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**F. No. 6/43/2020-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building,
5, Parliament Street, New Delhi – 110001**

Dated: 31st January, 2022

FINAL FINDINGS
CASE No. O.I. (CVD) 07/2020

Subject: Anti-subsidy investigation concerning imports of ‘Aluminium Primary Foundry Alloy Ingot in different forms’ 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 the 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 “Aluminum Primary Foundry Alloy Ingot” (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. 6/43/2020 – DGTR dated 24th December, 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, if required and 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 September, 2020 and was attended by the officials of the Government of Malaysia. The Government of Malaysia denied existence of certain programs, non-availment of some of the programs, and negligible subsidy in some of the schemes. However, no prima facie evidence denying existence of programs were provided.
 - iii. The Authority issued a Notification dated 24th December, 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 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 producer/exporter from the subject country and its exporter filed exporter's questionnaire response:
- a. M/s. Press Metal Bintulu Sdn. Bhd. ("PMBTU")
 - b. M/s. Sumitomo Corporation Asia & Oceania Pte. Ltd. ("SCAO")
- x. Pursuant to the initiation notification, apart from the abovementioned producers/exporters from the subject country and its exporter, 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. Endurance Technologies Ltd.
 - b) M/s. Enkei Wheels (India) Ltd.
 - c) M/s. Minda Industries Ltd.
 - d) M/s. Nissin Brakes India Pvt. Ltd.
 - e) M/s. Rico Jinfei Wheels Ltd.
 - f) M/s. Rockman Industries Ltd.
 - g) M/s. Synergies Casting Ltd.
 - h) M/s. Wanfeng Aluminium Wheel (India) Pvt. Ltd.
 - i) Aluminium Association of India
 - j) Society of Indian Automobile Manufacturers
 - k) Auto Component Manufacturer Association
 - l) Material Recycling Association of India
 - m) All India Non-Ferrous Metal Industries' Association
 - n) Indian Steel Association
- xii. The following importers/users/user associations have filed submissions or questionnaire responses in the present investigation.
- a) M/s. Endurance Technologies Ltd.
 - b) M/s. Minda Industries Ltd.
- 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 the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the 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 September 2020 (18 months). The injury investigation period will, however, cover the periods 2016-17, 2017-18, 2018-19 and the POI.
- 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 (DGCI&S) 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 13th August, 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 this final finding.
- 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 this final finding 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 January, 2022 and comments received thereon, considered relevant by the Authority, have been addressed 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\$=₹73.15.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. The product under consideration in the present investigation is “Aluminum Primary Foundry Alloy Ingot” also known as Primary alloy ingots, Primary Foundry alloy ingots, Aluminium Alloy Ingots etc. Aluminum Primary Foundry Alloy Ingot is produced by casting aluminium hot metal obtained from smelting alumina or re-melting primary aluminium ingot, along with required alloying elements. The molten aluminium is blended with the required alloying elements in holding furnaces. Individual alloying elements are added to the blend to achieve the desired alloy content. The resulting molten blend is then casted at the smelter’s on-site casting house. Alloyed Aluminium ingot produced through post-consumption scrap is beyond the scope of the product under consideration.

5. The product under consideration is primarily used for automobile and steel applications. It is classified under Chapter 76 under customs subheading no. 76012010 of the Customs Tariff Act, 1975. 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 the product under consideration and like article:

- i. The product under consideration in the present investigation is “Aluminum Primary Foundry Alloy Ingot”. Aluminum Primary Foundry Alloy Ingot is produced by casting aluminum hot metal obtained from smelting alumina or re-melting primary aluminum ingot, along with the required alloying elements.
- ii. The domestic industry is producing the like article to the product being imported from the subject country.
- iii. Aluminium alloy ingot produced through the primary route and those produced from primary aluminium ingot and production scrap/primary scrap are within the scope of the PUC. Those produced from post-consumer scrap is excluded.

C.2. Submissions made by the other interested parties

7. It is not disputed that aluminium alloy ingots produced from post-consumption scrap are secondary foundry alloy (SFA) ingots and are beyond the scope of the PUC.

C.3. Examination by the Authority

8. The scope of the product under consideration includes those Aluminum Alloy Ingots that are produced from smelting alumina or from re-smelting primary aluminum ingot/ production scrap/ primary scrap. Aluminum Alloy Ingots produced from post-consumer scrap is

excluded. The product under consideration is primarily used for automobile and steel applications. The product under consideration is classified under Chapter 76 under customs subheading no 76012010 of the Customs Tariff Act, 1975. The customs classification is, however, only indicative and in no way binding upon the product scope.

9. The Authority notes that the PUC is produced by the domestic industry and imported into India in various compositions. Though the changes in composition lead to different nomenclatures/ grades for the subject goods, these are, however, a result of same production process and are employed in similar end uses. It has been observed from the import statement that the product under consideration is imported and produced in different forms like LM 25, ALSI, A356.5, etc. Further the exporter has also admitted that the same form can either be produced from alumina or production scrap (primary) or from post-consumer scrap (secondary). Due to different forms of product under consideration being exported, there are chances of circumvention or avoidance of duties. Therefore, it has been considered appropriate to describe the product under consideration as “primary foundry alloy ingot in different forms” as the whole family of aluminum primary alloy ingots are within the scope of the present investigation. This is consistent with the order of Hon’ble CESTAT in the matter of Huawei Technologies Co. Ltd vs Designated Authority, wherein it was noted that Rules 25 to 28 of the Rules, which came into effect from 19-1-2012 deal with circumvention of anti-dumping duty. However, nothing can be read in these Rules to mean that Designated Authority should not levy the duty in a manner so as to ensure that it is not circumvented. After all, when duty is levied by Central Govt., it has to ensure that the same is effective in counteracting the injurious effects of dumping which implies that Designated Authority should ensure that the levy of duty is not amenable to unintended circumvention. The Authority clarifies that there is no change in the scope of the product under consideration.
10. The Aluminum Primary Foundry Alloy Ingot produced by the domestic industry is a like article to the Aluminum Primary Foundry Alloy Ingot 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 the product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from the subject country in accordance with the Anti-Subsidy Rules.

D. DOMESTIC INDUSTRY AND STANDING

D.1. Submissions made by the Domestic Industry

11. Following submissions have been made by the domestic industry with regard to the standing and scope of the domestic industry:

- i. The application was jointly filed by Vedanta Limited and Bharat Aluminium Company Limited. The applicants account for “a major proportion” of Indian production of the PUC

and satisfy the requirement of standing and constitute “Domestic Industry” within the meaning of the Rules.

- ii. 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

12. No submissions have been made by the other interested parties with regard to the standing and scope of the domestic industry.

D.3. Examination by the Authority

13. The application has been filed by Vedanta Limited and Bharat Aluminium Company Limited.

14. As per the evidence available on record, the Applicants are the only producers of the subject goods in India. 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.

15. 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.

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. The questionnaire responses filed by the respondents have either failed to provide any relevant information or claimed excess confidentiality on several questions.
- ii. Information such as ownership details and average useful life (AUL) period of PMBTU (Press Metal Bintulu Sdn. Bhd.) which are available in public domain is considered as confidential.

E.2. Submissions made by other interested parties

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

- i. The DI has claimed excessive confidentiality in the petition in violation of Trade Notice No. 10/2018 as the DI has not provided actual information in the form of aggregate data or trend on a number of parameters which should be provided according to the Annexure-I.
- ii. Data which must be provided as trend for injury parameters was withheld by the DI claiming such information as confidential and no further explanation was given in such regards. So, the Authority was requested to direct the DI to furnish revised petition disclosing the necessary information.
- iii. DI has provided same indexed number for POI and POI(A) in their updated format H. It is not clear if POI index is given for both or POI (A) index is given for both.

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 the 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 the 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 the 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. The Authority has examined the 'accuracy and adequacy' of the evidence provided while initiating the investigation. Further, the applicants have supplied all the information on each of the subsidy programs reasonably available as required under Article 11.2 of the ASCM. Panel Report in China – Countervailing and Anti-dumping duties on Grain Oriented Flat-rolled Electrical Steel from the United States is relied on.
- ii. The applicants have segregated imports to the best of their knowledge and belief using the limited information from DGCI&S import data. Even though the applicants do not have any objection to the Authority using the right data for determination, designating any low-priced imports as N-PUC by the interested parties should not be allowed. The imports should not be segregated solely based on the name of producer/exporter and should be for all imports.
- iii. Detailed explanation on the methodology adopted for segregating the import data into PUC has been provided with the petition. There is no separate requirement to provide methodology for the identification of Secondary Foundry Alloy imports.
- iv. PMBTU has not provided information for the AUL period for Program Nos. 8 (Accelerated Capital Allowance), 11 (Industrial Building Allowance), 12 (Allowance for Plant and Machinery), 17 (Exemption from import duty and sales tax on machinery and equipment), and 18 (Exemption from import duty on raw materials/components), which are related to capital goods.
- v. PMBTU admitted, in their questionnaire response, that Program Nos. 8, 11, and 12 provide one-time benefit. The Authority had, in the CVD investigation on the imports of 'Aluminium wire/wire rod above 7mm dia' from Malaysia, held that AUL information is

necessary for Program No. 17. Since a similar benefit is provided under Program 18, AUL information should be applicable for Program No. 18 too. The POI falls within the AUL period of all machinery and component acquisitions made by PMBTU. Hence, subsidy received on them should be quantified.

- vi. The investigation is not limited to the programs identified by the applicants. It is the obligation of the Government of Malaysia (GOM) and PMBTU to disclose all subsidies even if they consider them non-countervailable. Reference was made to Point No. 11 of instructions on program specific questions and point no. 16 of general instructions, Part III of the Government questionnaire and section II, point no. 2 of the Exporter Questionnaire.
- vii. Neither PMBTU nor GOM opposed the existence of alleged subsidy vide the letter filed by the domestic industry on 27th July, 2021 or provided information regarding the same. The lack of full cooperation and failure to disclose existence of programs warrants the application of facts available. The burden cannot be shifted on to the applicants or the Designated Authority as regards subsidies programs which are not known to the domestic industry. The Supreme Court decision in *Haldor Topsoe* is relied upon.
- viii. No reasons have been stated by the Ministry of Finance (MOF) for rejecting the findings of Authority. As such the same cannot be attributed to public interest.
- ix. The written submissions from the Government of Malaysia were filed late and hence should not be taken on record.
- x. Determination of countervailability and benefit should be based on the petition and submissions provided by applicants, questionnaire responses of the Respondents and Government of Malaysia and the information available with the Authority.
- xi. There is no legal basis to claim there should not be any subsidy margin determination on 19 programs which PMBTU claims to have not availed. Facts available should be used. The Government of Malaysia failed to provide prima facie evidence denying the existence of the alleged subsidy programs and cannot be disregarded merely because a company under the investigation has not applied, accrued or benefitted from it.

F.2. Submissions by the other interested parties

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

- a.i. The petition failed to provide 'sufficient evidence' to support allegations. No justification is provided for tying the alleged program to the subject goods in Malaysia. The petition is itself not sure if the program benefitted the Malaysian producer. The allegation is insufficient and ignores principles of ASCM.
- a.ii. The DI has only provided updated annexure and has not updated the entire petition including its claims and averments on alleged subsidies in the subject country for the POI from April 2019 to September 2020. The updated data filed by the domestic industry contains information for the updated POI and revised figures for the injury period. There is no explanation for such changes. The same is not permitted as per the Manual of Operating Practices. The same should be rejected. The Authority should consider if the case merits initiation in light of the revised profitability figures.

- a.iii. The subject import data provided in the petition is incorrect and unreliable as it includes PUC as well as non-PUC. The import segregation methodology provided in the petition does not provide the methodology used to identify Secondary Foundry Alloy Ingots (SFA) imports.
- a.iv. LM 25 and AlSi are included as PUC even though LM 25 can be produced from SFA as well and all AlSi grades are not Primary Foundry Alloy Ingots (PFA). Several grades mentioned in the annexure are of SFA. The Respondent's own analysis shows that the proportion of SFA in the subject imports as per petition was 80% in 2016-17 and 2017-18, 65% in 2018-19, and 42% in the POI.
- a.v. The Authority can verify the Respondent's claim using DG Systems data which provides the names of producers/exporters. The Respondent is the sole producer and exporter of the PUC in Malaysia. The names of SFA producers and traders in Malaysia have been identified.
- a.vi. The responses filed by PMBTU and GOM should be the basis for determining the countervailability and benefit, if any.
- a.vii. The alleged subsidies are either not countervailable or has not been availed by PMBTU. Since none of the Malaysian producer/exporter of the PUC applied, accrued, or benefitted from 23 out of the 29 programs, they should be disregarded.
- a.viii. The Authority determined in the finding in the CVD investigation on Aluminum Wire Rods that the respondent has not benefitted from Program Nos. 1-4, 6-7, and 9-21. There is no change in the fact regarding non-use of subsidy due to change in POI. The Authority is requested not to determine subsidy margin against these 19 programs.
- a.ix. Respondents requested the Authority not to determine subsidy margin against those programs not applied, used or benefitted during the POI. Where AUL applicable, no benefit during the period has also been indicated. Respondent has provided information to evidence non-use of subsidy program during AUL period. Therefore, the Authority should hold PMBTU has not received any benefit during the AUL period.
- a.x. The alleged deficiencies in the response filed by the GOM, PMBTU, and ETL does not hold merit. Since none of the deficiencies are related to subsidy programs under investigation, the SC decision in *Haldor Topsoe* is not applicable. Even if new subsidy allegations are considered, they are unfounded and does not have factual or legal basis.
- a.xi. By stating applicants have no objection to the Authority using right data for determination, they have conceded incorrectness of their import data and import segregation methodology.
- a.xii. Respondent has not considered price as a criterion to identify imports of the PUC in their segregation. The known grades of the PUC and SFA were used for the segregation.
- a.xiii. Country of origin form submitted at the time of import may note raw material as post-consumer scrap for SFA imports.
- a.xiv. Investigation into new subsidy programs is incorrect. The DI cannot expand the scope of the investigation by adding programs and surpassing Rule 6(3)(b) of the CVD Rules. Authority's practice shows initiation of investigation on every subsidy alleged is not automatic. Due to insufficient opportunity to respond to the allegation, the chances of application of adverse facts are also higher.
- a.xv. The Authority in the previous investigation on 'Wire Rods' found AUL information not required for Program Nos. 8, 11, 12, and 18. No factual or legal basis has been provided by the DI for reconsideration. The requirement for AUL information has to be determined based on the nature of the program. Program Nos. 8, 11, and 12 provide deduction of expenses during income tax computation and is recurring in nature. Program No. 18 is not tied to capital assets and is recurring in nature. AUL information is only relevant when the program

provides one-time benefit. No information for AUL period was requested for these programs by the Authority and hence, no facts available can be applied. AUL information for Program No. 18 was provided even though not requested.

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 claims concerning specific subsidy programs, the Authority has addressed the issues to the extent necessary while examining each subsidy program in the relevant paragraphs of this final finding.
 - b. The Authority notes that the applicants have provided a duly substantiated application based on which the present investigation was initiated. The present investigation was initiated based on the data/information provided by the domestic industry and by prima facie satisfying itself that there is sufficient evidence of existence of subsidy, injury and causal link. The application contained all the information relevant for the purpose of initiation of the investigation. Reference is placed on WTO Panel Report in the matter of China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States (DS 414) wherein the Panel stated that although definitive proof of the existence and nature of a subsidy, injury and a causal link is not necessary for the purposes of Article 11.3, adequate evidence, tending to prove or indicating the existence of these elements, is required. Indeed, in considering the quality of the evidence that should be provided in an application before an investigation is justified, we note that Article 11.2 requires "sufficient evidence of the existence of a subsidy", meaning that the evidence should provide an indication that a subsidy actually exists. In the instant case, the Applicant provided evidence of nature of program, administrating authority administering the program, legal basis, eligibility criteria, financial contribution, specificity, benefit, nature of benefit, linkage to producers, wherever possible, and cases where the scheme was held countervailable in their application. The Authority considers evidence provided by the applicants as "sufficient evidence of the existence of a subsidy".
 - c. With regard to the identification of imports of the subject goods from the subject country, the Authority notes that the domestic industry and exporter have claimed import volume and value based on DGCI&S data. Both the figures are different. However, and more importantly, while PMBTU has provided import volumes as per DGCI&S, it is noted that the same is materially lower than even the export volumes reported by the exporter in its own questionnaire response. In view of significant differences in the import volumes determined by the two parties based on DGCI&S data, and considering that there is possibility of the product not under consideration (NPUC) and the PUC carrying similar or even same description, the Authority considers that since the cooperating producer/exporter from the subject country, i.e. Press Metal Bintulu Sdn. Bhd. is the major producer/exporter of the product under consideration, the exports of the subject goods by PMBTU into India is representative of the Malaysian exports of the subject goods into India. Hence, the Authority has relied on the volume and value of export sales of the subject goods reported by PMBTU to India, duly verified for the purpose of the investigation.

- d. As regards the argument that LM 25 and AlSi are included as the PUC even though LM 25 can be produced from SFA as well and all AlSi grades are not Primary Foundry Alloy Ingots (PFA), it is noted that the product under consideration in the present investigation is 'Primary foundry alloy ingot in different forms'. The scope of the product under consideration includes those Aluminum Alloy Ingots that are produced from smelting alumina or from re-smelting primary aluminum ingot/ production scrap/ primary scrap. Aluminum Alloy Ingots produced from post-consumer scrap is excluded. Therefore, if LM 25 and AlSi are produced through post-consumer scrap, the same is excluded from the scope of the product under consideration.
- e. As regards the claim concerning information for the AUL period, the Authority recognizes that Program Nos. 8 (Accelerated Capital Allowance), 11 (Industrial Building Allowance), 12 (Allowance for Plant and Machinery), 17 (Exemption from import duty and sales tax on machinery and equipment), and 18 (Exemption from import duty on raw materials/components) pertain to capital goods and hence, the benefit received under these programs is spread across the AUL period of the asset involved. The Authority has examined the information provided by the responding producer to the extent available. Where information has not been provided, facts available have been applied.
- f. As regards claim concerning absence of information from the GOM and the producers/exporters about other subsidy programs not alleged in the petition, the Authority notes that the domestic industry alleged additional subsidy before the hearing vide its letter dated 27th July 2021 and further in its written submissions. However, neither GOM nor the responding exporter provided any information rebutting the claims of the domestic industry on additional subsidy in any of its submissions. The Authority has examined additional subsidy programs alleged by the domestic industry based on the information provided by the domestic industry in its submission.
- g. As regards the analysis of subsidy programs not availed by the responding producer, the Authority has examined them in light of the information available and quantified the benefit, wherever possible, based on facts available. The subsidy programs have been examined in detail in the following section.

G. EXAMINATION OF SUBSIDY PROGRAMS

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

24. Submissions by the domestic industry

- a. The Applicants submitted that the scheme is administered by the Ministry of Finance, Malaysia, Ministry of International Trade and Industry, and Malaysia External Trade Development Corporation. The scheme offers reimbursable 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.
- b. 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.

- c. The evidence and the legal basis are the Guidelines for Market Development Grants – 2020 and the finding of the Authority in the CVD investigation on “Continuous Cast Copper Wire Rods”. The program is export and enterprise specific.

25. Submissions by Government of Malaysia/other interested parties

- a. Market Development Grant (MDG) is a part of the SME Masterplan structured under the 11th Malaysian Plan for the purpose of increasing the SME’s participation in export promotional activities. Under the program, Malaysian SMEs can apply for a reimbursable grant of up to RM 200,000 for participation in export promotional activities. The program is available to SMEs incorporated under the Companies Act, 2016, has at least 60% equity owned by Malaysian(s), and exports products made in Malaysia or services originating in Malaysian companies.
- b. PMBTU is not a MDG recipient. PMBTU did not avail, use, or benefit from the program during the POI.

26. Examination by the Authority

- a. The Authority notes that the 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 being available only to SMEs and also being contingent on exports is specific.
- c. PMBTU, the only participating producer/exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of the subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

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

27. Submissions by the domestic industry

- a. The Applicants 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. The program is enterprise specific. The Industry Excellence Award meets the elements of subsidy as per the CVD rules.

28. Submissions by Government of Malaysia/other interested parties

- a. The Industry Excellence Award was introduced by the Ministry of International Trade and Industry (MITI) in 1991 to promote culture of entrepreneurship and innovation in value creation. PMBTU was awarded the Gold Winner for the Large Category of the Sarawak Chief Minister's Industry Excellence Award (CMIEA) and the Outstanding Winner in 2019. The award received does not involve any monetary or financial incentives. This makes PMBTU eligible for MITI's Industry Excellence Award, but PMBTU did not win the award during the 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. PMBTU, the only participating producer/exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMBTU. However, Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of the subject product in Malaysia. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

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

30. Submissions by the domestic industry

- a. Applicants 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. The program is export specific.

31. Submissions by Government of Malaysia/other interested parties

- a. The Export Credit Refinancing (ECR) scheme is used to promote Malaysia's exports and international trade in the form of pre-shipment and post-shipment financing. The scheme is governed by the ECR Guidelines issued by EXIM Bank. The exporter has to ensure that the product is eligible in reference to the Negative List and meet the eligibility criteria as per the guidelines. The program is only available to those companies that are incorporated in Malaysia and involved in export activities. PMBTU did not avail, use, or benefit from the program during the POI.

32. Examination by the Authority

- a. The Authority notes that the program is administered by the 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 the 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. PMBTU, the only participating producer/exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for 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.

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

33. Submissions by the domestic industry

- a. The applicants 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 long-term financing with a lender which is backed by EXIM Bank's guarantee. The evidence given is Buyer Credit Insurance by EXIM Bank, information by Malaysia External Trade Development Corporation, and previous finding of the Authority in "Continuous Cast Copper Wire Rod". The loan amount under this program must be minimum value of RM 2 million and the repayment period should be at least 2 years and maximum 15 years. There is also a requirement that the contract must have minimum 30% Malaysian content in the form of goods and services. The program is export specific.

34. Submissions by Government of Malaysia/other interested parties

- a. Bankers Trade Credit Takaful (BTCT) is a Credit Takaful designed to protect the Islamic Financial Institutions (IFIs) against risk of non-payment by their exporters arising from default by the overseas buyers. The facility is available against a trade finance facility on trade terms such as Open Account, Documentary Collection and/or Letter of Credit. The program is not provided pursuant to a statute, regulation, decree, or other legal measure. PMBTU did not avail, use, or benefit from the program during the 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. PMBTU, the only participating producer/exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for 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.

G.5. Program No. 5 – Pioneer Status

36. Submissions by the domestic industry

- a. The applicants submitted that the program is administered by the Ministry of Finance (MoF), Ministry of International Trade and Industry (MITI), Malaysian Industrial Development Authority (MIDA), and Inland Revenue Board (IRB). A company granted Pioneer Status will enjoy tax exemption from corporate income tax for a period of 5 years. The program encourages investments in promoted activities/products which are of national and strategic importance to Malaysia. 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 a company. The program is enterprise specific as it is limited to certain enterprises engaged in the promoted activities. The Authority should examine whether benefit under Pioneer Status is contingent on the export performance as found by USDOC in CVD investigation on Certain Frozen Warmwater Shrimp. PMBTU should be directed to provide requisite information for the analysis.
- b. Pioneer Status was held countervailable in previous CVD investigations on “Continuous Cast Copper Wire Rods”, “Tempered Glass”, “Clear Float Glass”, “Fiberboard” and “Aluminium Wire/Wire Rod” involving Malaysia since it is available to promoted activity/product. The Panel Report in US-Upland Cotton stated specificity should be decided on case-to-case basis. The program was held countervailable in several previous investigations and has not undergone any material change thereafter. The product under consideration is a promoted product which is discretionally designated by the GOM. The extend of tax exemption also varies depending on the product, hence, should be held a subsidy.
- c. As evidence of existence of the program, the applicants 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”, “Tempered Glass”, “Clear Float Glass”, “Fiberboard” and “Aluminum Wire/Wire Rod”
 - 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 the 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. The applicants are required to go through an Approval Committee and reasons for rejection can be those other than failure to meet the eligibility criteria.
- b. PMBTU submitted that the program is available to a wide range of companies ranging from SME to large conglomerate regardless of ownership. The target market can be fully domestic, fully export or a combination of both. It is available to 11 out of the 13 manufacturing industries listed under the MITI's website. The eligible promoted products or activities are too wide, diverse, broad and widespread to be considered as a "group of industries". The WTO reports in US – Softwood Lumber IV and US – Upland Cotton are relied on. The granting authority establishes objective criteria and are strictly adhered to. Hence, the program is not specific as per Article 2.1(b) of the ASCM.
- c. The program offers income tax exemption between 70%-100% of statutory income for a tax relief period of 5-15 years. The benefit under the program is recurring throughout the tenure of the tax period. PMBTU was initially approved for 100% tax exemption on statutory income under the Pioneer Status in October 2013 for a period of 5 years which was later extended for 5 more years till December 2022.

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, the Authority holds that countervailing duty should be imposed against this subsidy program for PMBTU. The Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject

product in Malaysia and therefore the Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

G.6. Program No. 6 – Investment Tax Policies

39. Submissions by the domestic industry

- a. The applicants submitted that the program is administered by the Malaysian Industrial Development Authority (MIDA) and the Inland Revenue Board Malaysia. An investment tax allowance may be granted to any company intending to participate in a promoted activity or produce as determined and gazetted by the Ministry of International Trade and Industry. The allowance is provided on the capital expenditure incurred for the purpose of the promoted activity/product. The allowance is then allowed to be exempted from the tax payable. The program is enterprise specific. As evidence of existence of the program, the applicants have relied on:
 - i. Sections 26-29, Promotion of Investment Act, 1986
 - ii. Promotion of Investments (Promoted Activities and Promoted Products) Order 2012

40. Submissions by Government of Malaysia/other interested parties

- a. Investment Tax Allowance, which is similar to Program No. 29, may be granted to any company intending to participate in a promoted activity or to produce a promoted product as determined by the Minister of Finance and the Minister of International Trade and Industry. The allowance is given only on capital expenditure incurred on industrial buildings, plant and machinery directly used for the purpose of the promoted activity/ products. Not all individuals/firms who applied and met all the eligibility criteria will be approved for the program and still needs to go through the Approval Committee. The program is mutually exclusive with Program No. 5 – Pioneer Status. PMBTU did not avail, use, or benefit from the program during the POI.

41. Examination by the Authority

- a. The 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% 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. PMBTU, the only participating producer/exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMBTU. The Authority also notes that since it has already determined to countervail the Pioneer Status program for all other producers/exporters from Malaysia, therefore, no additional countervailing duty should be imposed against this subsidy program for all other producers/exporters from Malaysia.

G.7. Program 7: Reinvestment Allowance

42. Submissions made by the domestic industry

- a. The Applicants 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. The program is enterprise specific as it is available to companies undertaking qualifying projects. Reinvestment Allowance was found countervailable in previous CVD investigations on “Continuous Cast Copper Wire Rods”, “Fiberboard” and “Aluminium Wire/Wire Rod” involving Malaysia.
- c. As evidence of existence of program, the applicants have relied on:
 - i. Promotion of Investment Act, 1986
 - ii. Schedule 7A of the Income Tax Act 1967
 - iii. Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods” “Continuous Cast Copper Wire Rods”, “Fiberboard” and “Aluminum Wire/Wire Rod”.
 - iv. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - v. Canada – Certain Aluminum Extrusions

43. Submission by Government of Malaysia/other interested parties

- a. A company or a person resident in Malaysia is granted the Reinvestment Allowance (RA) when the business has been in operation for not less than 36 months and the company/ person has incurred capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project. The RA is given at a rate of 60% on the capital expenditure incurred and is deducted from 70% of the statutory income. Unutilized allowance can be carried forward. The program is available to all companies and the Inland Revenue Board applies objective criteria in granting it. RA was found non-countervailable by the USDOC in the past because it is generally available. PMBTU did not avail, use, or benefit from the program during the POI which is evident from the tax computation and tax return document.

44. Examination by the Authority

- a. The 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.

G.8. Program 8: Accelerated Capital Allowance

45. Submissions by the domestic industry

- a. Accelerated Capital Allowance (ACA) provides a special allowance to write off the capital expenditure within three years, i.e., an initial allowance of 40 percent in the first year and an annual allowance of 20 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. Accelerated Capital Allowance was found countervailable in previous CVD investigations on “Continuous Cast Copper Wire Rods”, “Tempered Glass”, “Clear Float Glass”, “Fiberboard” and “Aluminium Wire/Wire Rod” involving Malaysia. The program is specific and benefits the aluminium industry and other industries requiring significant capital expenditure. It is also available to companies carrying out promoted activities. PMBTU has suppressed information for AUL period.

- b. As evidence of existence of the program, the applicants 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. Accelerated Capital Allowance (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. 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. 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.
- d. PMBTU is eligible to claim 100% of capital expenditures incurred on goods and services on the specified item on an accelerated basis instead of a normal timing basis.
- e. Since ACA provides for deduction of actual expense from gross income, no revenue is foregone that is otherwise due. The Appellate Body report in US – FSC is relied on. For the program, comparison with a normative benchmark is necessary but since no such benchmark is available, the program should be held to provide no financial contribution.

47. Examination by the Authority

- a. The 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. The 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. Since, PMBTU have availed, used and benefitted from this program during the POI, therefore, the Authority holds that countervailing duty should be imposed against this program. The Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia and therefore the Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

G.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. Under the program, 70% of the current year's unabsorbed losses can be offset against the income of another company within the same group.
- b. To avail the benefit, both the claimant and the surrendering companies each have a paid-up capital of ordinary shares exceeding RM 2.5 million. The program is enterprise specific. As evidence of existence of the program, the applicants 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"
- c. PMBTU's response that they were in a profitable situation is highly misleading since the benefit can also be claimed by exporters even if any of their related parties were in a loss-

making condition and hence financial statements of all related companies residing in Malaysia ought to be provided.

49. Submissions by Government of Malaysia/other interested parties

- a. Group relief is available to all locally incorporated resident companies and allows a company in a group to surrender (referred as the surrendering company) not more than 70% of its adjusted loss in the base period for a year of assessment to one of more related companies (referred as the claimant company) within the same group. The IRB applies objective criteria and the program is not countervailable as it is not linked to export conditions, not specific and is generally available.
- b. PMBTU was profitable in 2019 and 2020 and had no losses to surrender to one or more related entities. PMBTU has not applied for, accrued, or received benefit from the program.

50. Examination by the Authority

- a. The 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. The 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.

G.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. The program is export specific.
- c. As evidence of evidence of the existence of program, the applicants have relied on:
 - Section 14(2) of Customs Act 1967

- Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”
- <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>

52. Submissions by Government of Malaysia/other interested parties

- a. The program is similar to Program No. 18. The legal basis provided in the petition lacks specific information and is inaccurate. PMBTU did not avail, use, or benefit from the program during the 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 the subsidy program countervailable.
- c. PMBTU, the sole participating producer/ exporter from subject country did not benefit from this program. Thus, the Authority holds that no countervailing duty should be imposed against this program for PMBTU. The Authority has determined that exemption from import duty on raw material is countervailable under program No. 15. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

G.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 annual allowance is 3%. The expenditure can be written off in 30 years.

- b. The program does not follow a straight-line method and allows for an accelerated depreciation and hence should be treated as a tax reduction as per Annexure IV of the CVD Rules. The scheme provides for revenue forgone and therefore is a countervailable subsidy. Deductions under IBA are over and above the normal depreciation. PMBTU is put at an advantageous position in the form of lower taxable income and hence, lower tax payable as per the “but for test” in the Panel Report in Canada – Aircraft. The program was found countervailable in previous CVD investigations on “Continuous Cast Copper Wire Rods” involving Malaysia.
- c. IBA is granted to companies incurring capital expenditure on the construction or purchase of an industrial building that is used for specific purpose, including licensed private hospital, maternity and nursing home, building used for research, warehouse, building for approved service project, etc. The program is enterprise specific. PMBTU has suppressed information for AUL period.
- d. The evidence of the program relied upon by the applicants are:
 - Schedule 3 of the Income Tax Act, 1967
 - Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”
 - <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. An Industrial Building Allowance (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. The program is available to all companies and the IRB applies objective criteria in granting it. Hence, the program is not countervailable. Claiming of capital allowances including the industrial building allowance is mandatory under the relevant tax law.
- b. IBA comprises of Initial Allowance (IA) and Annual Allowance (AA) at the rate prescribed for each type of industrial building. In general, the rate of IA is 10% of the Qualifying Building Expenditure (QBE) and the rate of AA is 3% of the QBE unless it is stated at specifically different rate.
- c. PMBTU is eligible to claim IBA as deduction to reduce taxable income over a period of 30 years on 100% of the QBE incurred by PMBTU on the construction / purchase of building used as industrial building for the purposes of its business.
- d. There exists no financial contribution since it provides a deduction of expense actually incurred from the gross income. DI’s use of the ‘but for’ test has no relevance. DI has not claimed a normal rate of depreciation in Malaysia which would make a higher rate under

IBA revenue forgone. No subsidy margin for IBA was determined in the previous investigation on "Copper Wire Rods". IBA provides depreciation in straight line method as opposed to declining balance method.

56. Examination by the Authority

- a. The Authority notes that industrial building allowance (IBA) is available to an entity which has incurred qualifying capital expenditure as per Public Ruling 3/2018. IBA is deducted against adjusted income to arrive at statutory income.
- b. The Authority notes that the program provides for countervailable benefit because it provides for deduction of depreciation on building to all enterprises over and above the normal deduction of depreciation since IBA comprises of initial allowance (IA) and annual allowance (AA) generally at 10% and 3% respectively unless specifically prescribed. Further, the program does not follow a straight-line method for determining the allowance that can be claimed in a particular year due to the concurrent application of initial allowance (IA) and annual allowance (AA) in the first year. The additional allowance received by the company in the form of initial allowance is over and above the normal depreciation. The initial allowance reduces the taxable income and therefore it results in lower tax being paid by the company due to the program.
- c. According to Public Ruling 3/2018, only certain type of capital expenditures known as 'Qualifying Building Expenditure' incurred by the company is eligible for the benefit under the program. The QBE is available to specific types of buildings only. Therefore, the program is enterprise specific. The program provides financial contribution in the form of revenue foregone, which is otherwise due. Hence, Authority holds this program as countervailable.
- d. The Questionnaire response filed by PMBTU shows that they have availed the benefit under the program. The Authority has quantified the subsidy margin based on the information submitted by the responding producer/ exporter. The subsidy margin determined has been provided in the table below.

G.12. Program 12: Allowance for 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 program does not follow a straight-line method and allows for an additional depreciation in the initial year and hence should be treated as a tax reduction as per Annexure IV of the CVD Rules. The scheme provides for revenue forgone and therefore is a countervailable subsidy. Deductions under Allowance for Plant and Machinery are over and above normal depreciation. PMBTU is put at an advantageous position in the form of lower taxable income and hence, lower tax payable as per the “but for test” in the Panel Report in Canada – Aircraft. The program was found countervailable in previous CVD investigations on “Fiberboard” involving Malaysia. PMBTU has suppressed information for AUL period.
- c. The evidence relied upon by the applicants includes:
- Schedule 3 of the Income Tax Act, 1967
 - Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”
- d. 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 owner of the plant and machinery at the end of the basis period

58. Submissions by Government of Malaysia/other interested parties

- a. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method on the basis of a prescribed rate of allowance. All companies that meet the eligibility criteria can claim the CA. 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.
- b. Claiming capital allowances is mandatory under the relevant tax law. Allowance for Plant and Machinery (APM) comprises initial allowance (IA) and annual allowance (AA) at the rates prescribed for each type of capital expenditure. The qualifying expenditure (QE) includes (i) cost of assets used in a business, such as plant and machinery, office equipment, furniture and fittings, motor vehicles, etc., and (ii) the cost of construction and installation of plant and machinery (subject to payment of withholding tax where the installation is carried out by a non-resident). The deductions permitted are not more than the actual expense. This is a form of tax depreciation.

- c. PMBTU is eligible to claim APM/capital allowance as deduction to reduce taxable income over a period of between 4 to 8 years on 100% of the QE incurred by PMBTU to purchase capital assets for the purposes of its business.
- d. There exists no financial contribution since it provides a deduction of expense actually incurred from the gross income. DI's use of the 'but for' test has no relevance. DI has not claimed a normal rate of depreciation in Malaysia which would make a higher rate under IBA revenue forgone. IBA provides depreciation in straight line method as opposed to declining balance method.

59. Examination by the Authority

- a. The 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 producer/exporter, PMBTU has claimed allowance on plant and machinery.
- c. The 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, the Authority holds that no countervailing duty should be imposed against this program.

G.13. Program 13: Double Deduction for Promotion of Exports

60. Submissions by the domestic industry

- a. The applicants 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, the applicants 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 program is applicable to all resident trading, manufacturing or agricultural companies in respect of expenses incurred primarily and principally for the purpose of seeking opportunities, or in creating or increasing demand for the export of Malaysian manufactured goods or agricultural products. The program is administered under section 41 of the Promotion of Investments Act, 1986 read with Rule 4(2) of the Income Tax (Promotion of Exports) Rules, 1986. The claims are raised by the company in their annual tax returns. However, in case of participation in international trade fair, a letter of approval is to be received from MATRADE.
- b. PMBTU submitted that the legal basis provided in the petition is incorrect and the correct legal basis should be the 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 and the Section 33 of the Income Tax Act 1967 (Revised 1971). PMBTU did not incur any expense relevant to the program during the POI. PMBTU has not applied for, accrued, or received benefit from the program.

62. Examination by the Authority

- a. The Authority notes that the program is governed by Section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) read with 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 of income tax that would have been payable in absence of such double deduction. The program is also specific because it is contingent on export performance and is limited to enterprise engaged in export promotion activity. PMBTU, the sole participating producer/ exporter from the subject country did not benefit from this program. Thus, the Authority holds that no countervailing duty should be imposed against this program for PMBTU. The Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax under Program No. 5- Pioneer Status. Therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program for all other producers/ exporters.

G.14. Program 14: Incentives for Manufacturing and Manufacturing related Services in East Coast Economic Corridor

63. Submissions by the domestic industry

- a. The applicants submitted that the program is administered by the Ministry of Finance (MoF), the East Coast Economic Region Development Council and the Inland Revenue Board (IRB). Under the program, exemption is granted on import duty and sales tax levied on machinery equipment and consumables that are produced locally and used directly in the promoted activity/ product.
- b. The eligibility criteria for the program are:
 - Project is located in East Coast of Malaysia,
 - Value added, and
 - Level of technology as measured by the Managerial, Technical, and Supervisory (MTS) Index.
- c. The program is region specific as it is limited to the East Coast Economic Corridor. As evidence of the existence of program, Applicants have relied on:
 - <http://www.ecerdc.com.my/en/wp-content/uploads/2014/06/14-Special-ECER-Incentives.compressed.pdf>
 - Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”.

64. Submissions by Government of Malaysia/other interested parties

- a. Under the program, tax exemption may be granted to a company intending to participate in a promoted activity/product as determined by the Minister of Finance and located in the East Coast of Malaysia. The application for tax exemption is to be submitted to an agency under the Ministry of Finance called the East Coast Economic Region Development Council (ECRDC). On satisfaction by the agency, a letter is issued pursuant

to which tax exemption can be enjoyed for 10 years. PMBTU did not avail, use, or benefit from the program during the POI.

b. Changes will be made to the program as per the Forum on Harmful Tax Practices (FHTP) program under the OECD.

65. Examination by the Authority

a. The Authority notes that full income tax exemption is granted under this program to the company whose project is located in the East Coast Economic Corridor and is intending to participate in a promoted activity or to produce a promoted product including an activity/ product which is of national and strategic importance to Malaysia.

b. 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 limited to promoted products and also specific to a region i.e., enterprise whose project is located in East Coast Economic Corridor. The Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax under Program No. 5 – Pioneer Status. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

G.15. Program 15: Drawback on Import Duty, Sales Tax and Excise Duty

66. Submissions by the domestic industry

a. The applicants 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. The program is enterprise specific.

b. Legal basis relied upon by the applicants 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”

67. Submission by Government of Malaysia/other interested parties

a. The program provides an import duty refund on imported good subsequently re-exported. The program is administered by the RMCD on a case-by-case application. The program conforms with provisions of Annexes I, II, and III of the ASCM, and hence, not countervailable. Panel report in EU – Countervailing Measures on certain Polyethylene Terephthalate from Pakistan is relied on to stress on the excess remission principle.

- b. PMBTU did not avail, use, or benefit from the program during the POI. DI's allegation that PMBTU did not provide any information on imports of raw materials is baseless. Raw materials procured by PMBTU are subject to 0% sales tax and 0% customs duty as per MFN duty or as per relevant FTAs.

68. Examination by Authority

Drawback of import duty:

- a. Section 99 of the Customs Act, 1967 allows for full drawback of customs duty levied on import of goods when they are re-exported by the manufacture as part or ingredient of any goods manufactured in Malaysia or as the packing, or part or ingredient of the packing, of the manufactured goods. The benefit is received pursuant to approval of the Director General. A financial contribution is granted in the form of revenue forgone that is otherwise due. The program is specific since only those enterprises that are involved in export activity and approved by the Director General can avail the benefit.

Drawback of sales tax:

- b. Section 29 of the Sales Tax, 1972 allows for full drawback of the amount of sales tax paid in respect of goods which are subsequently exported from Malaysia. A financial contribution is granted in the form of revenue forgone that is otherwise due. The program is also deemed specific as it is contingent on exports.

Drawback of excise duty:

- c. Section 19 of the Excise Act, 1976 allows for full drawback of excise duty levied on goods when they are re-exported by the manufacturer as part or ingredient of any goods manufactured in Malaysia or as the packing, or part or ingredient of the packing, of the manufactured goods. The benefit is received pursuant to approval of the Director General. A financial contribution is granted in the form of revenue forgone that is otherwise due. The program is specific since only those enterprises that are involved in export activity and approved by the Director General can avail the benefit.
- d. PMBTU, the sole participating producer/ exporter from the subject country did not receive drawback of import duties and the records submitted by PMBTU show that they have not availed drawback of sales tax and excise duties. Hence, the Authority holds that no countervailing duty should be imposed against PMBTU under this program. The Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Malaysia and therefore the Authority holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

G.16. Program 16: Exemption from Import Duty and Sales Tax for Outsourcing manufacturing activities

69. Submissions by the domestic industry

- a. The applicants 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. The applicants relied on Section 14(2) of Customs Act, 1967 and anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods".

70. Submission by Government of Malaysia/other interested parties

- a. The program involved evaluating import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. For qualifying for the exemption, the imported raw materials and components should be used to manufacture finished products with nil duty or imported semi-finished products from contract manufacturers abroad should be used to manufacture finished products by local contract manufactures. The program conforms with provisions of Annexes I, II, and III of the ASCM, and hence, not countervailable. PMBTU did not avail, use, or benefit from the program during the POI.

71. Examination by Authority

- a. The Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by the Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. Raw materials which are used in the production of exported product and semi-finished goods are imported from contract manufacturers for use by local manufacturers qualify for this exemption.
- b. PMBTU, the sole participating producer/ exporter from the subject country did not benefit from this program. Thus, Authority holds that no countervailing duty should be imposed against this program for PMBTU. Since the Authority has determined that that exemption from import duty on raw material is countervailable under program No. 15, therefore, no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

G.17. Program 17: Exemption from Import Duty and Sales Tax on Machinery and Equipment

72. 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 program is enterprise specific. The applicants relied on Customs Duties (Exemption) Order 2017 and anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods".
- b. PMBTU has suppressed the information for the AUL period. The response provided by PMBTU is highly misleading as the transactions where import duty and sales tax were not required to be paid are those countervailable under this program. The program was previously held countervailable by the Authority in multiple CVD investigations.

73. Submissions by Government of Malaysia/other interested parties

- a. The program, administered under the Customs Duties (Exemption) Order 2017, involves evaluating import duty exemption on machinery and equipment to qualified manufacturer. The import duty and sales tax exemptions are claimed pursuant to a letter issued by the MIDA confirming the status of the manufacturer. The program conforms with provisions of Annexes I, II, and III of the ASCM, and hence, not countervailable.
- b. PMBTU paid import duty and sales tax on importation of machinery and equipment if the items are subject to import duty and sales tax. PMBTU did not avail, use, or benefit from the program during the POI.
- c. PMBTU has provided information on import of machinery during the POI and prior to the POI to evidence non-use of the subsidy program. PMBTU has either paid the applicable duty or imports were not subject to duty.

74. Examination by Authority

- a. The 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. The program is administered by the Malaysian Investment Development Authority.
- b. The program provides a financial contribution in the form of revenue foregone which is otherwise due, and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity. The responding producer/ exporter, PMBTU has only provided information for the years 2019 and 2020. PMBTU has not received any benefit under this program during the period of investigation. However, since this program is linked to capital goods, the total

value of the benefit has to be spread over the normal life of the asset i.e. AUL period. It is noted that the responding exporter has failed to provide information for AUL period for this program. The Authority has therefore applied facts available for working out subsidy margin for this program.

G.18. Program 18: Exemption from Import Duty on Raw Materials/ Components

75. 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. The program is enterprise specific. The applicants relied on Section 14(2) Customs Act 1947 and anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods” as the legal basis for this program.
- b. Facts available should be applied as GOM only responded regarding the exemption from import duty and no information was provided on exemption from sales tax provided under the program. PMBTU has suppressed information for the AUL period.

76. Submissions by Government of Malaysia/other interested parties

- a. The program involves evaluating import duty exemption on raw material/ component to qualified manufacturer. The raw material/ component should not be locally available and should be used directly in the production of the finished product at the approved manufacturers’ premise(s). The program conforms with provisions of Annexes I, II, and III of the ASCM, and hence, not countervailable.
- b. The raw materials procured by PMBTU have 0% sales tax and 0% import duty either as MFN rate or under relevant FTAs. PMBTU did not avail, use, or benefit from the program during the POI.

77. Examination by the Authority

- a. The 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.

- 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. Benefit under this program has not been availed by the responding producer/ exporter, PMBTU. Thus, Authority holds that no countervailing duty should be imposed against this program for PMBTU.
- c. Since the Authority has determined that exemption from import duty is countervailable under program No. 15, therefore, the Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

G.19. Program 19: Double Deduction for Promotion of Exports Cargo

78. Submissions by the domestic industry

- a. Under this program, a double deduction is allowed to a person who incurs premium on the insurance of cargo exported from Malaysia provided that the risks are insured with an insurance company incorporated in Malaysia. The program is export specific.
- b. Legal basis relied upon by the applicants include:
 - Income Tax (Deductions of Insurance Premiums for Exporters) Rules 1995
 - Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012
 - Promotion of Investment Act -1986
 - Income Tax (Promotion of Export Rules), 1986
 - Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods”

79. Submissions by the Government of Malaysia/other interested parties

- a. PMBTU did not avail, use, or benefit from the program. The program has been revoked in 2016.

80. Examination by the Authority

- a. The Authority notes that the GOM has submitted that the program has been revoked in 2016. Hence, the Authority holds that no countervailing duty should be imposed for this program.

G.20. Program 20: Allowance for increased export

81. Submissions by the domestic industry

- a. The applicants 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. The program is export specific.

- 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

82. Submissions by Government of Malaysia/other interested parties

- a. Under this program, a resident manufacturing company or agricultural company that exports manufactured or agricultural products is given an allowance for increase in exports. The allowance is given against 70% of statutory business income of the company. The program is mutually exclusive with Program No. 5 – Pioneer Status. PMBTU did not avail, use, or benefit from the program during the POI which is evident from tax computation and tax return document.

83. Examination by the Authority

- a. The 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. The Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax under Program No. 5- Pioneer Status. Therefore, the Authority holds that no additional countervailing duty should be imposed against this program.

G.21. Program 21: Tax exemptions for exporters in Free Trade Zones

84. Submissions by the domestic industry

- a. Under the program, goods and services of any description except those specifically and absolutely prohibited by law, maybe brought into, produced, manufactured or provided in a free zone without payment of any duty/tax. A free zone is an area declared primarily for manufacturing, in case of a Free Industrial Zone, or commercial, in case of Free Commercial

Zone, activities by the Ministry of Finance under section 3(1) of the Free Zone Act, 1990. The program is region and export specific.

85. Submissions by Government of Malaysia/other interested parties

a. Free Zones in Malaysia are established for the purpose of manufacturing and commercial activities to be carried out on with minimum Customs intervention. These free zones are managed by Free Zone Authority and any person or entity wishing to operate in these zones needs to get approvals from the respective authorities. As such, goods and services of any description except those specifically and absolutely prohibited by law, may be brought into, produced, manufactured or provided in a free zone without the payment of any duty/tax.

b. PMBTU is not located in any of the gazette free zone areas and hence, did not avail, use, or benefit from the program during the POI.

86. Examination by the Authority

a) The Authority notes that the program is administered by Free Zone Act, 1990 and Free Zone Regulations, 1991. Free zones are managed by Free Zone Authorities appointed by the Minister of Finance to administer, maintain and operate a free zone. Free Zones in Malaysia are established for the purpose of manufacturing and commercial activities to be carried out on with minimum Customs intervention. Goods and services of any description except those specifically and absolutely prohibited by law, may be brought into, produced, manufactured or provided in a free zone without payment of any duty/tax.

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 since it is available to enterprise located in free zone. The Authority has already determined that exemption from import duty is countervailable under program No. 15. Therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program.

G.22. Program 22: Less Than Adequate Remuneration for Land and Electricity

87. Submissions by the domestic industry

- a. The applicants 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 the Ministry of Industrial Development.
- b. The applicants relied upon the following as evidence of the program:
- Sarawak Government, Investment Incentives available at

infrastructure. The Panel Report in EC – Large Civil Aircraft is relied on. The criteria based on electricity load favours power intensive industries. Also, since SEB has the power to reject applications for PPA, the objective criterion is not “strictly” applied. Irrespective of SEB’s legal obligation under the Electricity Ordinance, the Questionnaire Responses show that customers are given discriminatory treatment.

- g. The general electricity tariff rate levied by SEB, is undistorted and market driven electricity tariff. AB Report in US – Carbon Steel (India) is relied on. It is the most appropriate benchmark since it is the same electricity supplier and would have been the rates applicable if not for the PPA. Additional benchmarks including electricity tariffs for industrial consumers in Singapore and those for 'business users' in Malaysia as per 'global petrol prices during the POI may be employed by the Authority. Existence of “benefit” is not determined in relation to cost of goods but the prevailing market conditions for it. As per facts available, the electricity tariffs as per the PPA between SEB and PMBTU is significantly below the benchmark electricity tariffs in Malaysia.
- h. Any deduction from the quantified benefit that is allowed should be a compulsory payment incurred during the period of investigation in order to receive the subsidy. Granting deduction of cost incurred for last mile connection as done in the CVD investigation on Aluminium Wire/Wire Rods from Malaysia is inconsistent with the CVD rules. Such cost is not exclusively tied to the subsidy and the expenditure is not in the form of a payment made to the government for the purpose of availing the subsidy. Further, no evidence was provided to show that the rate would be different in the presence and absence of last mile collectively and PMBTU did not provide any evidence to substantiate their claim.

88. Submissions by Government of Malaysia/other interested parties

- a. Alienation of land in Sarawak including determination of tenure of lease, quantum of premium and conditions of land use falls within the exclusive jurisdiction of the Sarawak State government. LSDS clearly established criteria and conditions governing the eligibility to lease land. Discount on premium is application to all lessee on meeting criteria and conditions set by LSDS. The government exercise discretion as to which firm is eligible to benefit.
- b. 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. PMBTU has not received any benefit. The land premium is calculated based on the prevailing rate published by the LSDS, Bintulu Division multiple with the area of the land.
- c. The petition filed by the DI has not explained specifically the claim regarding provision of land at less than adequate remuneration. The land prices provided by DI is not for Samalaju Industrial Park. DI has accepted that GOM has disclosed that land premium is levied on leased land at prevailing rate published by LSDS. The subsidy program is not specific in terms of Annexure II of the Countervailing Duty Rules because it is not limited to certain enterprise within the jurisdiction of granting authority and the eligibility is not discretionary but based on objective criteria which are neutral, economic and horizontal in application.

- d. 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.
- e. Electricity industry in Sarawak is regulated under the Sarawak state government. 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). PPA is governed by Malaysian or English law. Potential customers should complete a questionnaire titled “SEB Questionnaire for Large Investor”.
- f. 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)

- g. 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.
- h. The most important criteria for allocation of power to SEB’s customers is the customer’s tariff offer subject to adequate credit worthiness. The administering authority does exercise discretion in deciding who benefits.
- i. PMBTU purchases electricity from SEB through an arm’s length commercially negotiated contract. This does not amount to a program. No program exists for PMBTU to avail, use, or benefit from. Any benefit alleged to have been received is not specific since 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.
- j. 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.
- k. Electricity is a general infrastructure and hence, an exception to the rule on financial contribution. There is no preferential rate of electricity for any region or industry by the Government of Malaysia.
- l. There is no preferential rate of electricity. SEB is legally obligated not to provide special treatment under Para 4A(a) of the Electricity Ordinance. There is no benefit by way of purchase of electricity because long term PPA between PMBTU and SEB is a commercially negotiated agreement and SEB is a profitable business venture. SEB's Audited Financial Statement shows that it has made net profits. Since 70% of electricity sales is to bulk customers, majority of SEB's profit is due to price paid by bulk customers. PMBTU is able to procure electricity at bulk purchase price.
- m. SEB tariff price is not an appropriate benchmark since it is not reflective of terms and conditions under the PPA. The remuneration cannot be considered inadequate because of this difference.

89. Examination by the Authority

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

Provision of land at LTAR

- b. The Authority notes that alienation of land in the Sarawak Region including determination lease, premium payment, conditions of land use etc. falls within exclusive jurisdiction of the Sarawak State Government. The Land and Survey Department of Sarawak (LSDS) has established criteria for determined enterprises eligible to lease state land in Sarawak. The GOM has admitted in their Questionnaire Response that they exercise discretion in determining the beneficiaries under the program. State land is leased on a levy of land premium and land rent. The program provides for dual benefit in the form of (i) waiver/refund of land premium and (ii) levy of land rent less than adequate remuneration.
- c. The LSDS grants exemption of land premium by the way of refund of premium already 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.
- d. Waiver/ refund of premium by State Government of Sarawak amounts to financial contribution in the form of revenue forgone that is otherwise due. 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.
- e. The website of Sarawak Corridor of Renewable Energy (SCORE), where PMBTU is located, states that the State Government of Sarawak provides preferential land rates to investors. As per the questionnaire response, the Sarawak Government has exclusive jurisdiction over tenure of lease, quantum of premium and conditions of land use. The Authority notes that Government of Malaysia through Sarawak Government is providing land use rights at less than adequate remuneration which amounts to a financial contribution. The Authority observes that land use rights provided at less than market rates amount to conferring of benefit. This subsidy program is also specific because it is limited to enterprises in the Sarawak region and approved for lease by LSDS. Therefore, the Authority notes that the provision of land use rights by the GOM is a countervailable subsidy program. With regard to benefit in the form of land rent at less than adequate remuneration, the domestic industry has suggested benchmark rate of commercial land rates prevailing in Malaysia.
- f. The amount of benefit considered by the Authority is equal to the difference between the lease rate charged to PMBTU and the prevailing land rates in Sarawak, Malaysia. The Authority holds that PMBTU is paying lease rent at less than adequate remuneration and therefore countervailing duty should be imposed against the same.
- g. Questionnaire response filed by PMBTU shows that PMBTU benefited from this program in the form of waiver and refund of land premium. The Authority also determined that PMBTU is paying lease rent at less than adequate remuneration. Hence, the Authority holds that countervailing duty should be imposed against this subsidy program for PMBTU. The Authority also holds that countervailing duty should be imposed against this program for all other producers/exporters from Malaysia.

Provision of electricity at LTAR

- h. 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. Hence, SEB is a public body as per the ASCM and the provisions of the CVD Rules.
- i. 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. 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 the 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) may enter 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. According to the GOM, one of the important criteria is the tariff proposal made by the customer. 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 follow market principles.
- j. 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 that countervailing duty should be imposed against this subsidy program for PMBTU. Since the cost for last mile connection incurred by PMBTU does not amount to a compulsory payment made to the government for availing the subsidy, the deduction is not allowable for the purpose of calculation of benefit as per the CVD Rules. The subsidy margin, thus determined, is provided in the table below.

G.23. Program 23: Double Deduction for Promotion of Malaysian Brand

90. Submissions by the domestic industry

a. Under the program, the 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). Applicant companies are required to make the claim for the incentives in the annual tax returns for the fiscal year (basis period) in which the expenditure is incurred. The program is enterprise specific as it is only available to companies who advertise local brands.

91. Submissions by Government of Malaysia/other interested parties

a. The program, administered under the Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002, provides double deduction of expenditure on qualifying advertisements in advertising Malaysian brand name goods for arriving at adjusted income from a business. To avail the benefit, the company should be incorporated in Malaysia with at least 70% share capital Malaysian owned, registered proprietor of a Malaysian brand name, goods of which are export quality, and incur allowable expenditures.

b. PMBTU submitted that the legal basis provided in the petition is incorrect and the correct legal basis should be the 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 and the Section 33 of the Income Tax Act 1967 (Revised 1971). PMBTU did not incur any expense relevant to the program during the POI. PMBTU has not applied for, accrued, or received benefit from the program.

92. Examination by Authority

a. The Authority notes that this program is governed by 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 and the Section 33 of the Income Tax Act, 1967 (Revised 1971). Under this program, expenditure incurred in advertising Malaysian brand is eligible for double deduction from business income. To qualify for this double deduction, the company must have 70% Malaysian equity and the brand name should be of goods of export quality.

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 enterprise that incur expenses on advertising Malaysian brand. The Authority has already determined that countervailing duty should be imposed against the subsidy program granting exemption from income tax. Therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program.

G.24. Program 24: Incentives for Small and Medium Enterprise

93. Submissions by the domestic industry

- a. The program was introduced in 2009 whereby a special tax rate of 18%, instead of the usually 24%, is prescribed for resident companies with paid up capital of RM 2.5 million and below, classified as a Small and Medium Enterprise (SME), on the first RM 500,000 of their chargeable income. The legal basis relied on by the applicants is Schedule 1 of the Income Tax Act, 1967. The program is export specific and enterprise specific as it is limited to SMEs.

94. **Submissions by Government of Malaysia/other interested parties**

- a. According to Schedule 1 of the Income Tax Act 1967, a special tax rate is prescribed for a resident company with paid up capital of RM 2.5 million and below at the beginning of the basis period. On the first RM 500,000 chargeable income, a tax rate of 18% is levied, and 24% for the subsequent chargeable income. The company must also not be part of a group of companies where any of their related companies have paid-up capital more than RM 2.5 million.
- b. PMBTU and its subsidiaries do not fall within the ambit of SME. PMBTU did not avail, use, or benefit from the program during the POI.

95. **Examination by Authority**

- a. The Authority notes that under this program, preferential income tax rate is provided for SMEs i.e., enterprise with paid up capital of RM 2.5 million and below. On the income up to the first RM 500,000, chargeable income tax rate is 18%. Chargeable income tax for income above RM 500,000 is 24%.
- 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 small and medium scale enterprise. The Authority has already determined that countervailing duty should be imposed for the subsidy program granting exemption from income tax under Program No. 5- Pioneer Status. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

G.25. Program 25: Research and Development Fund

96. **Submissions by the domestic industry**

- a. The program covers three research and development funds administered by the Malaysian Technology Development Corporation Sdn. Bhd. The Applicants have provided information about three research and development funds.
 - CRDF-1 is a grant for commercialization of R&D output from public and private University (PPU)/Government Research Institute (GRI) by a spin off company Syarikat TerbitanUniversiti (STU). A grant of maximum RM 500,000 or 90% of eligible expenses (whichever is lower) is provided.
 - CRDF-2 is a grant for commercialization of R&D output from public and private University (PPU)/Government Research Institute (GRI) by a startup company. A partial grant of maximum RM 500,000 or 70% of eligible expenses (whichever is lower) is

provided.

- CRDF 3(a) is a grant for commercialization of any local R&D by SME and CRDF 3(b) is a grant for commercialization of public sector R&D by a non-SME. In CRDF-3(a) funding in form of partial grants with a max of 400,000 RM or 70% of eligible expenses (whichever is lower) is provided and in CRDF-3(b) funding in form of partial grants with a max of 400,000 RM or 50% of eligible expenses (whichever is lower) is given. There are eligibility criteria in terms of ownership, turnover, and size of the company and the proposed technology being commercialized.

b. As evidence of existence of the program, the applicants have relied on Research and Development Booklet prepared by MIDA. All the funds are provided enterprise specific.

97. Submissions by Government of Malaysia/other interested parties

a. The Commercialization of Research and Development Fund (CRDF) is a program under the Ministry of Science, Technology, Climate Change and Environment (MESTECC). CRDF provides funding assistance to aid commercialization activities of locally developed technologies undertaken by Malaysian owned companies. There are three types of CRDFs, i.e., CRDF 1, CRDF 2, and CRDF 3. CRDF 1 is for one year and provides a partial grant of maximum RM 500,000 for new technologies. CRDF 2 and CRDF 3 take place in first 2 years of the project and repayment of soft loan takes place from third to sixth years. For approval, an applicant company has to submit a viable business plan and go through a processing and evaluation process. The eligibility is limited to technology-based companies that have at least 51% Malaysian owned, the proposed technology should be one of the Priority Technology Clusters identified by the MESTECC and the R&D must be completed successfully with a commercial-ready prototype. PMBTU has not applied for, accrued, or received benefit from the program.

98. Examination by Authority

a. The Authority notes that Commercialization of Research and Development Fund (CRDF) is a program under the Ministry of Science, Technology, Climate Change and Environment (MESTECC). It provides funding assistance to aid commercialization activities of locally developed technologies undertaken by Malaysian-owned companies (51% share). The following three funds are covered under the program:

a.i. CRDF 1 is for one year and provides a partial grant of maximum RM 500,000 for new technologies;

a.ii. CRDF 2 provides funds commercialization activities for start-ups and small and medium enterprises. The maximum funding is RM 4,000,000;

a.iii. CRDF 3 provides fund for commercialization activities for large companies. The maximum funding is RM 4,000,000.

b. The program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The program is also specific because it is limited to enterprise with Malaysian ownership. PMBTU has submitted in their questionnaire response that they have not availed the program during the POI. The Authority holds that countervailing duty should be imposed against this subsidy program on all producer/exporters except PMBTU.

G.26. Program 26: Tax Incentives for in-house R&D

99. Submissions by the domestic industry

- a. The applicants submitted that the program allows companies that undertake in-house R&D to offset 50% of the qualifying capital expenditure, called investment tax allowance, against 70% of statutory income. In-house R&D is a promoted activity identified by the Ministry of Finance and Ministry of International Trade and Industry. The research undertaken should be in accordance with the needs of the country and benefits the Malaysian economy. The legal basis for the program relied on by the Applicants is sections 26E, 27E, and 29F of the Promotion of Investment Act, 1986. The program is enterprise specific as it is available to limited enterprises involved in R&D.

100. Submissions by Government of Malaysia/other interested parties

- a. An investment tax allowance (ITA) of 50% on the qualifying capital expenditure incurred within 10 years is granted as an incentive for in-house R&D. In-house R&D is one of the promoted activities determined by the Ministry of Finance and the Ministry of International Trade and Industry. ITA is offset against 70% of the statutory income of each year of assessment. The application is required to be submitted to the MIDA. Not all companies who applied and met all the eligibility criteria will be approved.
- b. The incentive under the program is in the nature of Investment Tax Allowance which is mutually exclusive with Program No. 5 – Pioneer Status. PMBTU did not apply for the program.

101. Examination by Authority

- a. The Authority notes that the program is governed by Sections 26E, 27E and 29F of the Promotion of Investment Act, 1986. Under this program, incentive is provided for in-house R&D activity as an Investment Tax Allowance of 50% of capital expenditure. Allowance can be offset against 70% of statutory income of each year of assessment. The allowance may be granted to any company participating or intending to participate in-house research activity in Malaysia.
- 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 engaged in research and development. The Authority has already determined that countervailing duty should be imposed against the subsidy program granting exemption from income tax. Therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program.

G.27. Program 27: Double Deduction for R&D

102. Submissions by the domestic industry

- a. The applicants submit that any company undertaking in-house research approved by the Minister of Finance, delegated to the Director General of Inland Revenue (DGIR), can claim double deduction of the expenses incurred. The allowance is limited to 50% of the qualifying capital expenditure which can be offset against 70% of statutory income. The program is enterprise specific as it is available to limited enterprises involved in R&D.
- b. The applicants have relied on the following legal basis for the program:
 - Section 34A of the Income Tax Act, 1967
 - Public Ruling No. 5/2004

103. Submissions by Government of Malaysia/other interested parties

- a. Under the program, revenue expenditure incurred by a person resident in Malaysia directly on research is eligible to claim double deduction in the same. The research undertaken must be approved by the Minister of Finance (delegated to the Director General of Inland Revenue). The company should also receive an approval letter from IRB.
- b. PMBTU did not incur any expense relevant to the program in the POI. PMBTU submitted that the legal basis provided in the petition is inaccurate and inherently conflicting. PMBTU did not avail, use, or benefit from the program during the POI.

104. Examination by Authority

- a. The Authority notes that program is administered by Section 34A Income Tax Act, 1967 and Public Ruling No. 5/2004. Revenue expenditure on research directly incurred by a person resident in Malaysia would be eligible for a claim for double deduction from net profit. The research activity in question must meet the prescribed criteria and definition and should be approved by the Minister of Finance.
- b. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The subsidy program is also specific because it is limited to enterprise engaged in research and development activity. The Authority has already determined that countervailing duty should be imposed against the subsidy program granting exemption from income tax. Therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program.

G.28. Program 28: Soft Loans for Small and Medium Enterprise

105. Submissions by the domestic industry

- a. The Petitioner submitted that under this program, loans are provided to SMEs and new start-up companies in project, fixed assets and working capital financing is given, to relocate their operations to legal industrial sites and improve their productivity through adoption of ICT in business management and operations. The loan amount can range between RM 50,000 and RM 3 million. SME incorporated under Companies Act, 1965 should have at least 60% equity by Malaysians, and with shareholding not exceeding 20% held by public listed companies. They should possess a valid premise license. As evidence of existence of the program, the

applicants have relied on SME Corporation of Malaysia.

106.Submissions by Government of Malaysia/other interested parties

a. Soft Loan for SMEs was launched to promote the development of SMEs by assisting existing and newly start up enterprises in project, fixed assets, and working capital financing. The scheme is funded by the Government of Malaysia via SME Corporation Malaysia to MIDF.

b. SMEs incorporated under the Malaysian Companies Act 2016 or Registration of Business Ordinance 1956 with at least 60% equity held by Malaysians or with shareholdings not exceeding 20% held by public-listed companies (only if applicable) as well as with business operations in manufacturing sector, manufacturing related sector and services sectors (excluding insurance and financial services) are eligible to apply for the program. The amount of assistance depends on the total cost of project ventured by the SME.

c. PMBTU did not apply to the program. PMBTU and its subsidiaries do not fall within the ambit of SME. PMBTU did not avail, use, or benefit from the program during the POI.

107.Examination by the Authority

a. The Authority notes that the program provides for loan to Small and Medium Enterprises. This program provides financing for existing as well as newly start-up enterprises for project, fixed assets and working capital requirement. The program is indirectly funded by the Government of Malaysia through the SME Corporation Malaysia to the Malaysia Industrial Development Finance (MIDF).

b. The program provides financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The amount of benefit is equal to the difference between the amount of payment to be made on loans granted pursuant to this subsidy program and the amount payable on any other comparable commercial loan. The program is also specific because it is limited to SMEs which meet the specified criteria. PMBTU has submitted that they are not eligible to avail the benefit under the program as it is not a SME. The Authority holds that the countervailing duty should be imposed against all exporters/producers for this subsidy program except for PMBTU.

G.29. Program 29: Investment Tax Allowance

108.Submissions by the domestic industry

a. The applicants submit that an incentive in the form of deduction from taxable income is granted under this program based on merits of certain case such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country. The program is enterprise specific since the authority approves the program on a case-by-case basis. The applicants have relied on section 127(3A) of the Income Tax Act, 1967 as the legal basis for the program.

- b. Program 6 and Program 29 are two separate programs that can be claimed separately by a recipient. Facts available should be applied as both GOM and PMBTU failed to provide any information on the program.

109. Submissions by Government of Malaysia/other interested parties

- a. The program is similar to Program No. 6. The program is mutually exclusive with Program No. 5 – Pioneer Status.

110. Examination by Authority

- a. The Authority notes that the program is administered by the Malaysian Investment Development Authority (MIDA) and the Inland Revenue Board Malaysia. Under the program, an Investment Tax Allowance (ITA) is provided on merits of certain case such as capital intensive, capable of generating significant linkages, import substitution, high value-added technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country. This allowance is further deducted from the taxable income of the company.

- b. The program provides a financial contribution in the form of revenue forgone that is otherwise due and a benefit is thereby conferred. The program is specific since it is applicable to those enterprises that incurred the qualifying expenditure. The information submitted by the sole responding producer/ exporter, PMBTU shows that they have not availed the benefit under the program. Since the Authority has already determined that countervailing duty should be imposed against the subsidy program granting exemption from income tax, therefore, the Authority holds that no additional countervailing duty should be imposed for this subsidy program.

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

H.1. Sales Tax exemption on Inputs

111. 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. Sales tax exemption was previously held countervailable by the Authority. Since aluminium hydroxide or alumina are inputs for the product under consideration, benefit is required to be countervailed. Sales tax exemption on other inputs shall also be examined. The exemption order does not provide a “generally applicable tax rate” as per Article 2.2 of the ASCM and hence, countervailable.

112. Submissions by Government of Malaysia/other interested parties

- a. The new subsidy program was held non-countervailable in the previous investigation on 'Wire Rods'. The DI has not provided additional justification on why the final finding should be reconsidered.
- b. Rate of 0% is not specific to a company/ entity. It is only for the product. There is no requirement under ASCM that all products should be taxed uniformly and the same is reflected in Article 2.2 of ASCM. The findings relied on by the DI refers to other sales tax exemption orders and not the one in question.

113. Examination by the Authority

- a. The Authority notes that Malaysian Government levies a sales tax at a rate of 10% under the Sales Tax (Rate of Tax) Order, 2018. However, this sales tax is exempted on aluminium hydroxide (alumina) through the Sales Tax (Goods Exempted from Tax) Order, 2018. It is noted that the program, is administered by the Royal Malaysian Custom Department.
- b. In the disclosure statement, the Authority had proposed the said scheme to be held as countervailable. However, after examining the post-disclosure comments, the Authority has held the scheme as non-countervailable for the subject investigation. The detailed examination by the Authority is mentioned in the relevant paragraph of the post-disclosure comments.

H.2. Natural Gas countervailable benefits through power consumed in production of the Product Under Consideration

114. Submissions by the domestic industry

- a. The Authority had previously held natural gas supply to electricity sector to be countervailable. SEB receives subsidized natural gas from PETRONAS with whom SEB has a 20 year long sale agreement. SEB, which provides electricity to PMBTU, also owns 3 power plants operating on gas. Hence, producer of subject goods in Malaysia is a beneficiary of subsidized natural gas. PETRONAS had reported revenue forgone due to gas pricing mechanism in FY2019. Hence, pass through of the benefit exists.
- 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.

115. Submissions by Government of Malaysia/other interested parties

- a. The new subsidy program was held non-countervailable in the previous investigation on 'Wire Rods'. The DI has not provided additional justification on why the final finding should be reconsidered.
- b. The Annual Report of PETRONAS does not show sale of subsidised natural gas to the Sarawak Region and only mentions about Peninsular Malaysia. SEB's main source for

electricity generation is hydro power (74%). The share of gas is merely 13%. The DI's reliance on previous findings on natural gas subsidies is incorrect as it only refers to provision of natural gas to industrial users. The Authority's recommendation in Clear Float Glass was not accepted by MOF as well and the one in Fibreboard is incorrect as there is no natural gas subsidy in Malaysia. No presumption of subsidisation can be made since no information was sought from PMBTU or GOM. Even if subsidy exists, pass through is wrongly presumed by the DI. The Appellate Body Report in US – Softwood Lumber IV is relied on.

116. Examination by the Authority

- a. The Authority notes that natural gas prices in Malaysia are regulated under the Gas Supply Act, 1993. The subsidy program allows regulated, more favourable rates of natural gas prices for industrial sector including the electricity sector. Subsidies received from the GOM allows the gas supplying companies namely, PETRONAS and Gas Malaysia Berhad (GMB) to provide natural gas within Malaysia at the regulated prices. This regulated natural gas is supplied to the electricity industry for the generation of electricity which enables them to supply electricity to the producers of the subject goods at subsidized rates.
- b. As per evidence provided by the Applicants, PETRONAS has reported significant revenue forgone as a result of supply of natural gas at regulated prices. The fact that SEB has a 20-year long sale agreement shows that the benefit is being passed on to SEB which is the electricity supplier to PMBTU. Authority also notes subsidy program of provision of electricity at less than adequate remuneration (Program No. 22) has been examined by the Authority. Therefore, the benefit received under the program is subsumed under Program No. 22. Therefore, the Authority holds that no additional countervailing duty should be imposed for this program.

H.3. Countervailable benefits received from affiliated Chinese raw material supplier

117. 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 PMBTU is met through imports from Sunstone.
- b. Sunstone Development Co. Ltd. has availed various subsidies provided by the Government of China PR. These subsidies enabled Sunstone to produce carbon anode at subsidized rate, benefit of which has flown to the PUC.

118. Submissions by Government of Malaysia/other interested parties

- a. The new subsidy program was held non-countervailable in the previous investigation on 'Wire Rods'. The DI has not provided additional justification on why the final finding should be reconsidered.

- b. The alleged subsidies are not provided by the government in the country producing and exporting the PUC. Even if subsidies by the Chinese government may be considered, there can be no presumption of subsidisation in favour of Sunstone when China PR is not a subject country. EU investigation on imports of 'glass fibre' is relied on. The DI has not even alleged a correlation or cooperation between China and Malaysia.

119. 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 Bintulu Sdn Bhd (“PMBTU”) (producer/exporter)

120. 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.

121. The Authority has verified the information provided by PMBTU and determined subsidy margin for Program Nos. 5, 8, 17 & 23 for which benefit was received or accrued during the POI. The Authority holds that the subsidy Program Nos. 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. The Authority further holds 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.

122. The table below provides name of the subsidy programs, and the corresponding subsidy margins.

PMBTU

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

Program No.	Name of the Program	Methodology	Subsidy Margin (%)	Subsidy Margin Range
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Program No. 5	Pioneer Status	Total amount of benefit was the amount of income tax saved during the POI. This amount of benefit was divided by total volume of company to arrive at total benefit per MT during the POI. This total benefit per MT during POI expressed as the percentage of CIF export price per MT is the subsidy margin for this program.	***	0-10%
Program No. 8	Accelerated Capital Allowance	Total amount of benefit was the amount of income tax saved during the POI multiplied by interest rate. This amount of benefit was divided by total volume of company to arrive at total benefit per MT during the POI. This total benefit per MT during POI expressed as the percentage of CIF export price per MT is the subsidy margin for this program.	***	0-10%
Program No. 11	Allowance for Industrial Building	Total amount of benefit is the amount of interest, as per market interest rates in Malaysia, that the company earned on the income tax saved during the POI. This amount of benefit was divided by total volume of company to arrive at total benefit per MT during the POI. This total benefit per MT during POI expressed as the percentage of CIF export price per MT is the subsidy margin for this program.	***	0-10%
Program No 17	Exemption from Import duty and sales tax on Machinery and Equipment	The exporter did not provide information for AUL period for this program. Therefore, the margin has been determined based on facts available.	***	0-10%
Program No. 22	Provision of Land at less than adequate remuneration	Waiver of Premium: Amount of benefit was the difference between the actual price/premium paid for leasehold industrial land and the price/premium payable for land without discounted premiums. The total amount of benefit was divided by leasehold period to arrive at total benefit during the POI.	***	0-10%

		<p>Lease rent at less than adequate remuneration: the amount of benefit was the difference between the actual lease rent paid during the POI as per questionnaire response and the prevailing rates of Industrial sector at Sarawak Region as per Malaysia Real estate report 2020.</p> <p>Total amount of benefit was divided by total Volume of company to arrive at total benefit per MT during the POI.</p> <p>This total benefit per MT during POI expressed as the percentage of CIF export price per MT is the subsidy margin for this program.</p>		
Program No. 22	Provision of Electricity at less than adequate remuneration	<p>Subsidy margin has been determined based on information provided in the questionnaire response regarding the electricity tariff paid and total electricity consumed during the POI.</p> <p>Total amount of benefit was the difference between the actual amount paid for purchase of electricity from SEB during the POI and the amount payable as per tariff rate prescribed/ published by SEB for industrial customers having demand upto 3MW, taking into consideration peak and off-peak prices. (https://www.sarawakenergy.com/customers/tariffs)</p> <p>This amount of benefit was divided by total volume of company to arrive at total benefit per MT during the POI.</p> <p>This total benefit per MT during POI expressed as the percentage of CIF export price per MT is the subsidy margin for this program.</p>	***	0-10%
Total			***	0-10%

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 in the quality of products/services offered	***	0-10%
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	Pioneer Status	Exemption from income tax	***	0-10%
Program No. 8	Accelerated Capital Allowance	Accelerated deduction of capital expenditure from taxable income	***	0-10%
Program No. 11	Allowance for Industrial Building	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%
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. 22	Provision of Land at less than adequate remuneration	Lease of state land at land rent at rates below market rate and refund/ waiver of land premium	***	0-10%
Program No. 22	Provision of Electricity at less than adequate remuneration	Purchase of electricity at tariff lower than market tariff rate from public body	***	10-20%
Total			***	10-20%

I. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

I.1. Submissions by the Domestic Industry

124. The following submissions were made by the domestic industry with regard to injury and causal link:

- a. The subsidized imports are causing material injury to the domestic industry as well as, materially retarding the performance of the domestic industry. The domestic industry has been unable to fully establish itself and suffered losses and extremely low returns due to subsidised subject imports.
- b. The demand for the subject goods increased till 2018-19 but declined in the POI(A) due to the slowdown in the automobile sector. However, the demand has increased in the POI(A) compared to the base year.
- c. The subject country is the largest source for imports of the subject goods and constitute almost a third of all imports of the subject goods into India. The subject imports increased in absolute terms till 2017-18, remained on similar levels in 2018-19 and declined in POI(A).
- d. The landed price of subsidized subject imports is below the cost of sales of domestic industry thereby imposing significant price pressure on the domestic industry. The subject imports are undercutting, depressing, and underselling the prices of the domestic industry. In 2018-19, the domestic industry increased the cost and selling price, thereby reducing losses when the price undercutting was the highest. During the period of investigation, the cost, landed price of imports and selling price of the domestic industry declined, as such the losses increased when the price undercutting reduced.
- e. Even if the imports claimed by PMBTU is considered, it will show that, the volume of imports has significantly increased in absolute terms, import price declined in the POI compared to the previous year and is below the cost of sales over the injury period, and injury margin is still significant. Landed price of imports from Malaysia is significantly lower than prices from other countries and is not comparable.
- f. The domestic sales price is comparable to the import price due to price depression, as evidenced by the negative profitability of the domestic industry over the injury and investigation period. The prices provided by the Respondents undercut the prices of the product produced by the domestic industry.
- g. The production, domestic sales, and market share of the domestic industry have increased over the injury period as a result of capacity increase. Capacity utilization has been low throughout the injury period and significantly declined in the POI compared to the previous year.
- h. The domestic industry has been suffering significant financial losses, cash losses, and low return on capital employed throughout the injury period and the POI. Inventories have increased over the injury period. The Domestic industry is offering sub-optimal prices due to the low-priced imports.
- i. Employment levels, wages paid, and productivity of the domestic industry increased over the injury period.
- j. The growth has been negative in almost all injury parameters. The applicants' ability to raise capital has weakened.

- k. The data in the old annexures cannot be compared to the new annexures, as the same have been revised on the direction of the Designated Authority.
- l. Rule 19(1)(a)(ii) does not require the subject imports to be the sole cause of injury but one of the causes of injury to the domestic industry. The subsidised imports have aggravated the injury suffered by the domestic industry in the wake of declining demand for the subject goods in India. Third country imports are insignificant or priced higher and does not cause injury. None of the listed known factors have caused injury to the domestic industry.
- m. The subject imports have remained significant throughout the injury period at subsidized prices.
- n. The prices of the domestic industry are dependent on the cost of inputs and price of foreign producers. Thus, if imports are occurring at low prices, the only option for the domestic industry is to offer sub-optimal prices. The landed price of the subsidized subject imports has been below the cost of sales of the domestic industry throughout the injury period and the POI (A). The same has imposed significant price pressure on the domestic industry.
- o. The price depression because of the subsidized imports has caused significant erosion in profitability of the domestic industry. The domestic industry is facing financial losses, cash losses and insignificant returns on capital employed.
- p. The growth of the domestic industry became negative in terms of a number of economic parameters.
- q. The measures by the Government of India to boost automobile sector can provide a limited relief to the domestic industry and imposition of CVD is essential to completely address the injury suffered.
- r. The subsidies received have been used by the Malaysian producer to reduce their import price.
- s. Regarding the claims that interest needs to be adjusted while calculating cost and profits by the interested party, they have failed to disclose which CESTAT case has been relied upon for the same.

I.2. Submissions by the other interested parties

125. The following submissions were made by the other interested parties with regard to injury and causal link:

- a. Law does not allow inclusion of any other article other than like article even if within "narrowest group/range of products". No reasoning provided on how the same was identified and found suitable.
- b. The DI did not claim positive injury in old annexures and introduced the same in updated annexures. The post-initiation submission of injury margin calculation is incomplete as the DI has redacted range of NIP.
- c. Since PMBTU is the sole producer of the PUC in Malaysia, their export is representative of import from Malaysia. But the data provided by the DI shows exaggerated figures. The same is, therefore, unreliable.
- d. There is no significant increase in the import of the PUC from the subject country in absolute or relative terms; to the contrary the imports have fallen down significantly

- during the POI. If actual import volumes of the PUC are considered, there is no volume effect or price effect due to the subject imports.
- e. Due to the inclusion of SFA imports in the import data, the import price in the Petition is also lower. The Respondent's own analysis shows that there is a difference of 3-10% in import price over the injury period and the POI.
 - f. Even if the import volume provided by DI is relied on, there is no significant increase in the subject imports in absolute or relative terms. On the other hand, import volume has significantly fallen in the POI. This led to decline in market share of the subject imports and increase in that of the DI.
 - g. The average import price provided in the petition is unrepresentative as the trade done by the respondent during the POI was through a trader in Singapore which indicates that the average import price from the subject country is higher than being represented in the petition.
 - h. The CIF price of imports from Malaysia increased in the POI as compared to the base year and 2017-18. If the information in the petition is relied on, there is no consistent decline in the import price from the subject country. The Authority should analyze trend over the injury period and not just in the POI compared to the preceding year.
 - i. There is no price suppression as the DI is able to increase and decrease its selling price commensurately with increase and decrease in the cost of sales. estimated domestic sales price of the DI is comparable to the import price from Malaysia. When export price of PMBTU is considered, there will be no price undercutting since certain share of exports is made through a trader in Singapore. There is no price undercutting due to import from the subject country if price of PMBTU is considered.
 - j. If claims of subsidization of subject imports is true, then there is no reason for fall in the imports. The claim of subsidy and injury do not show any inter linkage. As imposition of CVD would give undue market advantage to the DI which is not the purpose of CVD.
 - k. Market share of the PUC from Malaysia fell while domestic sales of DI increased. The import from the subject country declined during the POI because the DI has increased its capacity and production meeting the demand of the Indian market.
 - l. The ongoing trend shows that due to the capacity additions, capacity utilization and production will increase gradually and the DI will replace imports. Positive trend is also visible in case of profit earned by the domestic industry during the POI as the PBIT of domestic industry has improved substantially during the POI. There is also substantial increase in production, capacity, domestic sales and capacity utilization.
 - m. The decline in PBT or overall profit is due to sudden and substantial increase in interest/finance cost and depreciation cost of the DI as a result of sudden and substantial increase in capacity which cannot be attributed to imports.
 - n. Comparison of profit as per old petition as per proposed POI and new petition as per updated POI shows the DI's situation is improving rapidly. PBIT of the DI improved substantially.
 - o. The DI registered its lowest losses in 2018-19 where price undercutting was the highest which shows that the NSR and profits of the DI did not move in tandem with the landed price of imports and the imports did not create any adverse effects on the price decisions and profits of the DI.
 - p. The DI has arbitrarily identified the PUC imports from Malaysia when other countries, i.e., Qatar were also exporting the PUC to India in similar volumes and price. Taking

actual import volumes and rates, countries like UAE, Bahrain and Russia are also comparable.

- q. The main raw material for the production on the PUC is Alumina, whose price has gone down during the POI still the DI was not able to take advantage of such price fall due to increase in finance and depreciation cost. The finding in safeguard investigation on Cold Rolled Flat Products of Stainless Steel of 400 series and CVD investigation on Viscose Filament Yarn from China PR are relied on. The interest needs to be adjusted while calculating cost and profits as found by the CESTAT in the past.
- r. Injury if any caused to the DI is because of slump of automobile industry during the POI and cannot be attributed to imports. The same is only temporary as the Government of India has adopted measures to boost the sector.

I.3. Examination by the Authority

126. The Authority has taken note of various submissions of the domestic industry and the other interested parties and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.

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

i. Assessment of Demand/ apparent consumption

127. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product under consideration in India is defined as the sum of the domestic industry and imports from all sources. The demand so assessed is given in the table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI (A)
Sales of Domestic Industry	MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>319</i>	<i>484</i>	<i>802</i>
Imports from Subject Country	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>141</i>	<i>227</i>	<i>179</i>
Imports from other countries	MT	86,269	1,09,652	1,03,637	67,554
Total Demand	MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>140</i>	<i>153</i>	<i>131</i>

128. It is seen that the demand in India for the subject goods has increased over the injury period till 2018-19 declined thereafter in the POI(A). However, the demand has increased in the POI(A) compared to the base year.

I.3.2. Volume effect of the subject imports on domestic industry

129. With regard to volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India. For the purpose of the injury analysis, the Authority has relied on the volume and value of export sales of the subject goods reported by PMBTU to India. The import volume of the subject goods from the subject country and share of the subsidized import during the injury investigation period are as follows:

Particulars	UOM	2016-17	2017-18	2018-19	POI (A)
Imports from Subject Country	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>141</i>	<i>227</i>	<i>179</i>
Imports from other countries	MT	86,269	1,09,652	1,03,637	67,554
Total Imports	MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>129</i>	<i>134</i>	<i>91</i>
Subject imports in relation to					
Total imports	%	12.62	13.81	21.46	24.83
Indian Production	%	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>44</i>	<i>30</i>	<i>18</i>
Indian Demand	%	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>101</i>	<i>148</i>	<i>137</i>

130. It is seen that:

- a. The subject imports increased over the injury period and declined in the POI(A). However, the imports have increased in the POI(A) compared to the base year.
- b. The subject country's share in total imports of the subject goods into India have also increased over the injury period and POI(A). The subject country is the largest source for imports of the subject goods into India. During the POI, the subject imports account for almost 25% of the total imports into India.
- c. The subject imports have declined in relation to production in India.
- d. The subject imports have increased in relation to demand in India in the POI(A) compared to the base year.

I.3.3. Price effect of subject imports on the domestic industry

131. With regard to the effect of subsidized imports on prices, it is required to consider whether there has been a significant price undercutting by the alleged subsidized imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of subsidized imports from the subject country has been examined with reference to price undercutting, price suppression and price depression, if any. For the purpose of this analysis,

the cost of sales, the net selling price, and the non-injurious price of the domestic industry have been compared with landed price of imports of the subject goods from the subject country.

i. Price undercutting

132. For the purpose of price undercutting analysis, the net selling price of the domestic industry has been compared with the landed value of imports from the subject country. While computing the net selling price of the domestic industry, all taxes, rebates, discounts, and commissions have been deducted and sales realization at ex-works level has been determined for comparison with the landed value of the subsidized imports. The details of price undercutting are given in the table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI(A)
Landed Price from Subject Country	₹/MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>110</i>	<i>127</i>	<i>112</i>
Net Selling Price	₹/MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>114</i>	<i>122</i>	<i>104</i>
Price undercutting	₹/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	<i>Range</i>	0-10	0-10	Negative	Negative

133. It is noted that the subject goods are entering the market at price below the selling price of the domestic industry in 2016-17 and 2017-18. However, the imports are not undercutting the prices of the domestic industry in the 2018-19 and in the POI(A).

ii. Price underselling

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

Particulars	UOM	Malaysia
Non-Injury Price	₹/MT	***
Landed Value	₹/MT	***
Price Underselling	₹/MT	***
Price Underselling	%	***
Price Underselling	% Range	0-10

135. It is noted that the price underselling is positive during the POI.

iii. Price suppression/depression

136. In order to determine whether the subsidized imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increase which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period were compared as below:

Particulars	UOM	2016-17	2017-18	2018-19	POI(A)
Cost of Sales	₹/MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>107</i>	<i>123</i>	<i>106</i>
Selling Price	₹/MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>114</i>	<i>122</i>	<i>104</i>
Landed Price	₹/MT	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>110</i>	<i>127</i>	<i>112</i>

137. It is seen that the landed price of the subject imports increased over the injury period till 2018-19 and declined significantly in the POI. The Authority notes that the landed price of imports is below the cost of sales of the domestic industry over the injury period and the POI. Similar to the landed price of the subject imports, both cost of sales and selling price of the domestic industry increased till 2018-19 and declined in the POI. However, the selling price declined more than the decline in cost of sales in the POI as compared to the previous year. The domestic industry has not been able to proportionately increase their selling price in the POI compared to the base year with the increase in cost of sales. Hence, the imports from subject country are suppressing and depressing the price of the domestic industry.

I.3.4. Economic parameters of the domestic industry

138. Annexure – I of the Anti-subsidy Rules requires that the determination of injury shall involve an objective examination of the consequent impact of subsidized imports on domestic producers of like article in India. 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.
139. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

i. Production, capacity, capacity utilization and sales

140. The production, capacity, capacity utilization and domestic sales of the domestic industry over the injury period were as below:

Particulars	UOM	2016-17	2017-18	2018-19	POI	POI(A)
Installed Capacity	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>200</i>	<i>515</i>	<i>1,388</i>	<i>925</i>
Production	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>319</i>	<i>768</i>	<i>1,481</i>	<i>988</i>
Capacity Utilisation	%	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>159</i>	<i>165</i>	<i>119</i>	<i>119</i>
Domestic Sales	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>319</i>	<i>484</i>	<i>1,204</i>	<i>802</i>

141. The Authority notes that:

- a. The capacity of domestic industry has increased over the injury period and the period of investigation.
- b. As a result of the capacity expansions, the production and sales of the domestic industry have increased over the injury period and the POI(A).
- c. The capacity utilization has increased till 2018-19 and declined in the POI(A). However, the level of capacity utilization of the domestic industry has remained low throughout the injury period.

ii. Market share

142. The market share of the domestic industry and that of imports was as shown in table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI(A)
Domestic Industry	%	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>229</i>	<i>316</i>	<i>614</i>
Subject Country - Malaysia	%	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>101</i>	<i>148</i>	<i>137</i>
Other Countries	%	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>91</i>	<i>78</i>	<i>60</i>

143. It is seen that the market share of the domestic industry as well as the subject imports have increased over the injury period and the POI (A).

iii. Profitability, cash profits, and return on capital employed

144. The profitability, cash profits and return on capital employed of the domestic industry over the injury period is given in the table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI	POI(A)
Cost of Sales	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>107</i>	<i>123</i>	<i>106</i>	<i>106</i>
Selling Price	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>114</i>	<i>122</i>	<i>104</i>	<i>104</i>
Profit / Loss	₹/MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>-100</i>	<i>268</i>	<i>-183</i>	<i>-216</i>	<i>-216</i>
Profit / Loss	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>-100</i>	<i>856</i>	<i>-887</i>	<i>-2,596</i>	<i>-1,731</i>
Cash Profit	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>510</i>	<i>160</i>	<i>71</i>	<i>47</i>
ROCE	%	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>983</i>	<i>227</i>	<i>536</i>	<i>536</i>

145. The Authority notes that:

- The domestic industry suffered losses in the base year. The domestic industry thereafter earned profits in 2017-18 but the profitability declined in 2018-19 to negative levels and further declined during period of investigation. The domestic industry is suffering huge losses during the period of investigation.
- The cash profits of the domestic industry increased in 2017-18 but declined in 2018-19 and further in the POI.
- The domestic industry has been earning low returns on capital employed over the injury period and the POI (A).

iv. Inventories

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

Particulars	UOM	2016-17	2017-18	2018-19	POI	POI(A)
Opening Inventory	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>174</i>	<i>502</i>	<i>1,374</i>	<i>1,374</i>
Closing Inventory	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>125</i>	<i>674</i>	<i>842</i>	<i>842</i>
Average Inventory	MT	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>147</i>	<i>595</i>	<i>1,084</i>	<i>1,084</i>

147. It is seen that the average inventory with the domestic industry indicates accumulation of inventories.

v. Employment, productivity and wages

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

Particulars	UOM	2016-17	2017-18	2018-19	POI	POI(A)
No of Employees	No.	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>208</i>	<i>452</i>	<i>468</i>	<i>468</i>
Productivity per day	MT/Day	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>319</i>	<i>768</i>	<i>988</i>	<i>988</i>
Salary & Wages	₹ Lacs	***	***	***	***	***
<i>Trend</i>	<i>Index</i>	<i>100</i>	<i>347</i>	<i>747</i>	<i>1,347</i>	<i>898</i>

149. It is seen that number of employees, productivity per day, and wages of the domestic industry has increased over the injury period and the POI(A). The domestic industry has submitted that these parameters are not reflective of the impact of subsidized imports on the domestic industry.

vi. Growth

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

Particulars	UOM	2016-17	2017-18	2018-19	POI(A)
Production	Y/Y %	-	***	***	***
Domestic Sales Volume	Y/Y %	-	***	***	***
Profit ₹ Lacs	Y/Y %	-	***	***	***
Cash Profit ₹ Lacs	Y/Y %	-	***	***	***
Return on Capital Employed	Y/Y %	-	***	***	***

151. It is noted that growth has been negative in terms of major macro-economic parameters like profits and cash profits in the POI(A).

vii. Ability to raise capital investment.

152. It is noted that the domestic industry has recorded negative growth in profitability parameters. The domestic industry is incurring losses.

viii. Factors affecting prices

153. The Authority notes that the landed price of imports has been below cost of sales of the domestic industry and declined significantly in the POI compared to the previous year. As a result, the selling price has not aligned itself with the change in cost of sales.

I.3.5. Overall assessment of injury

154. The examination of the imports of the product under consideration and performance of the domestic industry clearly shows that:

- i. The volume of imports from the subject country has increased in both absolute terms as well as in relation to consumption in India.
- ii. The imports are priced below the cost of sales of the domestic industry leading to price suppression and depression.
- iii. The production and sales of the domestic industry has increased as a result of their capacity additions. However, the capacity utilization of the domestic industry has remained low throughout the injury period and POI.
- iv. The average level of inventories of the domestic industry has increased over the injury period.
- v. The domestic industry has incurred losses in the period of investigation. The profitability is in negative levels. The cash losses of the domestic industry have also declined in the POI(A). The ROCE has remained low throughout the injury period and POI(A).
- vi. While production and sales have shown growth, the profitability parameters have shown negative growth.
- vii. The imports have impacted the selling price of the domestic industry in the market.

155. In view of the foregoing, the Authority concludes that the domestic industry has suffered material injury.

I.3.6. Non-attribution analysis and causal link

156. As per the Anti-Subsidy Rules, the Authority, inter alia, is required to examine any known factors other than the subsidized imports which at the time are injuring the domestic industry, so that injury caused by these other factors may not be attributed to the subsidized imports. Factors which may be relevant in this respect include, inter alia, volume and prices of imports

not sold at subsidized prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than subsidized imports could have contributed to the injury to the domestic industry.

a. Volume and prices of imports from third countries

157. The Authority notes that the volume of imports of the product under consideration from other countries are either (i) at de-minimis levels, or (ii) have higher landed price.

b. Contraction of demand

158. The demand for the product under consideration has increased during the POI as compared to the base year.

c. Change in the pattern of consumption

159. There is no material change in the pattern of consumption of the product under consideration which could have caused injury to the domestic industry.

d. Trade restrictive practices

160. The Authority notes that there is no known trade restrictive practice which could have caused injury to the domestic industry.

e. Change in technology

161. The Authority notes that technology for production of the subject goods has not undergone a change which could have caused injury to the domestic industry.

f. Productivity

162. The Authority notes that the productivity of the domestic industry has increased over the injury period and the POI. Therefore, the domestic industry has not suffered injury on this account.

g. Export performance of the domestic industry

163. The Authority has considered the data for domestic operations only. Any possible deterioration in the export performance of the domestic industry, therefore, cannot be a cause of injury to the domestic industry.

h. Performance of other products

164. The Authority has only considered data relating to the performance of the product under consideration. Therefore, performance of other products produced and sold are not a possible cause of injury to the domestic industry.

I.3.7. Factors establishing causal link

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

- t. Subsidized imports from subject country have increased in absolute terms and in relation to production and consumption in India.
- u. The subsidized imports are causing price suppression/depression on the prices of the domestic industry
- v. The capacity utilization of the domestic industry has remained low throughout the injury period and POI
- w. There has been deterioration in profits, return on capital employed and cash profits during the POI(A).

I.3.8. MAGNITUDE OF INJURY MARGIN

166. The Authority has determined non-injurious price for the domestic industry on the basis of the verified information/ data relating to the cost of production for the period of investigation. The non-injurious price of the domestic industry has been worked out and it has been compared with the landed price from the cooperating producer/ exporter from the subject country for calculating injury margin. The injury margin for the non-cooperative exporters has been determined based on the facts available with the Authority.

SN	Name of producer	Non-Injurious Price	Landed Price	Injury Margin	Injury Margin	Injury Margin
		(₹/MT)	(₹/MT)	(₹/MT)	(%)	(Range in %)
1.	Press Metal Bintulu Sdn. Bhd.	***	***	***	***	0-10
2.	Non-cooperative/ residual exporters	***	1,39,058	***	***	10-20

J. POST DISCLOSURE COMMENTS

167. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions, which have already been examined and addressed by the Authority.

J.1 Submissions by the other interested parties

168. The other interested parties have submitted the following post disclosure:

- i. The Authority has correctly noted that volume of exports by PMBTU should be considered for determining total imports of the PUC into India.
- ii. The Authority has observed that PMBTU has not obtained benefit under subsidy programs 1, 2, 3, 4, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, additional subsidy program concerning provision of natural gas and additional subsidy program concerning raw material from China PR.
- iii. The Authority has incorrectly observed that PMBTU has received countervailable benefit for subsidy programs 5, 8, 11, 17 & 22.
- iv. Program No. 11 – Industrial Building Allowance (IBA) does not provide deduction of depreciation over and above normal depreciation. IBA program provides for straight line depreciation method. Higher rate of initial allowance in the first year does not mean that depreciation is not as per straight line method. Entire deduction towards IBA during the POI period is not a benefit as it cannot be presumed that the entire deduction was additional allowance in excess of expenditure. IBA does not provide for deduction in case of expenditure towards specific types of buildings but towards expenditure for all industrial buildings to all enterprise.
 - a. The Authority has already analysed IBA program in previous anti-subsidy investigation concerning imports of Aluminum Wire/Wire Rods above 7mm dia originating in or exported from Malaysia wherein it held that IBA is not a countervailable subsidy program.
- v. Program No. 17 – Exemption from Import Duty and Sales Tax on Machinery and Equipment: The Authority has already analysed this program in previous investigation concerning imports of Aluminum Wire/Wire Rods above 7mm dia originating in or exported from Malaysia wherein it held that PMBTU has not availed any benefit under this program during the AUL period. This factual finding cannot be changed in the present investigation.
- vi. Questionnaire issued by the Authority did not request information for AUL period for Program No. 17. PMBTU voluntarily submitted list of imported machinery and sample documents for the years 2019 and 2020 to support its claim that it has not received any benefit during the POI or prior to that. No deficiency questionnaire was issued and no further clarification/information/documents were sought by the Authority from PMBTU during the course of the investigation.
- vii. Existence of benefit can be shown through positive evidence. It is an unreasonable burden on PMBTU to show absence of benefit through positive evidence.
- viii. PMBTU is providing additional list of imported machinery and additional samples showing that import of machinery before 2019 also was not exempted from import duty.
- ix. Program No. 22 – Provision of Land and Electricity at LTAR: the Authority had held in previous investigation concerning imports of Aluminum Wire/Wire Rods above 7mm dia originating in or exported from Malaysia that only waiver of land premium amounts to financial contribution. The Authority cannot deviate in this investigation and hold that additionally levy of rent at LTAR also amounts to financial contribution.
- x. The Authority has not disclosed which lease rent has been used as benchmark; the time period for which such benchmark lease rent was applicable in Malaysia; and the

appropriateness of such lease rent for the purpose of benchmark determination in light of CVD rules concerning determination of adequacy of remuneration in light of prevailing market conditions.

- xi. Land lease was entered into by PMBTU in the year 2010 for a period of 60 years. Therefore, simple comparison cannot be made with prevailing lease rent in 2020 with annual lease rent during the POI applicable for PMBTU as per 2010 land lease agreement without further information regarding conditions attached to such annual lease rent.
- xii. Electricity benchmark tariff used in this investigation is from Malaysia Energy Statistics Handbook 2021 which is at variance with electricity benchmark used in previous investigation concerning imports of Aluminum Wire/Wire Rods above 7mm dia originating in or exported from Malaysia. No reason has been provided by the Authority for such a deviation.
- xiii. Authority has not ensured comparability while adopting the tariff rate published by SEB for Industry in Malaysia Energy Statistics Handbook 2021 because PMBTU uses electricity during off-peak hours as well and therefore off-peak electricity tariff rates should be taken into account as well while determining benchmark.
- xiv. Comparable electricity benchmark rate should also account for the fact that PMBTU is a bulk purchaser of electricity as opposed to retail customers. CVD Rules specifically provides for adjustment of benchmark on the ground of terms of sale such as bulk purchase. Thus, more closely resembling benchmark is the “Tariff I3- Industrial Peak/Off-Peak Demand” category, (who’s peak and off-peak tariff averages to 18.4 Sen/KWh) published on SEB website within the Industrial Pricing and Tariffs section. Adequate remuneration should normally be determined in the light of prevailing market conditions on the domestic market of the exporting country in accordance with Annexure IV (B)(d)(i) of the CVD Rules.
- xv. Expense incurred by PMBTU for last mile connection should be deducted from benefit calculation. The Authority had held in previous investigation concerning imports of Aluminum Wire/Wire Rods above 7mm dia originating in or exported from Malaysia that expenditure incurred by PMBTU pursuant to PPA is to be deducted while calculating the amount of benefit during the POI.
- xvi. Cost incurred for last mile connection is a compulsory payment to receive subsidy. Last mile connection expenditure is part of negotiated tariff under PPA and not a separate expenditure incurred by PMBTU outside the PPA terms and conditions.
- xvii. SEB sells electricity as a profitable business venture. The Authority should compare the cost information received from SEB and compare it with average electricity tariff charged by SEB from PMBTU under PPA to conclude that SEB sells electricity at a higher than cost price.
- xviii. Sustainability Report 2018 shows that 70% of SEB sales are to bulk purchasers of electricity, like PMBTU. Majority of SEB profits are owing to prices paid by bulk customers. If SEB were to sell to bulk customers like PMBTU at non-remunerative prices, it would not have earned profits.
- xix. Additional Subsidy Program No.1 – Sales Tax Exemption on Inputs: The Authority has held in previous investigation concerning imports of *Aluminium Wire/Wire Rods above 7 mm dia originating in or exported from Malaysia* 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.

- xx. Rate of sales tax on products is an indirect tax on product decided by the Government of Malaysia and is not specific to any company/entity. There is a list of products subject to sales and tax and there is a list of products not subject to sales tax. There is no requirement under the SCM Agreement that indirect tax rates should be uniform on all products. It is a sovereign right of Government to fix tax rates on each product as per Article 2.2 of the SCM Agreement. In this regard, it is noted that Government of India also fixes the effective rate of basic customs duty vide exemption notification and this rate is applicable to any person who is importing those goods instead of tariff rate mentioned in First Schedule of Customs Tariff. However, this is not considered as countervailable subsidy program by other countries.
- xxi. The Authority has provided confidential landed value information for PMBTU as:
 - i. “2. Rs. *****/- as per Format-D of the EQR filed by PMBTU.”
- xxii. The landed value adopted by the Authority is incorrect because:
- xxiii. Out of the total exports by PMBTU during the POI, PMBTU has sold *** MT (approximately **% of total exports by PMBTU) of the PUC to India through trader Sumitomo Corporation Asia & Oceania Pte. Ltd. (“SCAO”). Export price to India reported in Format D shows the price at which PMBTU has sold *** MT to SCAO. Such price reported in Format D of PMBTU for *** MT quantity is not landed value for goods imported into India. The Authority has incorrectly considered the sale price of PMBTU to SCAO as the landed value for *** MT exported to India through SCAO. Export price of SCAO to India should be considered for determining landed value of *** MT because such price is the price actually paid by the Indian importer for the PUC.
- xxiv. Also, as per questionnaire format, value of exports to India reported in Format D is the export price recorded in the books of producer/exporter. Terms of sales by PMBTU is FOB for several export transactions and value reported in Format D for such export transactions will not include costs of transportation to the place of importation, insurance, loading, unloading and handling charges etc. In accordance with Section 14 of the Customs Act 1962 read with Rule 10(2) of the Customs Valuation (Determination of value of Imported goods) Rules 2007, landed value or assessable value is the price actually paid for goods imported into India, which includes commissions and brokerage, costs of transportation to the place of importation, insurance, loading, unloading and handling charges etc. Appropriate adjustment regarding insurance and freight cost should be done to arrive at CIF price for such export transactions.
- xxv. The actual volume of imports into India of the PUC is much lower during the injury period as compared to import volume information submitted by the domestic industry. Import price per MT is substantially higher as per the correct import volume of the PUC determined by the Authority. If this actual import data was known at the time of initiation, no investigation would have been initiated.
- xxvi. The domestic industry is not suffering any injury because performance of domestic industry has improved. Capacity of domestic industry has increased by 825% over the injury period.

Production of domestic industry registered a staggering improvement of 888% during the injury period. Capacity utilisation of the domestic industry increased by 65% in POI (A) as compared to the base year. Domestic sales of domestic industry also increased by 1,104% in POI (A) as compared to base year.

- xxvii. Market share of domestic industry increased by 534% in POI(A) as compared to base year.
- xxviii. Losses incurred by the domestic industry have no correlation to the subject imports from Malaysia. Price undercutting due to subject imports from Malaysia is negative during the POI. Moreover, when subject imports were low in the base year, domestic industry was still incurring substantial losses.
- xxix. Non-cash expenses such as depreciation have increased year on year and by 726 points leading to losses of domestic industry. Similarly, interest cost of the domestic industry has increased year on year and by 883 points in the POI(A) as compared to the base year. Substantial increase in capacity has led to significant increase in these expenses.
- xxx. Imports from other countries put together are more than two times the imports from Malaysia. For example, imports from Qatar are higher in quantity and are in lower prices than imports from Malaysia. For appropriate determination of material injury, imports from other countries cannot be ignored.
- xxxi. According to Article 15.5 of the ASCM, countervailing measures should be imposed only when the subsidised imports have a causal link to the injury suffered by the domestic industry. GOM is not clear on the basis of the examination made by the Authority for the remaining alleged programmes as countervailable and is of the view that the proposed subsidies' margins on these alleged programmes would be inconsistent with Article 15.5 of the WTO SCM as there would be no causal link between the alleged subsidised imports of the product under consideration and the injury suffered by the Petitioner has been established by the Authority.
- xxxii. The findings made by the Authority does not take into account or reflect the submissions/evidence made by GOM or cooperating producer.
- xxxiii. The GOM and cooperating producer was not given ample time to reply to the disclosure statement. GOM also had to file comments to disclosure statement issued in another CVD investigation on the same day. The Appellate Body report in China – GOES requires the need to ensure interested parties have the ability to defend their interests.
- xxxiv. The findings with regard to specificity of programs are not clear and not in line with Article 1.1 and 1.2 of ASCM. Program No. 5 – Pioneer Status is not specific to any enterprises as it is available to a wide range of companies, located in any state in Malaysia, and covers all sectors. Program No. 8 – ACA is available to all companies and Inland Revenue Board (IRB), Malaysia applies objective criteria. This submission was not considered by DGTR. Since Program No. 12 – APM and this program are similar, they should be given similar treatment and found non-countervailable. The finding on Program No. 11 – IBA is inconsistent with finding in 'Aluminium wire rods' and 'continuous cast copper wire rods'. The program was removed from the list of alleged programs in other investigations.
- xxxv. The finding of DGTR on Program No. 22 – Provision for electricity at LTAR conflicts with the submission by GOM and PMBTU that the PPA is an arm's length commercially negotiated agreement. Since industrial customers with loads greater than 5 MW are eligible to negotiate a long-term pricing rate, the program should not be deemed a subsidy. DGTR

also failed to consider GOM's post-verification submission that SEB is profitable. PPA is signed at a commercial remunerative rate and no subsidy element exist. SEB does not provide any subsidy to its customers as provided in its annual and sustainability reports. PPA rates are significantly lower than published tariff rates since PPA customers do not obtain electricity from SEB's electricity distribution networks hence the cost of production of electricity is lower, they have consumption commitments and are purchased in bulk.

- xxxvi. In Program No. 22 – provision of land at LTAR, the jurisdiction over land falls with Sarawak. The discount on land premium received by PMBTU are as per objective conditions by LSDS. The discount is available to all lessees of industrial land that meet the objective criteria.
- xxxvii. There is no clarification or evidence to substantiate causal link between subsidised imports and injury suffered by the petitioner.
- xxxviii. The detailed subsidy calculation has not been provided.
- xxxix. It has been contended by Endurance that A356.2 Alloy, which it has been importing, is very Low Iron Content Alloy and its availability in India is poor. Imported product meets the requirement of users of such iron content (Fe) requirements of less than 0.10%. This aspect is not refuted by the petitioner. In view of the same, A356.2 Alloy with less than 0.10% iron content (Fe) must be excluded from the scope of the PUC as the same is not adequately produced and sold by the domestic industry and such imports ought not to have caused any injury to the DI.
- xl. Disclosure statement shows that subject import did not create any volume injury and the market share of the DI was robust. While the demand declined from 149 points in the immediate previous year to 127 points in the POI, sales of the domestic industry increased from 484 point to 802 points and imports declined from 227 points to 177 points in the same period. Thus, the sales of DI were not impacted at all even when the demand declined and such volume situation rules out even chances of injury on account of subject imports as against the allegations.
- xli. The disclosure statement shows negative price undercutting in the POI which means the imports were made at a price higher than the selling price of the DI. The DI claims losses thereafter during the POI at PBT level. Interestingly, the cash profit and ROCE has been positive during the entire injury period. This signifies the fact that the cause of losses at PBT level claimed by the DI is not landed price of imports but higher and unjustified cost of the DI. A price higher than the NSR of the DI ought not to have caused any injury to the DI, until it is shown otherwise.
- xlii. In any case, ROCE of the DI moved from 100 points in the base year to 536 points in the POI which is a mammoth growth in return and claims of injury has no meaning in view of such fabulous figures of growth in ROCE. No CVD is warranted when the DI has registered such growth in ROCE and the claims of injury itself is disputable in view of such numbers of ROCE.
- xliii. The petitioners failed to establish beyond doubt any case of injury on account of alleged subsidized imports of the subject goods from Malaysia.
- xliv. There are overwhelming facts which shows the alleged injury could be on account of other reasons such as high interest cost evidencing absolute breach of causal link in this matter.

J.2 Submissions by the domestic industry

169. The domestic industry has submitted the following post disclosure:

- i. The PUC should include “Aluminum Primary Foundry Alloy Ingot in different forms” in its description.
- ii. The NCV of the response filed by PMBTU does not meet the requirements and obligations under law.
- iii. The volume of imports should be seen having regard to existence of the industry in Malaysia and manner in which new ones are expected to grow.
- iv. Normation of cost on salary & wages and depreciation is inappropriate since they are fixed costs for the company and not the PUC. The Authority is requested to reconsider the nature of these expenses in determining NIP.
- v. Program No. 12 – The program does not provide a normal deduction of depreciation or follow a straight-line method. The questionnaire response of PMBTU refers to the benefit under the program as a tax depreciation as opposed to normal accounting depreciation. Following Annexure IV of the CVD Rules, entire amount claimed by PMBTU under the program as initial allowance amounts as benefit as per CVD Rules. The programs disproportionately benefit those industries having high capital expenditure like the aluminum industry. Hence, the program is specific as per Article 2.1(c) of the ASCM. The program was previously held countervailable by the Authority following the same reasoning in “Fiberboard” investigation. The Authority should, hence, reverse the finding on this program and quantify margins for PMBTU.
- vi. Subsidy on carbon anode received from Government of China PR required to be analyzed and quantified. The domestic industry had provided evidence on legal relationship between Press Metal and the raw material supplier in China, the information on raw material procurement, and the subsidy and quantum of subsidy received by them. The Authority is requested to consider the evidence, suppression of fact by the exporters, and reconsider the analysis.
- vii. The Authority should quantify subsidy margin for Program Nos. 15, 25, and 28 based on facts available. In the absence of other information, the Authority may rely on margins quantified for these programs in the previous investigation on “Continuous Cast Copper Wire Rods” since the subject country and the industry are the same and the program has not undergone any material alterations.
- viii. The appropriate denominator for quantifying the subsidy per unit for Program Nos. 5 and 8 would be turnover (value) of the company and not volume. Since the benefit under these programs are in the form of revenue forgone, they are directly related to turnover and not volume of the company. The CVD Rules does not limit the ‘per unit’ calculation to be in tonnes and any appropriate unit may be used. Hence, a reconsideration is requested.
- ix. The benchmark adopted by the Authority to quantify benefit received from land lease rate at LTAR is appropriate since the benchmark rate pertains to same category as the benefit (land lease rate), same category of land (industrial), same region (Sarawak), and is of private land as per market rate relevant for the POI and recent. The same source was also relied on by the USDOC in an investigation against Malaysia. The domestic industry had proposed alternate benchmarks as part of its written submissions.
- x. The benchmark adopted by the Authority to quantify benefit received from electricity rate at LTAR is appropriate since the benchmark rate pertains to same category of consumers (industrial), same electricity supplier (SEB), normal rate charged from non-PPA customers, and is recent and relevant to the POI. Since SEB is the sole supplier in

Sarawak, their market rates are most appropriate as benchmark. The domestic industry had proposed alternate benchmarks as part of its written submissions. The Authority may also use benchmark rates of other regions like TNB or SESB as there is no evidence of distortion or subsidization there.

- xi. The domestic industry has suffered material injury which has a causal link to the subsidized subject imports. The domestic industry has suffered volume and price injury and is forced to follow the prices of subject imports as market price benchmark. The domestic industry has, as a result, faced significant deterioration in their economic performance. The decline in subject imports in the POI(A) compared to the previous year is a result of the covid outbreak in Malaysia and the volumes would surge as normalcy is reinstated.
- xii. The Authority has already examined that the imposition of the duties would be in the public interest of the country. Additionally, the imposition of duties is in the interest of Indian producers, consumers, and the public at large. The industry provides large scale employment. Despite no demand-supply gap in India, the market share of domestic industry is meagre as a result of the subject subsidized cheap imports. Imposition of duties will ensure fair competition in the Indian market allowing third country imports to also compete with Malaysian imports. There exists no financial impact on eventual end consumers as evidenced from their Annual Reports. From a forex saving point of view, it is beneficial to reduce import dependence. Further, aluminum is a strategic sector that also triggers economic development in rural areas. The Indian industry has made significant developments to meet the domestic demand.

J.3 Examination by the Authority

170. The Authority notes that most of the submissions by the domestic industry and other interested parties are repetitive in nature. These submissions have already been examined at appropriate places in this Final Finding. The Authority has examined all the relevant additional submissions of the interested parties as under:
171. As regards Program number 11, the argument by PMBTU that IBA does not provide for deduction in case of expenditure towards specific types of buildings but towards expenditure for all industrial buildings to all enterprise is factually incorrect. According to Public Ruling 3/2018, following capital expenditures on following type of buildings are categorized as 'Qualifying Building Expenditure'.
 - (a) Licensed private hospital, maternity home and nursing home
 - (b) building used for research
 - (c) Warehouse
 - (d) Building used for approved service project
 - (e) Hotel
 - (f) Airport
 - (g) Motor racing circuit
 - (h) Building used as living accommodation for employees
 - (i) Child care centre provided by an employer
 - (j) A school building or an educational institution
 - (k) Building for industrial, technical or vocational training

172. As far as the submissions of the GoM about non-countervailability of the scheme, the Authority notes that in the past it was of the understanding that the IBA provides for straight line depreciation. However, after examining the submissions of the interested parties in detail along with the relevant law governing the said scheme, the Authority notes that IBA does not provide for straight line depreciation method since the rate of depreciation in the first year is different than the subsequent years. The additional allowance received by the company in the form of initial allowance is over and above the normal depreciation. The initial allowance reduces the taxable income and therefore it results in lower tax being paid by the company due to the program. The Authority duly notes that it is only the interest on the additional allowance that is being saved as the benefit by the company and has, therefore, quantified the subsidy margins accordingly.

173. As regards application of facts available in Program 17, the examination is as under:

- x. The Authority notes that since this program is linked to capital goods, the amount of countervailable benefit shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned i.e., AUL period as per Rule 12(5) of the CVD Rules. It is the global practice in a CVD investigation to seek information of AUL period for a subsidy program linked to capital goods. The AUL period differs from 10 years to 20 years in various jurisdictions.
- y. The Authority notes that the responding producer/ exporter, PMBTU has only provided information for the years 2019 and 2020 and has not provide any information for such AUL period. The information of 2019 and 2020 is not sufficient to conclude that the exporter has not received benefit during AUL period.
- z. Reference is placed on Para 71(b) of the final findings against imports of wire rod issued in 2021, wherein PMBTU had duly provided the information of AUL period for this program which has been analyzed by the Authority. However, in the present case, PMBTU has failed to provide information for such AUL period for this program.
- aa. The Authority does not find any merit in the arguments raised by PMBTU that the AUL information was not sought for this program, and it is an unreasonable burden to provide the AUL information when AUL information for this program was provided by PMBTU in the recently concluded investigation against imports of “Aluminum wire rods” from Malaysia.
- bb. The Authority notes that the purpose of deficiency is to seek clarification on the information already filed by the interested parties. This is also consistent with the case cited by the exporter in the matter of Metrod Malaysia Sdn Bhd Vs. Designated Authority, AD/50897 of 2020, wherein the Hon’ble Tribunal noted that if Authority has doubts regarding the information submitted and requires further supporting information from the producers/exporters in subject countries or Government of exporting countries, the Authority should request further information. The Tribunal in the said case noted that the Malaysian Government filed the prescribed information. However, in the present case, the exporter did not file the prescribed information.

174. As regards the argument of Program 22- lease rent at less than adequate remuneration, it is noted that the Authority has provided detailed findings on the same in the relevant paragraphs of these findings. Further, the benchmark adopted for the land is appropriate since it pertains to (a) the same category as the benefit provided under the program i.e., land lease rates (b) the same category of land as covered under the program i.e., industrial land (c) the same region where PMBTU is located i.e., Sarawak (d) lease of private land as opposed to state land which is leased at subsidized rate (e) a time period which is recent and relevant to the POI of the present investigation. Further PMBTU has not provided any information on the alternate benchmark or any information to dispute the claim of the domestic industry and to establish that the lease rent is not less than adequate remuneration.
175. As regards the argument of appropriateness of benchmark adopted for Program 22- Electricity at less than adequate remuneration, the Authority has taken note of the arguments raised by the interested parties and revised the benchmark accordingly. The revised subsidy margin calculated for this program is mentioned in the relevant paragraph of this finding.
176. As regards sales tax exemption on inputs, the responding exporters have stated that Government has sovereign power to levy tax rates and while exercising such function the Government has issued the Sales tax (Exemption) Order, 2018 wherein certain category of products have been exempted from sales tax. The Authority notes that while levy of taxes is a sovereign function of the Government but there can be situations where such actions result in a countervailable subsidy under Agreement on Subsidies and Countervailing Measures (ASCM) if the intent of the government while exercising such powers/functions is to benefit a certain number/ class of industries/ entities resulting in de-facto specificity. However, in the present case, the Authority, on perusal of the exemption order, notes that the said order covers a wide horizontal spread of the goods/products spanning many sectors of the Malaysian economy that have been exempted from sales tax. Also, the fact that the said exemption order may have benefitted only certain number/ class of industries/ entities could not be established due to constraints of availability of relevant information/data/facts. In view of the above the Authority holds this scheme to be non-countervailable in the subject investigation.
177. With regard to the calculation of NIP for the domestic industry, it is clarified that the determination is consistent with the practice followed by the Authority in this regard.
178. With regard to the quantification of subsidy margins for Program Nos. 5, 8, and 11, the Authority has considered appropriate denominator to calculate per unit subsidy as per consistent practice.
179. With regard to the landed price of PMBTU, the same has been revised in view of the arguments and has been provided in the relevant paragraphs of these findings.
180. With regard to the argument that increase in depreciation and interest costs have caused injury to the domestic industry, it is noted that the domestic industry has made investments during the injury period which has resulted in increase in interest and depreciation cost. These are part of cost of production relating to product under consideration and does not fall in the category of "other factors" referred under the law. Further, domestic industry has suffered continuous

losses due to price suppressing and depressing effect caused by subsidized imports from Malaysia.

181. As regards imports from Qatar causing injury to the domestic industry, it is noted that imports from Qatar are at a price higher than Malaysia and is not causing injury to the domestic industry.
182. With regard to the impact of the imposition of the recommended duties on public interest, the Authority has made a detailed examined herein below.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

K.1 Submissions by the domestic industry

183. The following submissions have been made by the domestic industry with regards to Indian industry's interest:
- i. Imposition of anti-subsidy measure is in the interest of the producer as it will arrest decline in performance and redress the injury, thereby enabling the domestic producers to remain viable and competitive. The imposition of CVD will restore fair competition and offer the downstream industry multiple sources for purchasing the subject good.
 - ii. If the current situation continues, the industry will face further injury and eventually be wiped out, giving foreign producers increased leverage, and the consumers will be left at their mercy and will have to maintain higher degree of inventory if they have to depend on imported material, while, in case of procurement from the domestic industry, inventory holding can be kept at much lower levels.
 - iii. A strong, competitive domestic production of the product is in interest of the public at large. The subject goods manufacturing industry is labour and capital intensive and provides large-scale employment. Continued injury will lead to unemployment in the country and jeopardise huge investments.
 - iv. Customers of the domestic industry fix their prices based on average price of the raw material and the increase in raw material prices is passed on to their customers by the immediate consumers. There is no impact on users on imposition of countervailing duties. Annual reports of Minda Industries Limited, Endurance Technologies Limited, Enkei Wheels (India) Limited and Steel Strips Wheels Limited have been relied upon.
 - v. Contrary to the claims of Endurance Technologies Ltd., the company has a policy of passing through changes in raw material prices to its customers as stated in its Annual Report 2020-21.
 - vi. The domestic industry is a reliable automotive supplier and the quality of the products produced meets the prescribed international standards. The DI has even supplied the PUC to Endurance Technologies Ltd. as per their requirements. There has not been a complaint on the quality of the product supplied. The commercial terms of BALCO are not tougher than the imports, as evidenced by the 34% market share of the domestic industry.
 - vii. Due to widening trade deficit and dwindling forex reserves, it is important to rely more on the domestic production capacities and reduce import dependence. Despite sufficient domestic capacities, the imports hold significant share in the domestic market. India,

- being rich in bauxite should support the existence and survival of the domestic aluminium industry.
- viii. The chance of OEM shifting to imported alloy wheels due to increase in costs rising from imported ingots is less as an anti-dumping duty on imports of alloy wheels is already in place.
 - ix. Aluminium industry plays a critical role in building blocks of India's economy and plays a key role in contributing towards the nation's economic growth and the development of downstream industries. Areas with aluminium eco-system are socially and economically dependent on Aluminium industry.
 - x. The Authority has already examined in the disclosure statement that the imposition of the duties would be in the public interest of the country. Despite no demand-supply gap in India, the market share of domestic industry is meagre as a result of the subject subsidized cheap imports. Imposition of duties will ensure fair competition in the Indian market allowing third country imports to also compete with Malaysian imports.

K.2 Submissions by the other interested parties

184. The following submissions have been made by other interested parties with regard to Indian industry's interests:
- i. Since the PUC is a key raw material for the downstream industries, imposition of CVD will have a wide negative impact in India. Alloy wheels for two wheelers, which Endurance produces using the subject goods, is very price sensitive with limited margins. Any CVD on imports of the subject goods from an essential source of import like Malaysia will have an impact on the company and the end users at large.
 - ii. The impact will be in terms of cost which cannot be passed on easily, availability of subject goods of required specification due to unavailability of required product in India and probable import of finished wheels itself.
 - iii. The users are dependent on the imports for the right quality of material and the new producers are yet to develop the product required. BALCO is the current supplier of this product but it is yet to become a reliable source in terms of product requirements. Since users are dependent on imports, the impact of CVD on cost will have to be borne by them.
 - iv. If imports are restricted by CVD, the local suppliers will hike their prices and users will be dependent on inferior product available locally killing competitiveness in the market. MOF have, in the recent past, not imposed duties on products which are major input in key sectors. Public interest should be analysed in this backdrop as well. The commercial terms of BALCO are tougher than import and add to the issues at the end of the users.
 - v. DI cannot decide on need for building forex reserves and protection of strategic sector. The statement in ETL's annual report relied on by the DI does not show that the company will not be impacted by CVD. Due to the crisis in the automobile sector, it will be impossible to pass on the burden of CVD. There is no direct link between these objectives and the CVD duty on imports of the subject goods from Malaysia.
 - vi. Any CVD shall have irreparable damages on the users and no CVD should be recommended in larger public interest.
 - vii. The Authority has observed in the disclosure statement that the interested parties have provided no cogent evidence demonstrating an adverse impact of the duties on the operations of the downstream industry. It may be noted in this regard that our submission demonstrated the subject goods constitute about 55-65% of the cost of the finished goods

and any CVD will have very serious and direct effects on the cost of the users as the users are forced to import the subject goods with necessary properties as the same is not available amply in India.

- viii. Disclosure statement also noted that annual reports of the downstream industry shows that fluctuations in raw material prices are passed on to the customers by the downstream industry and hence, the impact on them, if any, would be insignificant. This is the argument of the petitioners and the same was already refuted which is not considered in the disclosure statement. Our rebuttal is that the increase in input cost is meant to be passed on in normal course as recorded in the annual report. But the issues here are that the auto sector is in a serious down cycle and there are demand issues especially in two wheelers and passing on additional cost like CVD is not pragmatic at such an eventuality which has lasted for more than 2-3 years now. The Authority may consider our detailed submissions in this regard which would show that passing on cost increase due to CVD will not be feasible and attempts to pass on the cost will lead to increase in imports of finished goods instead.
- ix. The Authority may also consider following issues while examining public interest/downstream user interest which will show that the DI is placed in a dominant position in the market and are dictating terms seamlessly which alone rules out any unfair competition from imports;
- i. BALCO/Vedanta does not honor supply terms. Supplies are completely stopped bringing production at the end of users to halt and the buyers are forced to accept all their revised terms and conditions.
 - ii. BALCO insists for usance LC and the interest cost is charged to the account of customer. Such strategies show the superior pricing power of the producer and absence of any threat from imports.
 - iii. Imports are also on LC terms but there is ease in doing business with import suppliers whereas there is too much of communication from BALCO. BALCO does not even wait for the 5 working days normally given by bank for LC payments.
 - iv. BALCO does not issue credit notes once differences in value are mutually accepted and thereafter, payments are delayed for the issued credit notes.
 - v. If CVD is imposed, BALCO will add duty cost for local supplies.
 - vi. BALCO's production planning and dispatches are not as per customer schedules. Production done during 1st week and supplies starts only from 2nd week. Does even maintain committed stock at warehouse.
 - vii. The above all shows that the DI is not vulnerable to imports and the users are forced to import to ensure availability of right material at the right time under reasonable terms so as to avoid closure of its production.

K.3 Examination by the Authority

185. 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 measures. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and 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 unfair trade practices so as to re-establish

a situation of open and fair competition in the Indian market, which is in the general interest of the country. The 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.

186. The Authority considered whether imposition of countervailing measures shall have adverse public interest. For the same, the Authority examined whether the imposition of the countervailing duty on imports the subject goods would be against the larger public interest. This determination is based on consideration of information on record and interests of various parties, including domestic industry, importers, and consumers of the product.
187. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers, and other interested parties. The Authority also prescribed a questionnaire for the consumers to provide relevant information with regard to the present investigation, including possible effect of countervailing duty on their operations. The Authority sought information on, inter-alia interchangeability of the product supplied by various suppliers from different countries, ability of the domestic industry to switch sources, effect of countervailing duty on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of the countervailing duties.
188. Two users/ importers, namely, Endurance Technology Limited and Minda Industries Limited have responded in the present investigation. None of the OEMs or user/ importer associations have opposed the present investigation. Though Endurance Technology Limited has claimed adverse impact as a result of the proposed countervailing duties, no verifiable evidence has been provided to support the claim. The domestic industry has provided extracts from the annual reports of Endurance Technology Limited, Minda Industries Limited and other users stating that 'Company's raw material costs are impacted by changes in the prices of aluminium and steel, the risk on the Company's profits due to such changes is mitigated by pass-through mechanism in prices contracted for finished goods. Both the responding users are, in fact, customers of the domestic industry. As already noted in this finding, none of these importers have provided any verifiable information on the effect of countervailing duty on the consumer. Further, in this regard, the Authority reiterates 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.
189. The Authority notes that the interested parties have not established the impact of countervailing duties on the user industry with verifiable information. Further, the domestic industry has submitted that the impact on the end product would be insignificant.
190. The Authority notes that the subject goods are produced and imported into India from several countries other than the subject country. About 75% of the imports of the subject goods into India during the POI were from third countries. The imposition of the countervailing measures would not restrict imports from the subject country or affect the availability of the product to the consumers or create a monopoly in the Indian market.
191. The Authority notes that the product is used primarily in the automobile and steel applications. Considering the resurgence of the automobile sector following the measures taken by the

Central Government to revive the industry, the demand for the subject goods is expected to surge in India. The domestic industry has increased their capacity over the injury period to cater to the growing demand in India. As of the POI, there is no demand-supply gap in the country.

192. Further the capacity utilization of the domestic industry has been low throughout the injury period and the POI. The domestic industry had the potential to cater to a higher share of the Indian market. However due to the cheap subsidized import of the product under consideration, the domestic industry was faced with unutilized capacity and had a much smaller share in domestic market than what they could have served.
193. The Authority further notes that the recommendation for imposition of duty is made only when the requisite legal requirements are met. From the information on record, it is also noted that the impact of countervailing duty is miniscule to the consumers of the product under consideration, and the Authority is of the view that the imposition of countervailing duty will be in public interest.

L. CONCLUSION

194. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of subsidization and consequent injury to the domestic industry, the Authority concludes that:
- a. The product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from the subject country.
 - b. 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.
 - c. The applicants have provided a duly substantiated application based on which the present investigation was initiated. The evidence provided by the applicants as “sufficient evidence of the existence of a subsidy”.
 - d. The Authority has relied on the volume and value of export sales of the subject goods reported by PMBTU to India, duly verified for the purpose of the investigation.
 - e. The scope of the product under consideration includes those Aluminum Alloy Ingots that are produced from smelting alumina or from re-smelting primary aluminum ingot/ production scrap/ primary scrap. Aluminum Alloy Ingots produced from post-consumer scrap is excluded.
 - f. The Malaysian producer has received countervailable subsidies in the form of land and electricity at less than adequate remuneration, income tax exemption, waiver of land premium, accelerated capital allowance and import duty exemption on purchase of machinery. The subsidy margin calculated for the cooperating Malaysian producer is above de-minimis and much above the level of injury margin determined.
 - g. The subject imports have increased in both absolute terms and in relation to consumption in India. The import prices are below the cost of sales of the domestic industry leading to significant price depression. In view of the increasing demand in India the domestic industry expanded its capacity to meet the same. However, the

utilization of the capacity by the domestic industry has remained low throughout the injury period and the POI due to subsidized imports. This has resulted in increased levels of inventories. The domestic industry suffered financial losses in the period of investigation, and the same has led to decline in cash profits and return on investment. The growth of the domestic industry has been adverse in case of volume parameters and negative in case of price parameters.

- h. The material injury suffered by domestic industry is on account of the subsidized imports for which causality has been established both through direct nexus to exports and also through the non-attribution analysis.
- i. The interested parties have not established impact of the ADD on the user industry with verifiable information. Further the annual report of the users states that they pass on the increase in raw material prices to their customers and therefore are not impacted by the fluctuations of the raw material prices. Non-imposition of the antidumping duty will adversely impact the indigenous production of the product concerned; the Authority is of the view that the imposition of anti-dumping duty will be in the public interest.

M. RECOMMENDATIONS

195. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, Embassy of the subject country, exporters, importers and other interested parties to provide positive information on the aspect of subsidization, injury and causal link. Having initiated and conducted an investigation into subsidization, injury and causal link in terms of the CVD Rules and having established positive subsidy margin as well material injury to the domestic industry caused by such imports, the Authority is of the view that imposition of countervailing duty is necessary.
196. In terms of provisions contained in Rule 4(d) and Rule 19(1)(b) of the CVD 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.

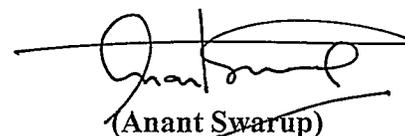
DUTY TABLE

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.	76012010	Aluminum Primary Foundry Alloy Ingot in different forms	Malaysia	Any country including Malaysia	Press Metal Bintulu Sdn. Bhd.	5.53%

2.	-do-	-do-	Malaysia	Any country including Malaysia	Any producer other than the producer mentioned in S.No. 1 above	13.27%
3.	-do-	-do-	Any country other than Malaysia	Malaysia	Any	13.27%

N. FURTHER PROCEDURE

197. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the appropriate forum in accordance with the relevant provisions of the Act.



(Anant Swarup)

Designated Authority