remuneration	Purchase of electricity at lower rate from public body	****%	0-10%
Total			****%	5-15%

94. Subsidy margin determined for PMAR and PMBTU is substantial and above *de-minimis* level. Weighted average subsidy margin for PMAR and PMBTU is as below:

Particulars	Margin	Range
PMBTU	****%	5-15%
PMAR	****%	0-10%
Weighted Average	****%	0-10%

95. Subsidy margin determined for all other producers/exporters is as below:

All other producers/exporters from Malaysia

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 1	Market Development Grant	Grant to SMEs for participation in export promotional activity	***	0-10%
Program No. 2	Business/Industry Excellence Award	Grant to Malaysian companies by MITI to recognize their improvement	***	0-10%

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
		in the quality of products/services offered		
Program No. 3	Export Credit Re-financing	EXIM Bank provides loan to enterprise to finance export of products	***	0-10%
Program No. 4	Buyer Credit Guarantee	EXIM Bank provides guarantee to financial institutions against risk of non-payment by their exporters	***	0-10%
Program No. 5	Accelerated Capital Allowance	Accelerated deduction of capital expenditure from taxable income	***	0-10%
Program No. 8	Pioneer Status	Exemption from income tax	***	0-10%
Program No. 17	Exemption from Import Duty and Sales Tax on Machinery and Equipment	Exemption on customs duty and sales tax on import of machinery and equipment	***	0-10
Program No. 18	Exemption from import duty on raw materials/components	Exemption on customs duty and sales tax on import of raw material	***	0-10
Program No. 23	Provision of Land at less than adequate remuneration	Discount on land premium	***	0-10%
Program No. 23	Provision of Electricity at less than adequate remuneration	Purchase of electricity at lower rate from public body	***	5-15%
Total			***	10-20%

H. EXAMINATION OF INJURY AND CAUSAL LINK

H.1. Submissions by Domestic Industry

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

- a. The domestic industry has suffered injury due to the presence of subsidized imports from the subject country.
- b. Volume of imports from subject country has increased significantly, both in absolute and relative terms, despite decline in demand.
- c. Imports have suppressed and depressed the prices of the domestic industry in the market.
- d. Capacity utilization has declined after 2017-18 and reached lowest level in the POI.
- e. Production and sales of the domestic industry have declined in 2018-19 and further in the POI. Though the demand declined by 5%, sales of the domestic industry declined by 14%.
- f. Market share of subject imports has increased over the injury period while that of the domestic industry declined.
- g. The domestic industry has been facing financial losses, cash losses and negative ROI in the POI.
- h. Inventories with the domestic industry have been increasing throughout the injury period.
- i. Number of employees and wages paid declined over the injury period. However, productivity per employee increased.
- j. Growth has been negative in almost all injury parameters in the POI.
- k. Price pressure being caused by the subsidized imports either prevented the domestic industry from increasing its prices to the extent of increase in costs or forced it to reduce the prices beyond the decline in costs.
- l. The price depression and suppression effect of subsidized imports from subject country has resulted in significant erosion in profits of the domestic industry.
- m. Deterioration in profits, return on capital employed and cash profits are directly the result of subsidized imports.
- n. Increase in imports resulted in decline in domestic sales, and consequently decline in production and capacity utilization of the domestic industry.

- o. The export constitutes only ***% of the total sales of the domestic industry. Therefore, decline in export cannot be a factor for decline in production and capacity utilization.
- p. The domestic industry also offers LME based prices.
- q. It is submitted that around 85% of the product under consideration is consumed by electrical conductors manufacturing industry. Central and State electricity boards procure these final conductors for its transmission line requirements. The customers of domestic industry largely fix their prices based on average price of raw material (product under consideration) by Indian industry. Therefore, the users will have no impact of imposition of countervailing duties.

H.2. Submissions by other interested parties

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

- a. POI in the present investigation is April 2019 to December 2019 i.e. 9 months, which is inappropriate. It has been the practice of the Authority not to select short period as POI to avoid risk of relying on some abnormality that may prevail during a short period. Therefore, POI should be 12 months or longer.
- b. If full period of 12 months was considered as the POI in the present investigation, the assessment of increase in imports in the POI would have shown that there is no consistent increase in imports during the injury investigation period.
- c. Imports of PUC from Malaysia is attracting 0% customs duty whereas MFN rate of Customs duty applicable on imports of PUC from other countries is 7.5%. The reason for increase in imports of PUC from Malaysia is the benefit of reduction in Customs duty to 0% as compared to other countries and not due to alleged subsidization.
- d. The import data relied by the Applicants is inaccurate due to reliance on annualized POI data. The actual import data of PUC available from DGFT database shows lower imports in 2019-20.
- e. Total imports of PUC into India are only ***% of total Indian production during POI. Import volume of PUC from Malaysia is so low that it cannot create any volume effect on DI.

- f. Price undercutting for imports of PUC from Malaysia has been negative for the last 3 years, including POI. Exports from Malaysia are based on LME prices and not artificially subsidized prices. There is no evidence of price suppression or depression being faced by DI due to PUC imports from Malaysia.
- g. The trend of net selling price and cost of sales of DI do not indicate any continuous price effect due to PUC imports.
- h. Decline in domestic selling price during POI without commensurate decline in cost of sales is not attributable to price pressure from imports as export price of DI has also dropped commensurately during the same period.
- i. There should be some correlation between import price and profit earned/loss incurred by DI to show causal link between imports and performance parameters of DI.
- j. There is no causal link between imports and performance of DI in terms of profits as losses have increased with negative price undercutting for the last 3 years, including POI. Hence, imports are not responsible for decline in profits.
- k. Imports were insignificant in 2016-17 and DI had still incurred losses during that period. Thus, no clear correlation exists between volume of imports and injury to DI.
- l. The DI has also sold subject goods to its related parties in India. The Authority is requested to examine sales made by DI to related parties separately.
- m. Decline in performance of DI, if any, is directly attributable to decline in demand of PUC.
- n. Import price per unit from other countries was substantially lower than import price from Malaysia during the years 2017-18, 2018-19 and POI. The Authority is also requested to examine if injury is due to inter-se competition with the 2 other major domestic producers.
- o. The fact that big producers such as Hindalco and NALCO have not participated, strongly suggests that these entities have deliberately not been included in the present investigation as these other entities may not be suffering any injury at all or injury, if any, is due to factors other than subject imports.

- p. The inclusion of injury information regarding products other than the like article risks distorting the actual injury faced by the domestic industry.
- q. The decline in export sales is a major factor for the decline in the Petitioner's production and capacity utilization.
- r. The flexible pricing policy followed internationally, including by the exporters from Malaysia, is commercially more attractive to and preferred by users. It is for this reason, that the users of the PUC who are not offered the prices linked to the LME spot prices prefer to import the subject goods from the subject country rather than purchase from the domestic industry.
- s. The basic customs duty on import of alumina into India is 10% and for other raw materials the BCD is 7.5%. However, the BCD on the import of the subject goods from Malaysia is 0%. As a result, this creates an inverted duty structure.
- t. The Authority should verify whether internal purchases of aluminium products by Vedanta including "Molten Aluminium Metal" and /or "Aluminium Ingots" within the conglomerate are at arm's length and there is no transfer of injury from other non-PUC segment to the PUC segment.

H.3. Examination by the Authority

98. In the light of above submissions made by the interested parties and the domestic industry, the Authority has examined injury to the domestic industry on account of imports from the subject country. The analysis undertaken by the Authority ipso facto takes into account the submissions made by the domestic industry and opposing interested parties.
99. Rule 13 of the Anti-subsidy Rules deals with the principles governing the determination of injury which provides 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 subsidised 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 subsidised imports into an isolated market, and
 (ii) the subsidised imports are causing injury to the producers of almost all of the production within such market.”

H.3.1. Volume Effect of subsidized imports and impact on domestic industry

i. Assessment of Demand

100. Demand or apparent consumption of product concerned in India is defined as the sum of the domestic sales of all Indian producers and imports from all other countries. The demand so assessed is as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Sales of domestic industry	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>108</i>	<i>105</i>	<i>86</i>	<i>86</i>
Sales of other Indian producers	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>101</i>	<i>89</i>	<i>89</i>
Imports from Subject Country – Malaysia	MT	18,813	37,772	65,904	72,983	54,737
Imports from other Countries	MT	15,623	26,913	27,274	3,419	2,564
Total Indian Demand	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>111</i>	<i>112</i>	<i>95</i>	<i>95</i>

101. The Authority notes that the demand in India for the subject goods has increased till 2018-19 and thereafter declined during the POI(A).

H.3.2. Import volumes and share of imports from subject country

102. With regard to volume of the subject imports, it is required to be considered whether there has been a significant increase in subsidized imports either in absolute terms or relative to production or consumption in India. The details relating to the imports are given below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Subject country – Malaysia	MT	18,813	37,772	65,904	72,983	54,737
Other Countries	MT	15,623	26,913	27,274	3,419	2,564
Total Import Volume	MT	34,436	64,685	93,178	76,402	57,301
Imports from subject country in relation to						
Production	%	3.09	5.82	10.47	13.47	13.47
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>188</i>	<i>339</i>	<i>436</i>	<i>436</i>
Consumption	%	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>181</i>	<i>312</i>	<i>411</i>	<i>411</i>
Total imports	%	55	58	71	96	96

103. It is seen that:

- a. There has been a significant increase in the absolute volume of imports from subject country in the period of investigation despite decline in demand.
- b. The imports have increased sharply in relation to production of the domestic industry from 100 indexed points to 436 indexed points.
- c. The market share of subject imports has increased significantly from 100 indexed points to 411 indexed points.
- d. The imports are largely from the subject country accounting for 96% share in total imports into India during POI.

H.3.3. Price effect of subject imports and impact on the domestic industry

104. With regard to the effect of subsidized imports on prices, it is required to be examined 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.

I. Price undercutting

105. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry during the injury period. The details of price undercutting are given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Landed price of imports	₹/MT	129,246	151,086	165,616	144,295	144,295
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>117</i>	<i>128</i>	<i>112</i>	<i>112</i>
Net Selling Price	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>121</i>	<i>134</i>	<i>118</i>	<i>118</i>
Price Undercutting	₹/MT	(***)	(***)	(***)	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	<i>(100)</i>	<i>(59)</i>	<i>(46)</i>	<i>(25)</i>	<i>(25)</i>
Price Undercutting	%	(***)	(***)	(***)	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	<i>Negative</i>	<i>Negative</i>	<i>Negative</i>	<i>Negative</i>	<i>Negative</i>

106. The Authority notes that the price undercutting is negative throughout the injury period including the POI.

ii. Price underselling

107. The Authority has worked out non-injurious price (NIP) of the subject goods and compared the same with the landed value of the imported goods to arrive at the extent of price underselling as under:

Particulars	Unit	Amount
Landed price of imports	₹/MT	144,295
NIP	₹/MT	***
Price Underselling	₹/MT	***
Price Underselling	%	***
Price Underselling	<i>Range</i>	<i>10-20</i>

108. The Authority notes that the price underselling is significant during the POI.

iii. Price suppression/depression

109. In order to determine whether the subsidized imports are suppressing or depressing the domestic prices, the changes in the costs and prices over the injury period have been considered. The position is shown in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Cost of sales	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	125	115	115
Selling price	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	121	134	118	118
Landed price of imports	₹/MT	129,246	151,086	165,616	144,295	144,295
<i>Trend</i>	<i>Indexed</i>	100	117	128	112	112

110. The Authority notes that the landed price of imports is below the cost of sales of the domestic industry during 2016-17, 2018-19 and POI. During the POI, cost of sales has declined by 10 indexed points as compared to 2018-19. On the other hand, the selling price has declined by 16 indexed points during the same period. The imports from subject country are suppressing the price of the domestic industry.

H.3.4. Economic parameters relating to the domestic industry

111. The Anti-subsidy Rules require that a determination of injury shall involve an objective examination of the consequent impact of subsidized imports on domestic producers of like article in India.

112. With regard to consequent impact of subsidized imports on domestic producers of like products, the Anti-subsidy 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, the performance of the domestic industry has been examined over the injury period.

i. Production, capacity, capacity utilization and sales

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

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Capacity	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	84	84	84
Production	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	105	89	89
Capacity Utilization	%	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	124	106	106
Domestic Sales	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	108	105	86	86

114. It is noted from the above table that:

- The capacity of domestic industry has declined in the period of investigation. The decline in capacity is because BALCO has discontinued two of its production lines of product under consideration.
- The production and sales of the domestic industry has declined in the POI(A) as compared to base year and well as previous year.
- The production and sales of the domestic industry has declined in the POI(A) which more than the decline in demand in the Indian market.
- The capacity utilization has increased till 2018-19 and declined in the POI(A).

ii. Market share

115. The market share of the domestic industry and imports over the injury period is as under:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Domestic industry	%	***	***	***	***
<i>Trend</i>	%	100	97	94	91
Other Indian producer(s)	%	***	***	***	***
<i>Trend</i>	%	100	95	90	94
Subject Imports – Malaysia	%	***	***	***	***
<i>Trend</i>	%	100	181	312	411
Other imports	%	***	***	***	***
<i>Trend</i>	%	100	155	156	23
Total Demand	%	100	100	100	100

116. It is seen that the market share of the domestic industry declined throughout the injury period, albeit marginally, whereas the market share of imports from subject country has increased during the same period.

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

117. The position of the domestic industry in terms of profit/loss, cash profits and return on capital employed is as under:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Cost of sales	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	125	115	115
Selling price	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	121	134	118	118
Profit/Loss	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	(100)	(10)	(35)	(89)	(89)
Profit/Loss	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	(100)	(11)	(37)	(76)	(76)
PBIT	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	376	347	156	156
Cash Profit	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	(100)	127	35	(89)	(89)
Return on Capital Employed	%	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	360	364	201	201

118. It is seen from the above table that:

- The domestic industry has been suffering losses throughout the injury period. The losses to the domestic industry have increased during the POI (A).
- The cash profits follow the same trend as profits. The cash profits of the domestic industry have declined to negative levels during the POI.
- The Return on capital employed improved till 2018-19 but declined in the POI (A).

iv. Inventories

119. The data relating to inventories of the subject goods is as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Inventory - Average	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	162	208	1,911

120. It is noted that the average inventories with the domestic industry have increased substantially over the injury period and further in the POI.

v. Employment, productivity and wages

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

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Annualized	Actual
Wages	₹ Lacs	***	***	***	***	***
Trend	Indexed	100	61	71	54	54
Employees	Nos	***	***	***	***	***
Trend	Indexed	100	77	74	65	65
Productivity per Employee	MT	***	***	***	***	***
Trend	Indexed	100	139	141	136	136

122. The Authority notes that the employment and wages have declined over the injury period. Productivity has increased over the injury period. The domestic industry has submitted that these parameters are not reflective of the impact of subsidized imports on the domestic industry.

vi. Growth

123. Examination of growth parameters of the domestic industry during the injury period is shown below:

Particulars	Unit	2016-17	2017-18	2018-19	POI (A)
Production	%	-	7.08	(2.38)	(15.11)
Domestic Sales	%	-	7.66	(2.49)	(18.17)
Profit/Loss	%	-	88.90	(229.53)	(108.38)
Cash profits	%	-	226.87	(72.80)	(356.53)
Return on capital employed	%	-	260.19	0.93	(44.84)

124. It is noted that growth has been negative in terms of production, domestic sales, profits, cash profits and return on capital employed in the POI(A). All major price parameters such as profits, cash profits and return on capital employed have also shown a significant decline over the injury period.

vii. Ability to raise fresh investment.

125. The domestic industry has suffered significant losses during the injury period and the period of investigation, which has in turn, weakened the ability of the domestic industry to raise capital investment.

H.3.5. Causal link

126. It has been examined whether other known factors could have caused injury to the domestic industry.

a. Volume and prices of imports from third countries

127. The Authority notes that the volume of imports of the product under consideration from other countries are at *de-minimis* levels.

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

128. The demand for the product under consideration has declined in the POI(A). Despite the decline in demand in the country, the volume of imports from subject country has increased. The pattern of consumption has not undergone any material change.

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

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

d. Developments in technology

130. None of the interested parties have 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

131. It is noted that injury analysis is based on domestic performance. Hence, the injury is not on account of export performance of the domestic industry.

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

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

H.3.6. Factors relevant for causal link

133. The following factors establish causal link between the subsidized imports and the injury to the domestic industry:

- a. Subsidized imports from subject country have increased in absolute terms and in relation to production and consumption in India.
- b. The subsidized imports are causing price suppression/ depression on the prices of the domestic industry.
- c. The production, domestic sales and capacity utilization of the domestic industry has reduced during the POI(A).

- d. There has been deterioration in profits, return on capital employed and cash profits during the POI(A).

H.3.7. MAGNITUDE OF INJURY MARGIN

134. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed price of the imports from the subject country for determination of injury margin during the POI. The injury margin thus determined is as under:

Injury Margin

S.No	Country	Producer	NIP	Landed Value	Injury Margin	Injury Margin %	Injury Margin Range %
1.	Malaysia	(i) Press Metal Bintulu Sdn. Bhd. (ii) Press Metal Aluminium Rods Sdn. Bhd.	***	***	***	***	10-20
2.	Malaysia	All others	***	***	***	***	10-20

135. The level of injury margins as determined are significant.

H. Post-Disclosure Comments

136. The Authority issued a disclosure statement on 18 June 2021 disclosing essential facts of the case and inviting comments from interested parties. The post-disclosure submissions have been received from the interested parties. Majority of the issues raised in the comments on disclosure statement have already been raised earlier and also addressed appropriately. Additional submissions to the extent deemed relevant have been examined as under:

Submissions made by the domestic industry

- Submissions regarding the non-circulation of supplementary information filed by the responding producers/exporters have not been addressed in the Disclosure Statement.
- Product under consideration should be “Aluminum wire in coil form/ rod in coil form”. PMBTU and PMAR produce Aluminum wire rod in coil form which is known as “wire rod” in technical, commercial and customs parlance.
- Domestic industry produces only wire rod in coil form. It does not produce rod or wire rod which is not in coil form. Aluminum wire rod not in coil form; aluminum rod not in coil form; and aluminum wire in coil form below 7mm dia was excluded by the domestic industry in the Petition.
- Since the product under consideration is imported under various codes, the Authority may indicate the codes in the duty table and specify that the same is indicative only.
- PMBTU and PMAR produce the product of 9.52 mm dia with a tolerance of +/- 0.76 mm. The same product can be exported at less than 9 mm dia. Therefore, the restriction of the product between 9 mm and 12.5 mm is not appropriate. PMBTU and PMAR can circumvent the countervailing duty by exporting the product with diameter downsized upto 7.6 mm. The domestic industry is capable of producing product above 7mm dia and above 12.5mm dia. The description of the product should include the product imported from Malaysia and that which is produced by domestic industry.
- It is the responsibility of exporters and Government of Malaysia to provide information on additional subsidy programs. There is no limitation on the stage at which new information on subsidies can be brought to the notice of the Authority. New information on subsidies was also investigated by the Authority in a previous CVD investigation on “fiberboard”. The evidentiary burden on the domestic industry is only to provide information reasonably available to them.
- PMBTU and PMAR have not provided any information for the AUL period.
- Program Nos. 11 and 12 disproportionately benefit those industries which have high capital expenditure. The programs were previously held countervailable by the Authority.
- In Program No. 15, Authority should examine drawback of sales tax provided under the program as well.
- In Program No. 16, Authority should examine sales tax exemption provided under the program as well.
- In Program No. 23 – Provision of Electricity at LTAR, the expenditure incurred by PMBTU should not be deducted from the benefit. The quantification methodology for PMBTU’s electricity benefit should be reconsidered as expenditure for last mile connection is incurred under PPAs and standard terms are not exclusively tied to the program.
- Authority should reconsider the submissions of the domestic industry previously made in relation to provision of electricity by TNB to PMAR at LTAR.
- In Program No. 23 – Provision of Land at LTAR, Authority has not considered that land

rent levied is not as per market principles and is less than adequate remuneration. On the land benefit availed by PMAR, the Authority should examine the premium amount and lease rent applicable to PMAR.

- Domestic industry has suffered material injury which has a causal link to the subsidized subject imports.
- PMAR is a 100% subsidiary owned by PMBTU and hence all the subsidy margin arrived for PMBTU should be added on to PMAR as PMAR gets its 100% basic raw material from PMBTU.

Submissions by other interested parties

- The Authority should reexamine import data in light of the revision in scope of product under consideration. Import data initially under consideration included PUC above 7 mm dia. Authority should consider import data of PUC having diameter 9 mm to 12.5 mm in its injury analysis.
- Standing of domestic industry is not established as exact percentage share of Vedanta Industries Ltd. and BALCO in the total production of product under consideration has not been disclosed. There is also no clarification why other major producers – Hindalco and NALCO have not participated in subject investigation. Authority should re-examine representativeness of domestic industry in subject investigation.
- Disclosure Statement does not address (1) whether Vedanta Ltd. imported PUC from any other country during injury period; (2) whether SPTL imported PUC from Malaysia or any other country during injury period.
- Pioneer Status program is not specific because it is available to a wide range of companies ranging from small and medium enterprises to large conglomerates regardless of ownership of company, whether local or foreign owned. A Pioneer Status company can be located within any state in Malaysia, operating in either the primary, manufacturing or services sector spread out across multiple industries.
- Requirement under Rule 11 of the CVD Rules is not met as the Pioneer Status program is not specific to any enterprise or group of enterprises, or to any industry or group of industry given that eligible promoted activities are too wide, diverse, broad and widespread.
- The number of categories, industries, sectors, products or activities eligible for Pioneer Status is too diverse to be considered as a group of industries.
- Program No. 5 and 8 are in the nature of income tax concessions available to all recipients irrespective of region, sector, enterprise etc. These benefits are available on a horizontal basis and follow objective criteria.
- PMAR did not avail, use or benefit from Program No. 17 during POI. The last sales tax exemption for importation of machinery and equipment used by PMAR was approved

in 2014 and enjoyed in 2015. PMAR did not avail, use or benefit from this program in 2016-2019.

- Authority should take into account the non-use of the exemption under this program by PMAR between 2016-2019 and that no measurable benefit has accrued to PMAR under this program during the POI, to conclude that no countervailing duty should be imposed against this subsidy program.
- Authority's assessment of the Power Purchase Agreement (PPA) between PMBTU and SEB is not complete. Authority should conclude that all consumers requiring electricity above 5 MW are eligible for PPA facility and the applicable criteria are objective in nature.
- PPA is a commercial contract negotiated at arm's length between PMBTU and SEB. There is no program for sale of bulk power in Sarawak. SEB sells power through arm's length commercial negotiation on a willing buyer, willing seller basis. Therefore, there cannot be any pre-defined guidelines for tariff rate fixed under PPA.
- SEB cost of sales of electricity per unit in the year 2019 has been provided as per financial statements of SEB and should be compared with the tariff under PPA. Prices charged by SEB under PPA are remunerative because SEB sells electricity at a price higher than its cost price.
- PPA rates are lower than published tariff rates set by SEB because (1) Non-PPA customers obtain electricity from SEB's electricity distribution networks. The cost of distribution networks account for 1/3rd of total cost of production and distribution of electricity; (2) PPA customers do not utilize SEB's electricity distribution networks; (3) Non-PPA customers have no minimum consumption commitment; (4) PPA customers must commit to consume at least 95% of committed quantity failing which they have to pay the minimum commitment of 95% usage; (5) PPA customers commit to purchase in bulk quantities on long term basis for 10-25 years period.
- SEB is a profitable business venture. In 2018, SEB's Audited Financial Statements recorded net profit of MYR 1.28 Billion. If SEB was engaging in any non-remunerative transactions, it would not have earned significant profits.
- PMBTU purchases electricity from SEB in bulk. Majority of SEB's sales of electricity (70%) are to bulk consumers, like PMBTU. This shows that majority of SEB's profits are also owing to bulk consumers like PMBTU. Hence, SEB charges remunerative price to bulk consumers under PPA and makes profits from such sales.
- Benchmark tariff rate chosen by Authority in its subsidy margin determination is not a comparable benchmark because it is based on retail sale of electricity. Article 14(d) of the SCM Agreement requires that adequacy of remuneration be determined based on prevailing market conditions including conditions of purchase and sale. Authority should make downward adjustment to benchmark price to ensure comparability of benchmark price in terms of bulk sale by SEB to PMBTU.

- Benchmark tariff rate chosen by Authority in its subsidy margin determination is also not a comparable benchmark because it does not account for off-peak consumption of electricity by PMBTU. PMBTU operates 24 hours a day, 365 days a year. It has a substantial off-peak consumption of electricity. Therefore, the Authority should adopt a suitable benchmark taking into account the off peak consumption of electricity by PMBTU.
- PMBTU and PMAR have proposed that the Authority should opt for hydropower tariff rate in India as the comparable benchmark in subsidy margin determination. This is because 70% of SEB's electricity generation is from hydropower.
- Provision of land at LTAR is not a countervailable subsidy program. The discount on land premium received by PMBTU is according to objective conditions set by Land and Survey Department of Sarawak ('LSDS'). PMBTU managed to complete erection of the building and commence operation of approved industrial activity within 5 years, and therefore, LSDS allowed PMBTU's application for refund of 4th instalment of premium and waiver of 5th instalment of premium. Such discount is applicable to all lessees of industrial land if the objective criteria set by LSDS are met.
- There is no program by Government of Malaysia for provision of land at LTAR as such; and the eligibility criteria set by LSDS for discount on land premium are objective.
- Determination of subsidy margins by Authority in Program No. 5, 8, 17 and 23 are inconsistent with Article 15.5 of the SCM Agreement as there is no causal link between alleged subsidized imports and injury suffered by domestic industry.
- Authority did not provide sufficient time and opportunity to interested parties to provide comments on Disclosure Statement, contrary to Article 12.8 of the SCM Agreement.
- Total imports of PUC in India are only 14-15% of total Indian production of PUC during POI and cannot cause injury to domestic industry. On the other hand, the domestic producers taken as a whole dominate the market with over 87% share in the POI.
- Domestic industry's selling price increased and decreased in tandem with the increase and decrease in cost of sales in the injury period. Domestic selling prices are uninfluenced by the landed prices of the imports. Thus, there is no price suppression or depression as inferred by the Authority.
- Decline in domestic selling price during POI without commensurate decline in cost of sales is not attributable to price pressure from imports as export price of domestic industry has also dropped commensurately during the same period.
- In 2017-18, domestic industry earned profit while price undercutting was negative. In 2018-19, domestic industry incurred losses even though price undercutting continued to stay negative. Hence, there is no causal link between imports and performance of domestic industry in terms of profits.

- Domestic sales of domestic industry are closely reflecting the domestic demand. Decline in sales over injury investigation period is not attributable to imports of PUC from Malaysia.
- Price competition and injury to domestic industry, if any, is due to imports from other countries. Import price per unit from other countries was substantially lower than import price from Malaysia during years 2017-18, 2018-19 and POI.
- Authority has observed that the capacity of domestic industry has declined in the POI on account of BALCO's discontinuation of two of its production lines of the PUC. At no point of time before the issue of the Disclosure Statement has this fact been brought to the attention of the other interested parties.
- Authority has not considered previous submission that domestic industry is engaged in a trade-restrictive practice where the prices charged by it to the user industry are ad hoc and inflexible as they are not commensurate to the prices indicated by the London Metal Exchange. The domestic industry's prices are higher than the prices on the London Metal Exchange. On the other hand, the prices charged by the producers from Malaysia move commensurate to the prices indicated by the London Metal Exchange.
- If Authority determines that countervailing duty should be recommended, Authority should recommend reference price form of countervailing duty. Ad-valorem form of duty rate will not be appropriate considering the nature of PUC.

Examination by the Authority

137. The Authority notes that most of the submissions made by interested parties are repetitive in nature and were already addressed earlier in the Disclosure Statement. The Authority has examined submissions of interested parties to the extent relevant and not addressed elsewhere.
- As regards the submission concerning non-circulation of supplementary information filed by the responding producers/exporters, Authority notes that no supplementary questionnaire was issued to the responding producers/exporters from Malaysia or the Government of Malaysia. The Authority requested for supporting information/backup documents from responding producers/exporters and Government of Malaysia during the desk verification exercise. It is the consistent practice of the Authority not to disclose the information submitted during verification exercise by foreign producers/exporters to domestic industry and vice-versa.
 - As regards submission concerning scope of product under consideration, the Authority after detailed deliberation with the domestic industry on the scope of PUC has finally determined that product under consideration in the present investigation is "Aluminium Wire in coil form/Wire Rod in coil form having diameter ranging from 9 mm to 13 mm".

- As regards submission to expand the scope of product under consideration to include less than 9 mm dia and more than 12.5 mm dia product, Authority notes that it is an admitted fact in this case that domestic industry has not produced and sold Aluminium Wire/Wire Rod in coil form of less than 9 mm dia during the POI. In the post disclosure comments, domestic industry has submitted evidence that it has produced and sold Aluminium Wire in coil form/Wire Rod in coil form having 13 mm dia during the POI. Therefore, the Authority deems it appropriate to restrict the scope of PUC ranging from 9mm dia to 13 mm dia.
- As regards the submission of the domestic industry regarding additional subsidy programs, it is noted that the Authority has in fact examined all additional subsidy programs for which information was provided by the domestic industry.
- As regards the claim of the domestic industry that PMBTU and PMAR have not provided information for AUL period for subsidy programs, Authority notes that the Responding producers/exporters have provided information for AUL period wherever applicable.
- As regard the submission of the domestic industry that Program Nos. 11, 12, 15 & 16 are countervailable, Authority notes that Program Nos. 11 and 12 are not countervailable because these programs provide for normal deduction of depreciation on building and plant & machinery respectively and hence does not result in foregoing of revenue otherwise due. Authority has determined that no additional countervailing duty should be imposed for Program Nos. 15 & 16 because exemption from import duty on raw material has been countervailed by Authority under program No. 18.
- As regards the submission regarding accuracy of import data, it is noted that the Authority has considered import data of PUC in its injury analysis.
- As regards standing of domestic industry, Authority has determined that production of Vedanta Ltd. and BALCO accounts for a major proportion of domestic production of like article in India as per Rule 2(b) of CVD Rules. There is no requirement for participation of all domestic producers as constituents of domestic industry in a CVD investigation. It is sufficient if the domestic producers having a major proportion in the Indian production have participated in the investigation as constituent of domestic industry.
- As regards submissions concerning imports made by Vedanta Limited and SPTL, Authority notes that neither Vedanta Limited nor SPTL have imported the subject goods from subject country or any other country during POI.
- As regards countervailability of Program No. 5, Pioneer Status program, Authority has determined that the program provides for tax incentive in the form of exemption from income tax and this amounts to a financial contribution in the form of revenue foregone that is otherwise due. The program is also specific as it is available to companies that qualify the eligibility criteria for being a pioneer status company.

- As regards countervailability of Program No. 17, PMAR has availed benefit on its capital goods during AUL period. Hence, Authority has determined that countervailing duty should be imposed against this subsidy program for PMAR for benefit accrued during the POI.
- As regards countervailability of Program No. 23, specifically, Provision of Electricity at LTAR, Authority determines that preferential tariff rate for sale of electricity by SEB through PPA is a financial contribution by public body in the form of provision of goods/service at less than adequate remuneration. Authority has decided to impose countervailing duty against this program for PMBTU. In accordance with Rule 12 read with Annexure IV of the CVD Rules, Authority has deducted expenditure towards additional installation cost for last mile connection incurred by PMBTU pursuant to PPA allocated to POI while calculating amount of benefit. The Authority notes that PMBTU has incurred actual expenditure owing to its obligations under the PPA and not as general expenditure.
- As regards the submission that PMBTU consumes electricity during both peak and off-peak hours and therefore benchmark rate should be suitably modified, Authority notes that there is merit in the submission made by PMBTU. Authority has accordingly modified the benchmark rate considered for determination of benefit under Program No. 23 relating to provision of electricity at LTAR. Authority has considered both peak and off-peak electricity tariff provided on SEB website while deciding the comparable benchmark tariff rate. It is noted that PMBTU has not specified exact share of off-peak consumption of electricity in its total consumption. Authority has determined the benchmark rate by considering that one-third of electricity consumed by PMBTU is during off-peak hours and the remaining two-third consumption is during peak hours.
- Regarding the claim that electricity supplied by SEB is at remunerative prices and above per unit cost of sales of electricity, Authority notes that information submitted by Government of Malaysia regarding cost of production of electricity is not complete and only a simple tabulated information has been provided without any detailed methodology and evidence about calculation of such cost of production. Authority also notes that cost related information has been provided by Government of Malaysia/SEB only after the issuance of disclosure statement. It is not possible for the Authority to verify the correctness of cost related information at such belated stage. Authority continues to hold that tariff charged by SEB (or its wholly owned subsidiary) from PMBTU under PPA is subsidized.
- Authority also notes that Economic Research Institute for ASEAN and East Asia (ERIA) Research Project Report 2015 titled "Economic Impact of Removing Energy Subsidies in Malaysia" has noted existence of energy subsidies in Malaysia, particularly in supply of electricity. The Report notes that energy demand is largely driven by the stable economic growth and the intentionally low energy prices due to the energy subsidy policy on electricity. The Report further notes that although the share of

electricity and transport fuel subsidy is currently declining, the energy subsidy in Malaysia in 2010 accounted for 4.1 percent of the total GDP, with per-capita subsidy amounted to US\$200 (IEA, 2015).

- As regards the claim that that majority (70%) of electricity produced by SEB is through hydropower and therefore the benchmark rate should be determined based on hydropower tariff in India, Authority notes that there is no requirement to adopt external/out of country benchmark when in-country benchmark is readily available.
- As regards the claim that provision of land at LTAR is not a specific subsidy, Authority notes that it has examined in detail the subsidy program concerning provision of land at LTAR in the subsidy section of the present final findings.
- As regards the submission that subsidy margin arrived for PMBTU should be added on to PMAR as PMAR gets 100% basic raw materials from PMBTU, Authority notes that PMAR purchases basic raw material (Aluminium Ingot) from PMBTU. It is noted that during the POI, 75-80% requirement for Aluminium Ingot was met through imports and only the balance 20-25% requirement for Aluminium Ingot was purchased from PMBTU. The Authority also compared the prices at which PMAR purchased Aluminium Ingot from PMBTU with the import price of Aluminium Ingot and noted that the purchase price from PMBTU was in fact higher than the import price.
- As regards the submission that import price from other countries is lower than import price from Malaysia, Authority notes that import volumes from other countries are substantially lower (less than 5% of total imports into India) than imports from Malaysia during the POI (A). Therefore, imports from other countries are not capable of causing material injury to the domestic industry.
- As regards all other submissions raised by the interested parties regarding material injury and causal link between imports and material injury to the domestic industry, Authority has examined all the issues in the section concerning examination of injury and causal link in these final findings.
- As regards the claim that sufficient time was not provided for responding to disclosure statement, Authority notes that it has provided sufficient time to interested parties to submit their comments in response to disclosure statement. In fact, all interested parties have filed detailed and elaborate submissions and the same have been duly considered in the present final findings.
- As regards the submission that that domestic industry is engaged in a trade-restrictive practice where the prices charged by it to the user industry are ad hoc, inflexible, not commensurate to the prices indicated by the London Metal Exchange and that the domestic industry's prices are higher than the prices on the London Metal Exchange, the Authority notes that the present investigation is a countervailing duty investigation requiring Authority to examine whether or not the imports into India from subject country are subsidized and causing material injury to the domestic industry.

- As regards the submission of benchmark price based duty, Authority notes that the form of duty is decided by the Authority based on the facts and circumstances of a particular case. The Authority has decided appropriate form of duty in the present case based on the factual matrix of the present case.

I. INDIAN INDUSTRY'S INTEREST

138. The Authority recognizes that the imposition of countervailing duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of countervailing duty measures. On the contrary, imposition of countervailing duty measures would remove the unfair advantages gained by subsidization and will prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of countervailing duties, 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 duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the countervailing measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

J. CONCLUSION

139. 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. Vedanta Ltd. and BALCO constitute domestic industry within the meaning of Rule 2(b) of CVD Rules.
 - ii. The PUC is "Aluminium Wire in coil form/Wire Rod in coil form having diameter ranging from 9 mm to 13 mm".
 - iii. The PUC is imported into India from Malaysia at subsidized prices.
 - iv. Considering the level of subsidies provided by the Government of Malaysia, the subsidy margin is above de-minimis and significant.
 - v. The domestic industry has suffered material injury. The Authority notes that the imports have increased in absolute terms as well as in relation to production and consumption in India.
 - vi. The price underselling/injury margin of responding producers/exporters is also positive and significant.
 - vii. The economic parameters of domestic industry such as production, sales, market share, profit have declined significantly over the injury period.

- viii. The domestic industry has not suffered injury due to other factors. The domestic industry has suffered injury due to imports of subsidized product from the subject country.

K. RECOMMENDATION

140. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia, and adequate opportunity was given to all interested parties to provide information/evidence on the aspects of subsidization, injury and causal link. Having initiated and conducted the investigation into subsidization, injury and causal link 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 countries in the form and manner described hereunder.
141. In terms of provisions contained in Rule 4(d) and Rule 19(1)(b) of the Rules, the Authority recommends imposition of countervailing duty equal to the lesser of margin of subsidy and the margin of injury, so as to remove the injury to the Domestic Industry. The Authority recommends imposition of definitive countervailing duty equal to the amount indicated in Column 7 of table below on all imports of goods described in Column 3 of the duty table originating in or exported from subject country from the date of notification to be issued in this regard by the Central government for a period of 5 years.

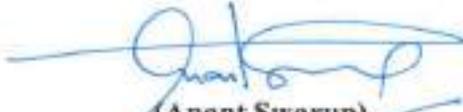
DUTY TABLE

S.No.	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount as a % of CIF Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	76011040, 76012040, 76041010, 76042920, 76051100 and 76052100	Aluminium Wire in coil form/Wire Rod in coil form having diameter ranging from	Malaysia	Any country including Malaysia	Press Metal Bintulu Sdn. Bhd.	6.8669%

		9 mm to 13 mm				
2.	-do-	-do-	Malaysia	Any country including Malaysia	Press Metal Aluminium Rods Sdn. Bhd.	6.8669%
3.	-do-	-do-	Malaysia	Any country including Malaysia	Any producer other than producers mentioned in S. No. 1 and 2 above	16.4874%
4.	-do-	-do-	Any Country other than Malaysia	Malaysia	Any	16.4874%

L. FURTHER PROCEDURE

142. An appeal against the order of the Central Government that may arise out these Final Findings Notification shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act.


(Anant Swarup)
Designated Authority