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**F. No.6/14/2019-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: 29 December 2020**

**NOTIFICATION  
(Final Findings)  
(CASE No. CVD 04/2019)**

**Subject: Countervailing/ Anti-subsidy investigation on the imports of Clear Float Glass originating in or exported from Malaysia.**

**A. BACKGROUND**

1. **F. No.6/14/2019-DGTR-** Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and Rule 18 of 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 the “Countervailing Duty/ CVD Rules”) thereof:
2. Whereas, M/s Asahi India Glass Ltd., M/s Gold Plus Glass Industry Ltd., M/s Saint-Gobain Glass India Ltd. and M/s Sisecam Flat Glass India Ltd. (hereinafter also referred to as “the Applicants” had filed an application before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as “the Act”) and the Countervailing Duty Rules, as amended from time to time for imposition of countervailing/anti-subsidy duty on imports of “Clear Float Glass” (hereinafter also referred to as “subject goods”) originating in or exported from Malaysia (hereinafter also referred to as the “subject country”).
3. And, Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 6/14/2019-DGTR dated 1.10.2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 5 of the above Rules to determine existence, degree and effect of the alleged subsidy of the subject goods, originating in or exported from Malaysia, and to recommend the amount of anti-subsidy duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

**B. PROCEDURE**

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

- i. The Authority, under the above Rules, received a written application from the Applicants on behalf of the Domestic Industry, alleging subsidy of Clear Float Glass from Malaysia.
- ii. The Authority notified the Government of Malaysia, through its High Commission in India about the receipt of the anti-subsidy application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 6 of the Countervailing Duty Rules.
- iii. The Authority invited the Government of Malaysia for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 17.9.2019 in New Delhi, which was attended by the representatives of the Government of Malaysia (hereinafter also referred to as “GOM”). The issues clarified by the GOM were taken on record.
- iv. The Authority issued a notification dated 1.10.2019 published in the Gazette of India Extraordinary, initiating anti-subsidy/countervailing investigation concerning imports of the subject goods from Malaysia.
- v. A copy of the public notice was forwarded by the Authority to all known exporters of the subject goods, the Government of the subject country through their High Commission in India, and other interested parties about the initiation of the subject investigation in accordance with Rule 7(2) of the Rules.
- vi. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, and to the Government of Malaysia, through its High Commission and to other interested parties who made a request therefore in writing in accordance with Rule 7(3) of the Rules supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested. Also, in view of the global pandemic and physical inaccessibility, request was made to all the interested parties to share the non-confidential versions of their submissions with other interested parties via email.
- vii. The Authority forwarded a copy of the public notice initiating anti-subsidy investigation to the known producers / exporters in the subject country, and other interested parties and provided them an opportunity to file response to questionnaire in the form and manner prescribed within time limit as prescribed in the initiation notification or extended time limit, and make their views known in writing in accordance with the Rules. The Authority sent Exporter’s Questionnaire to the following known producers/exporters to elicit relevant information in accordance with the Rules:
  - a. Kibing Group (M) Sdn. Bhd. (“Kibing”)
  - b. Xinyi Energy Smart (Malaysia) Sdn. Bhd. (“Xinyi”)
  - c. Sipex Glass

- viii. The Governments of Malaysia, through their High Commission in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known producers/exporters was also sent to the High Commission along with the names and addresses of the known producers/exporters from the subject country.
- ix. In response to the notification, following producers/exporters responded by filing Exporter's Questionnaire responses.
- a. Government of Malaysia
  - b. Kibing Group (M) Sdn. Bhd. (Producer / Exporter)
  - c. Xinyi Energy Smart (Malaysia) Sdn. Bhd. (Producer / Exporter)
- x. The Authority forwarded a copy of the public notice initiating anti-subsidy investigation along with Importer's Questionnaire 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. Atlantic Trading – Mumbai
  - b. Kanch Ghar – Mumbai
  - c. Fishfa Glass – Mumbai
  - d. Samarth Industries – Mumbai
  - e. Prashanth Trading – Mumbai
  - f. Asmi Traders – Mumbai
  - g. Rajat Glass Traders – Karad
  - h. Chandan Glass Traders – Pune
  - i. Kochhar Glass Traders – Bhopal
  - j. Ganeriwala Brothers Pvt Ltd – Kolkata
  - k. Sure Safe Group/ Ganeriwala Glass Traders- Kolkata
  - l. M S Glass Traders- Kolkata
  - m. Glaze Architecture Pvt Ltd. - Kolkata
  - n. Glaze Infrastructure P Ltd.- Kolkata
  - o. Saraf Glass P Ltd. - Kolkata
  - p. GSC - Noida
  - q. Shiv Shakti - Roorkee
  - r. Ridhi Sidhi - Jaipur
  - s. Banaras Glass - Lucknow
  - t. T. L. Verma - Chandigarh
  - u. Jagdamba Glass - Delhi
  - v. Sheesh Mahal Tuff - Rohtak
  - w. Nutan Glass Hs(P) Ltd. - Bangalore
  - x. Mahaveer Glass Hs - Bangalore
  - y. Karnataka Metal Company - Bangalore
  - z. Impact Safety Glass (P) Ltd - Bangalore
  - aa. Southern Auto Products (P) Ltd. - Bangalore
  - bb. Tough Glass India- Bangalore

- cc. Yesho Float Glass (P) Ltd. - Hyderabad
  - dd. Bhandari Glass Co. - Hyderabad
  - ee. Prakash Glass - Hyderabad
  - ff. Mahaveer Glass - Chennai
  - gg. Mahaveer Mirror - Vishakhapatnam
  - hh. Uma Industries – Bangalore
  - ii. Jai Mirror Industries – Chennai
- xii. The Authority sent Importer's Questionnaire to the following known Association of subject goods in India for circulation & calling necessary information in accordance with Rule 7(4) of the Rules:
- a. All India Flat Glass Manufacturers Association (AIFGMA)
  - b. ASSOCHAM
  - c. FICCI
  - d. CII
- xiii. In response to the above, none of the importers/users have filed their submissions/representations in the above matter.
- xiv. The Authority made available non-confidential versions of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- xv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and from DG-Systems, Central Board of Indirect Taxes and Customs (CBIC) to provide the transaction-wise details of imports of subject goods for the injury period. The exporters, during the discussions, submitted that they have exported float glass of various thicknesses under a particular invoice. However, the DGCI&S data has reported entire such quantity of that invoice under only one thickness head. This has impacted the CIF prices of their exports to India. After analysis of DG Systems data and exporters' questionnaire response, credence was found in the request of the exporters. In view thereof, after due examination of the transactions and required analysis, DG Systems data has been relied upon for computation of the volume and value of imports to correlate quantum of exports from specified exporters and validate responses filed, to the extent feasible.
- xvi. The Non-injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules has been worked out so as to ascertain whether Anti-Subsidy duty lower than the injury margin would be sufficient to remove injury to the Domestic Industry.
- xvii. The period of investigation (POI) for the purpose of present investigation is from 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019 (12 months). However, the injury investigation period covers the data of previous three years, i.e. April 2015 to March 2016, April 2016 to March 2017, April 2017 to March 2018 and POI.

- xvii. 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 held on 08.01.2020. Subsequently, another oral hearing was held on 15.07.2020 in view of the change of the Designated Authority, as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority, in Civil Appeal No. 949 of 2006 on 07.01.2011. All the parties who attended and presented their views in the oral hearings were requested to file written submissions of their views expressed orally. The parties were also advised to collect written submissions made by the opposing parties and were provided an opportunity to submit their rejoinders thereafter. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed in these final findings.
- xviii. In accordance with the Rules the Authority disclosed the essential facts of the case that would form the basis of its findings in the form of a disclosure statement on 11.12.2020 and the interested parties were allowed time up-to 17.12.2020 to comment on the same. The comments of the interested parties, to the extent relevant, have been considered by the Authority and have been addressed in this finding.
- xix. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered in this final finding.
- xx. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the confidentiality claims have been accepted wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xxi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, such parties have been considered as non-cooperative and disclosure statement has been recorded on the basis of the facts available.
- xxii. '\*\*\*' in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted for the subject investigation is US\$1 = ₹70.85.

## **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

5. At the stage of initiation, the product under consideration (PUC) for the purpose of present investigation was defined as “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)”, the nominal thickness being as per BIS 14900:2000, originating in or exported from Malaysia.
6. Clear Float Glass is used in construction, refrigeration, mirror, solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface etc., the applications of the product have been increasing for different purposes.
7. Float Glass is classified under Chapter Heading 70 “Glass and glassware”. However, the subject goods are also being imported under tariff sub-headings 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020. However, the customs classification is indicative only and in no way binding on the scope of this investigation.

### **Submissions made by producers/exporters/importers/other interested parties**

8. No submission has been made by the producers/exporters with regard to the scope of the product under consideration and like article.

### **Views of the Domestic Industry**

9. The product under consideration (PUC) for the purpose of present investigation is “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)”, the nominal thickness being as per BIS14900:2000.
10. Clear Float Glass is used in construction, refrigeration, mirror and solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface etc., the applications of the product have been increasing for different purposes.
11. Float Glass is classified under Chapter Heading 70 “Glass and glassware”. However, the subject goods are also being imported under tariff headings 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020. It is also submitted that the custom classification is indicative only and in no way binding upon the product scope of the Customs Tariff Act, 1975.
12. There is no known difference in the subject goods produced by the domestic industry and that imported from Malaysia. The subject goods produced by the domestic industry and the subject goods imported from subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The applicants have claimed that the subject goods, which are being coming into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions

or end-uses of the subsidized imports and the domestically produced subject goods and the product under consideration manufactured by the applicants. The two are technically and commercially substitutable and hence should be treated as 'like article' under the Rules.

### **Examination of the Authority**

13. The product under consideration for the purpose of present investigation is "Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)", the nominal thickness being as per BIS14900:2000 (hereinafter referred to as the "subject goods").
14. Clear Float Glass is used in construction, refrigeration, mirror and solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface, etc., the applications of the product have been increasing for different purposes and classified under Chapter Heading 70 "Glass and glassware". The classification at the 8-digit level is 70051090 even though the same are being classified and imported under various sub-headings like 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020 etc. The custom classification is indicative only and in no way binding upon the product scope of the Customs Tariff Act, 1975.
15. With regard to like article, Rule 2(ca) of the Anti-subsidy Rules provides as under:  
  
*"like article" means an article which is identical or alike in all respects to the article under investigation or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."*
16. It is noted that there is no known difference in the subject goods produced by the Indian industry, and product under consideration exported from Malaysia. Subject goods produced by the Indian industry and imported from Malaysia are comparable in terms of characteristics such as physical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The subject goods produced by the domestic industry are like article to the product under consideration imported from Malaysia within the scope and meaning of Rule 2(d) of anti-subsidy Rules.
17. No other argument has been made by any interested party on the product under consideration and like article issue. Therefore, it is confirmed that the scope of the product under consideration in the present investigation remains the same as mentioned in the initiation notification.

### **D. DOMESTIC INDUSTRY AND STANDING**

18. The current application has been filed by M/s Gold Plus Glass Industry Ltd., M/s Asahi India Glass Ltd., M/s Saint-Gobain Glass India Ltd. and M/s Sisecam Flat

Glass India Ltd., who collectively command 85% share in Indian production of the subject goods during the period of investigation. As per the information available with the Authority there is only one other known producers of the product under consideration in the country i.e., M/s Gujarat Guardian Ltd. It is also noted that the said company has neither supported nor opposed to the present investigation.

19. As per the available information, the Applicants have neither imported the subject goods from Malaysia nor are they related to any other producer/exporter of subject goods in Malaysia or any importer in India. Further, the Applicants account for a major proportion in Indian production of the subject goods.
20. In view of the above, and since none of the interested parties has made any submissions in relation standing of the Domestic Industry, the Authority the Applicants constitute domestic industry within the meaning of Rule 2(b) of the Rules and considers that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

#### **E. CONFIDENTIALITY**

##### **Submissions made by exporters/importers and other interested parties**

21. The exporters/importers and other interested parties have claimed that the responses filed by them are as per the Trade notice. It is further claimed that they have filed the exact replica of the confidential version in the non-confidential version. Therefore, allegation of the Domestic Industry that they have not filed the proper non-confidential version is incorrect.
22. The application suffers from excessive confidentiality as Domestic Industry has claimed all the costing formats as confidential.

##### **Submissions made by the domestic industry**

23. Various submissions made by the domestic industry with regard to confidentiality claims of the exporters/importers and other interested parties are as follows:
  - i. Excessive confidentiality has been claimed by the exporters in as much as the non-confidential versions of the questionnaire response were not the exact replica of the confidential version filed by the exporters as required under the Rules and the instructions on the issue.
  - ii. Exporters / importers have even claimed confidentiality on the narrative portion of their response, which has made impossible for the Domestic Industry to defend their legitimate interest or to assist the Authority in the best possible manner.
  - iii. As far as their submissions of Applicants are concerned, confidentiality has been claimed in accordance with the provisions of Rule 7 of the Anti-subsidy Rules

and the Trade Notices issued in this regard. Therefore, the claims of interested parties that the Applicants have claimed excessive confidentiality, are baseless.

### **Examination by the Authority**

24. With regard to confidentiality of information, Rule 8 of Countervailing Duty 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 a generalized or summary form, it may disregard such information.”*

25. Non-confidential version of the submissions by various interested parties were made available to the all the other interested parties through inspection of the Public file maintained by the Authority for the same and also through circulation via e-mail for their comments and record.
26. As regards the contentions with regard to confidentiality of information, it is noted that information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidence submitted by various interested parties in the form of public file. The information related to imports, performance parameters and injury parameters of domestic industry has been made available in the public file. Business sensitive information has been

kept confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

#### **F. Assessment of subsidy – Methodology, Parameters, Countervailability and Subsidy margins**

27. The petition filed by Domestic Industry provided prima facie evidence of existence of countervailable subsidies in the subject country to initiate the instant investigation prior to initiation of investigation. Government of Malaysia was invited for consultation on 17.9.2019 in New Delhi. The producers and exporters from Malaysia were advised to file response to the questionnaire and were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.
28. The following producers/exporters from Malaysia including the Governments of Malaysia have filed questionnaire responses.
  - a. Government of Malaysia
  - b. Kibing Group (M) Sdn. Bhd. (Producer / Exporter)
  - c. Xinyi Energy Smart (Malaysia) Sdn. Bhd. (Producer / Exporter)

#### **General overview of the alleged Subsidy Programs**

##### **Submissions made by domestic industry**

29. The following submissions have been made by the domestic industry:
  - a. Response of Kibing Group cannot be accepted, as they have not provided the complete information of their related parties situated in Malaysia namely Kibing Energy Saving Glass Co., Ltd and CS Eco Glass (M) Sd. Bhd. Domestic Industry has further submitted that unless the data of Kibing Energy Saving Glass Co., Ltd and CS Eco Glass (M) Sd. Bhd. are not examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Kibing Group.
  - b. Response of Xinyi Smart Energy cannot be accepted, as they have not provided the information of their related companies situated in Malaysia namely Xinyi Solar (Malaysia) Sdn. Bhd. (Xinyi Solar) and Xinyi Photovoltaic (Malaysia) Co., Ltd. (Xinyi Photovoltaic). Domestic Industry has further submitted that unless the data of Xinyi Solar and Xinyi Photovoltaic are examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Xinyi Smart Energy.
  - c. Exporters have stated "not applicable" in most of the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe that it would not have benefited under the alleged programs. Thus, either the company should show absence of eligibility or must demonstrate why it has not availed benefit that is available under the program.

- d. The response filed by the Government of Malaysia should also not be accepted as they have not cooperated to the best of their ability. In this context, it is submitted that the Government of Malaysia has simply stated that information should be collected from the exporters, without providing specific information requested in the response.
- e. In their response Government of Malaysia has not provided information relating to the companies under investigation as to which companies have applied for, claimed, received or used assistance stated. Moreover, information about their related companies and benefits availed by them also not been disclosed by the Authority. This non-submission of information relating to exporters of subject goods and their related entities vitiates the whole purpose of collecting response from Government of exporting country.
- f. Government of Malaysia and exporters of the subject goods from Malaysia have not participated with clean hands and therefore, their responses need to be rejected and Domestic Industry should be protected to the full level of subsidy margins.

### **Submissions by the other interested parties**

30. The following submissions have been made by the other interested parties:
  - a. Article 11.3 of the SCM Agreement requires an investigating authority to review the accuracy and adequacy of the evidence provided in a petition in order to determine whether it is "sufficient" to justify the initiation of an investigation.
  - b. It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable. Further, the petitioner could not establish the existence of the three elements comprising a countervailable subsidy, i.e. financial contribution by a government or public body; benefit; and specificity.
  - c. The GOI's consistent use of a lower standard of assessment and its failure to first determine that the petition provides "sufficient evidence" of subsidization of the subject goods by exporting producers and resulting injury to the Indian industry is a fatal error.

### **Examination by the Authority**

31. The Authority notes that the investigation was initiated for 20 schemes for which *prima facie* evidences were provided by the applicant to show that the producers and exporters of the subject goods in Malaysia have benefited from a number of subsidies granted by the Government of Malaysia directly or indirectly. The alleged subsidies consist of direct transfer of funds and potential direct transfer of funds or liabilities; Government revenue that is otherwise due is foregone or not collected; Provision of goods and services for less than adequate remuneration; etc. In addition to 20 schemes, the exporter has provided one more

scheme namely Licensed Manufacturing Warehouse Scheme. The Authority has thus analyzed the countervailability of all 21 schemes in the following paragraphs.

## **I. Schemes Identified as Grants**

1. Subsidies on Natural Gas
2. The Market Development grant

## **II. Schemes Identified as Tax Incentive**

3. Pioneer Status
4. Incentive for manufacturing and manufacturing related service in East Cost Economic Corridor
5. Investment Tax Allowance
6. Accelerated Capital Allowance
7. Double deduction for promotion of Malaysian brand
8. Draw back on Import duty, Sales tax and Excise duty
9. Sales Tax Exemption
10. Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities.
11. Exemption from Import Duty and Sales Tax on Spares and Consumables
12. Exemption from Import Duty and Sales Tax on Machinery and Equipment
13. Exemption from Import Duty on Raw Materials/Components
14. Double Deduction for Promotion of Exports
15. Double Deduction for Promotion of Export Cargo
16. Allowance for Increased Export
17. Tariff Related Incentive
18. Allowance for plants and Machinery

## **III. Schemes Identified as Export Credit and Export Financing**

19. Export Credit Refinancing
20. Buyer Credit Guarantee

## **IV. Scheme Claimed by the Exporter**

21. Licensed Manufacturing Warehouse
32. The Authority has examined the claims and counterclaims of all the interested parties with respect to specific schemes below:

### **Calculation Methodology**

33. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the

recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology of determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.

### **Schemes related information:**

#### **Program No. 1: Subsidies on Natural Gas**

##### **a. Submission of the Domestic Industry**

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

35. As evidence of existence of the program, Petitioners relied on:

- Annual report of the Gas company “Gas Malaysia Behrad”
- Regulated and unregulated gas prices published by the energy commission of Malaysia.
- Investment act, 1986

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

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

37. The price adjustments for industrial sector experienced eleven cycles of price revisions since 2014, with an increase of RM1.50/million British thermal unit (MMBtu) every six months. As of March 2019, the average gas tariff for

industrial sector was RM\*\*\*/MMBtu. The regulated gas price is expected to reach market price in 2020. In that note, current regulated gas price is slightly lower than the market price.

38. Currently, there are two categories of gas prices in Malaysia that are collectively referred to as the two-tiered pricing mechanism, namely regulated gas price and market-based LNG-indexed price. Under the regulated gas price regime, which only applies to customers with pre-existing contracts, the Government regulates the price of the gas supplied by PETRONAS and Gas Malaysia Berhad (GMB). On the other hand, LNG indexed pricing is applicable for all new volumes, including additional volumes from customers with pre-existing contracts.
39. In addition, the government has also prescribed the Incentive Based Regulation (IBR) framework which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge.
40. The gas price charged to industrial customers is based on tariff category. All the customers in the same tariff category will be imposed the same price. Since this program is not available for industrial customers, no application process is applicable.
41. The exporters have further submitted that no subsidy is granted to the Gas suppliers since January 2020 and the same is verified from the invoices of the Gas companies. They have further submitted that all the existing Gas Malaysia Berhad (GMB) consumers will enjoy a fixed gas price for 2 years starting 1st January 2020 until 31st December 2021. The Government has fixed the consumer gas price at the average price of RM\*\*\*/Mmbtu for the year 2020.
42. The exporters have further claimed that that Program No.1 cannot be regarded as countervailable, as GCPT is no longer applicable and the regulated gas prices have been matched with the unregulated gas price since January 2020 and hence no subsidy is given by the Government of Malaysia to Gas companies. Since Gas prices will not be regulated by GOM starting 1st January 2022, hence, no margin should be applied on account of Program No. 1.

**c. Examination by the Authority:**

43. Authority notes that this program is governed by Gas Supply Act,1993. The subsidy program allows regulated, more favourable rates of natural gas prices for industrial sector including the electricity sector. It is noted that the GOM admittedly provides subsidies to the gas supplying companies namely, PETRONAS and Gas Malaysia Berhad (GMB) which in turn supplies gas to the exporter at reduced rates. The difference is then recovered by the said company

from the GOM. Thus, the Authority is of the view that there is a direct financial contribution by the GOM. Further, the response of GOM itself states that:

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

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

*9(1)Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.*

*Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if—*

- (a) there is financial contribution by a Government, or any public body [in the exporting or producing country or territory], that is, where –*
- i. a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;*
  - ii. Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);*
  - iii. a Government provides goods or services other than general infrastructure or purchases goods;*
  - iv. a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or .....*

45. From the above, it is clear that if a government ‘entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the functioning, in no real sense, differs from functions normally carried out by governments in terms of paragraph i-iii of Section 9(1)(a) of the Customs Tariff Act, 1975, then it is deemed to be a subsidy. These provisions mirror Article 1.1(a)(1)(iv) and (iii) of the SCM Agreement. Therefore, any program which allows even the private bodies to provide Gas for less than adequate remuneration to the industry, is covered by the definition of “subsidy” in terms of the above provisions.
46. The Authority further notes that the exporters initially denied any knowledge about the existence of the subsidy relating to natural gas. However, during the investigation, the Authority took note of the fact that subsidy element was mentioned on the Gas invoices raised by the Gas supplier to the exporters. The Authority, thereafter, checked the invoices for the relevant period and noticed that subsidy was indeed availed by the exporters of the subject goods.
47. The Authority has examined the countervailability of the scheme below:
  - a. The response submitted by the GOM states that the gas prices in Malaysia are regulated by the Government.
  - b. The response submitted by the GOM acknowledges that there is a price differential in the market prices of gas and the prices of gas for industrial users.
  - c. Further, the response of GOM also states that the gas price charged to industrial customers is based on tariff category, indicating consumption-based tariff system.
  - d. The Authority notes that this scheme provide benefit to large numbers of the enterprises. However, while examining the scheme, the Authority observes that the Government of Malaysia’s natural gas regulation predominantly benefits the industries who uses gas as major input for manufacturing their product. Since Natural Gas is major input used in the furnace for melting raw material in Float Glass industry, the Authority considers this scheme to have been granted to a limited number of persons engaged in the manufacture or production of the product under consideration. It is also noted that natural gas constitutes substantial part of the total cost. The inherent characteristics of natural gas limits the possible use of the subsidy to few industries, but this does not mean that, in order to be specific, the subsidy must be further limited to a subset of any industry. It is therefore specific under Article 2 of the ASCM.
48. In view of the aforesaid, the Authority determines that the above program is countervailable and the element of the benefit is to be included in the overall subsidization.

## **Program No. 2: Market Development Grant (MDG)**

### **a. Views of the Domestic Industry**

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

### **b. Submission by Government of Malaysia/other interested**

50. It is a continuous program structured under the 11th Malaysia Plan (2016 - 2020) for increasing the SME's participation in export promotional activities.
51. The MDG provides an opportunity for Malaysian SMEs to apply for a reimbursable grant up to RM200,000 for participation in export promotional activities namely International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centers overseas.

### **c. Examination by the Authority**

52. The Authority notes that Market Development Plan (MDP) was introduced in 2002. It is part of the 11th Malaysian Plan (2016-20). It is intended to increase participation of SMEs in export promotional activities. The MDP 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-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas.
53. The subsidy program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred to the recipient. The subsidy program is also specific because is contingent on export. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporters.

## **Program No.3: Pioneer Status**

### **a. Submission by the Domestic Industry**

54. The Domestic Industry has submitted that under this program a company granted Pioneer Status will enjoy tax exemption from corporate income tax. The program encourages investments in promoted activities/products in the manufacturing sector that can contribute to development and growth of economy. It applies to

both local and foreign investors for approved promoted products/activities in the manufacturing sector. Five-year partial exemption is provided from payment of income tax. A company pays tax on 30% of its statutory income, with exemption period commencing from its Production Day. Unabsorbed capital allowances and accumulated losses incurred during the pioneer period can be carried forward and deducted from post pioneer income of company. As evidence of existence of the program, petitioners have relied on:

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

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

55. Companies are required to submit the applications for the Pioneer Status program to the Malaysian Investment Development Authority (MIDA), an agency under Ministry of International Trade and Industry (MITI). The company will then be required to get the Pioneer Certificate from MIDA. This is to ensure that the company has complied with the conditions imposed. After MIDA is satisfied that the company has complied with the conditions, MIDA will determine the production date for the company and determine the start and ending date of the program. Later, companies approved with the program submit their claims to the Inland Revenue Board together with their annual tax returns containing the calculation of claim for the tax deductions. The applicants will need to go through the Approval Committee also.
56. The major tax incentives for companies investing in the agricultural and manufacturing sectors are the Pioneer Status and Investment Tax Allowance. These incentives are mutually exclusive. Sections 5-25 Promotion of Investments Act 1986 are evidence of the same. The benefit is an exemption from taxes owed. Also, losses can be carried forward.
57. The eligibility criteria for the Pioneer Status is based on criteria such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

### **c. Examination by Authority**

58. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provides for pioneer status program. The program provides for tax incentives in the form of exemption from income tax. Losses incurred during the exemption period can be carried forward for subsequent years to offset taxable income/net profit. It is noted from the responses on record that the eligibility is based on criteria 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
59. 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 as it is based on criteria listed above. In addition to that, the GOM stated that, *“The applicants will still need to go through the Approval Committee. Reasons for rejection can vary from applicants not able to meet the criteria stated above & some other relevant criteria set up by the Government.”* The Authority therefore, notes that the discretion of ‘setting up of some other relevant criteria’ exercised by the Government for selection or rejection of any company clearly lends specificity to the enterprises who get benefit under this scheme. Accordingly, the Authority determines this scheme as specific and countervailable.
60. However, the benefit under this program is not availed by the cooperating exporters.

### **Program No.4: Incentives for Manufacturing and manufacturing related services in East coast Economic Corridor**

#### **a. Submission by the Domestic Industry**

61. The Domestic Industry has submitted that under this program, various tax exemptions-revenue forgone are given to a company, situated in East Coast Economic Corridor, involved in manufacturing of selected and agro-based products and manufacturing related services.
62. Customized incentives based on merit of each case, or, Income Tax exemption of 100% for 10 years starting from year company derives statutory income or Income Tax exemption of 100% on the qualifying capital expenditure for 5 years is given. Stamp duty exemption on land or building acquired for development and Import duty and sales tax exemption on machinery and consumables that are produced locally and used directly in the activity are also available.

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

63. Tax Exemption may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia.

64. Companies are required to submit the applications for the tax exemption program to the East Coast Economic Region Development Council (ECERDC), an agency under MOF. The company will then be required to get the verification of compliance letter from ECERDC upon the company receiving the first statutory income for tax exemption will be issued upon the company meet all the conditions. After ECERDC is satisfied that the company has complied with the conditions, it will issue the said letter of which the company then can enjoy the incentive for the period of 10 years. Later, companies approved with the program will submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax exemption. The assistance is an exemption from taxes owed. There is a provision of losses and carry forward is allowed. Not all individuals/firms who applied and met eligibility criteria will be approved of the program. The applicants will need to go through Approval Committee.
65. 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. Examination by Authority**

66. 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.
67. 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 region i.e. enterprise whose project is located in east coast economic corridor. Therefore, Authority holds that this scheme is a countervailing program. However, the benefit under this program is not availed by the cooperating exporters.

**Program No.5: Investment Tax Allowance**

**d. Submission by the Domestic Industry**

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

years from the date the first qualifying capital expenditure is incurred is given. Company can offset this allowance against 70% of its statutory income for each year of assessment. Remaining 30% of its statutory income will be taxed at the prevailing company tax rate. As evidence of existence of the program, Petitioners have relied on:

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

**e. Submission by Government of Malaysia/other interested parties**

69. Investment Tax Allowance (ITA) may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia. Promoted activities and promoted products are determined and gazetted by the Minister of International Trade and Industry. Sections 26 – 29 of the Promotion of Investments Act 1986 (Act 327) are evidence of the same.
70. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used for promoted activities or the production of the promoted products. Companies are required to submit the applications for ITA program to MIDA, an agency under MITI. The company will then be required to establish the commencement of ITA period which is on the incurrence of the first capital expenditure duly certified by MIDA. Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claim for the tax deductions.
71. The eligibility criteria for the ITA are value added (VA) percentage and level of technology as measured by the MTS Index.
72. Not all individuals/firms who applied and met all the eligibility criteria are approved. The applicants will need to go through the Approval Committee. The assistance is a deduction from taxable income. The allowance can be carried forward until fully utilized.
73. A company can elect to receive Pioneer Status but not receive the Investment Tax Allowance, or can elect to receive the Investment Tax Allowance, but not Pioneer Status.

## **f. Examination by Authority**

74. Authority notes that Sections 26 to 29 of the Promotion of Investments Act 1986 provides for Investment Tax Allowance program. Promoted activities and promoted products are granted capital allowance. Value addition and technological requirements are also to be fulfilled. Out of the total capital expenditure, 60% of the capital expenditure is granted as allowance and can be deducted against 70% of statutory income for 5 years. Remaining income can be taxed at normal income tax rate. It is noted from the responses on record that the eligibility is based on criteria 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.
75. 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 as it is based on criteria listed above. In addition to that, the GOM stated that, *“The applicants will still need to go through the Approval Committee. Reasons for rejection can vary from applicants not able to meet the criteria stated above & some other relevant criteria set up by the Government.”* The Authority, therefore, notes that the discretion of ‘setting up of some other relevant criteria’ exercised by the Government for selection or rejection of any company clearly lends specificity to the enterprises who get benefit under this scheme. Accordingly, the Authority determines to treat this scheme as specific and countervailable.
76. The Authority further notes that under this scheme, Xinyi Energy Smart (Malaysia) Sdn. Bhd. has got income tax exemption and therefore, the Authority is of the view that countervailing duty should be imposed against this subsidy programs for Xinyi Energy Smart. Accordingly, the Authority determines this scheme as specific and countervailable. It is further noted that although the allowance can be carried forward until fully utilized, this scheme is valid only for the period of 10 years and accordingly, the Authority has calculated the benefit under this scheme. It is noted that the benefit under this program is not availed by the M/s Kibing, the cooperating exporter.

## **Program No. 6: Accelerated Capital Allowance**

### **a. Submission by Petitioners**

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

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

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

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

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

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

**c. Examination by Authority**

80. 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 reinvestment allowance period. The program allows to write off the total capital expenditure within three years, i.e., an initial allowance of 20 percent in the first year and an annual allowance of 40 percent in the next two years.

81. Authority notes that the program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is available to certain enterprise carrying out promoted activity that qualify for using this allowance and does not qualify for reinvestment allowance on account of expiry of 15 years period of eligibility. Therefore, Authority holds this program as countervailing program.

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

## **Program No 7: Double deduction for promotion of Malaysian Brand**

### **a. Submission by Petitioners**

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

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

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

84. Expenditure for qualifying advertisements in advertising Malaysian brand name goods is eligible for a double deduction in arriving at adjusted income from a business. Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002 are given in evidence. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred within Malaysia for advertising Malaysian brand goods. The original supporting documents must be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the fiscal year (basis period) in which the expenditure is incurred. The companies under investigation will be eligible to claim the deductions if they fulfill the criteria. The assistance is a deduction from taxable income. The deduction can be carried forward. No changes are anticipated to the program.

### **c. Examination by Authority**

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

86. 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. Therefore, this program is noted to be countervailable.

However, the benefit under this program is not availed by the cooperating exporters.

### **Program No. 8: Drawback on Import duty, Sales tax and Excise duty**

#### **a. Submission by the Domestic Industry**

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

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

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

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

#### **c. Examination by Authority**

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

### **Program No. 9: Sales Tax Exemption**

#### **a. Submission by the Domestic Industry**

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

output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on their inputs instead.

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

91. The program provides exemption from payment of sales tax. There are persons or manufacturers who are exempted from paying sales tax on importation and purchase of locally manufactured goods under Sales Tax (Person Exempted from Payment of Tax) Order 2018. Exemptions are classified into three (3) schedules as below:

- i. Schedule A - Class of persons that meets the criteria and conditions;
- ii. Schedule B - Manufacturer of specific non-taxable goods exemption of tax on the acquisition of all goods excluding petroleum to be used solely and directly in manufacturing non-taxable goods activities;
- iii. Schedule C - Registered manufacturer of taxable goods exemption of tax on the acquisition of raw materials, components and packaging materials to be used solely and directly in manufacturing of taxable goods.

**c. Examination by Authority**

92. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions as submitted by the Government. This program provides exemption of Sales tax due to the exporters which is otherwise due. The program is also specific because it is available to certain enterprise who meet the eligibility criteria. Therefore, this program is noted to be countervailable. It is also noted that both the cooperating producers and exporters have availed this benefit.

**Program No. 10: Exemption from Import duty and Sales Tax for Outsourcing Manufacturing Activity**

**a. Submission by Domestic Industry**

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

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

94. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. Section 14(2) Customs Act 1967 is given as evidence. All manufacturers which meet the eligibility criteria will benefit from scheme and the authorities do not exercise discretion. No changes are anticipated to the program.
95. This program is not countervailable since it conforms with the provisions of Annex I, II and III of the SCM Agreement (Exception to the subsidy definition).
96. To qualify for the exemption,
- Imported raw materials and components which are used to manufacture finished products with nil import duty.
  - Semi-finished products which are imported from contract manufacturers abroad and are used in the manufacture of finished products by local contract manufacturers.

**c. Examination by Authority**

97. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. Raw materials which are used in the production of exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

**Program No. 11: Exemption from Import Duty and Sales Tax on Spares and Consumables**

**a. Submission by the Domestic Industry**

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

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

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

### **c. Examination by Authority**

100. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on spares and consumables. The program is administered by Malaysian Investment Development Authority (MIDA). The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is subject to fulfillment of certain criteria. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

## **Program No. 12: Exemption from Import Duty and Sales Tax on Machinery and Equipment**

### **a. Submission by the Domestic Industry**

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

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

102. The program provides import duty exemption on machinery and equipment to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The manufacturer then claims for exemption. To qualify for the exemption, the machinery and equipment must be new, unused and directly used in the manufacturing process of the finished product at the approved manufacturer's premise(s). All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since

it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

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

### **c. Examination by Authority**

104. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on new and unused machinery and equipment to qualified manufacturer. There is no exemption from sales tax during the POI because Sales Tax Act 1972 [Act 64] was repealed with the enactment of the Goods and Services Tax Act 2014 [Act 762] entered into force 1 July 2014. The program is administered by Malaysian Investment Development Authority.
105. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

## **Program No. 13: Exemption from Import Duty on Raw Materials/Components**

### **a. Submission by the Domestic Industry**

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

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

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

### **c. Examination by Authority**

108. Authority notes that the program is governed by Section 14(2) of Customs Act 1967. The program provides for import duty exemption to the qualified manufacturer on raw materials / component that are not locally available.
109. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to an enterprise that uses raw material that are not locally available. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

### **Program No. 14: Double Deduction for Promotion of Exports**

#### **a. Views of the Domestic Industry**

110. The Domestic Industry has submitted that under this program tax deduction is given to exporters for expenses which are aimed at promoting exports and supply of goods overseas, cost of maintaining office overseas for purpose of promotion of services, publicity and advertisements in any media outside Malaysia for promotion of export of services and Page 59 of 139 export market research. As evidence of existence of the program, Petitioners have relied on:
  - Section 41 of Promotion of Investment Act, 1986
  - Income tax promotion of export rules 1986
  - WT/TPR/S/292
  - WTO-Notification-G/SCM/N/3/MYS-1995
  - US carbon steel wire rod from Malaysia

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

111. The program which is provided under section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) read together with rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986 is applicable to all resident trading, manufacturing or agricultural companies in respect of expenses incurred in the basis period primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand for the export of Malaysian manufactured goods or agricultural products. This program's focus is on supporting Malaysian companies' participation in eligible export promotional activities, not on their goods' export performance or on the use of domestic good. All firms which can meet the eligibility criteria can benefit from this program. The companies under investigation will be eligible to claim the deductions if they fulfil the criteria. There are no anticipated changes to the program. The deduction can be carried forward.
112. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred overseas for advertising, travelling

and related export promotional expenditure. The original supporting documents must be retained by the company for audit purposes by the IRB.

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

### **c. Examination by Authority**

114. Authority notes that the program is governed by Section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) & Rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986. Under this program double deduction from income to enterprise involved in manufacturing, trading and agricultural activities is available for expenses incurred for promotion of export. Expenses incurred by a company for increasing demand for exports are allowed for double deduction.
115. The Authority notes that the program provides for financial contribution the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The benefit is the difference between the amount of income tax paid after double deduction and the amount of income tax that would have been payable in absence of such double deduction. The program is also specific because it is contingent on export performance and is limited to enterprise engaged in export promotion activity. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

## **Program No. 15: Double Deduction for Promotion of Export Cargo**

### **a. Submission by the Domestic Industry**

116. The Domestic Industry has submitted that under this program an exporter may make a deduction from taxable income for premium insurance on export cargo and regional tax deduction for tax insurance. As evidence of existence of the program, Petitioners have relied on
  - Promotion of Investment Act, 1986
  - Income tax promotion of export rules 1986
  - Tax incentives for Companies
  - Other Authority findings

### **b. Submission by Government of Malaysia/Other interested parties**

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

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

### **c. Examination by Authority**

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

## **Program No. 16: Allowance for Increased Export**

### **a. Submission by the Domestic Industry**

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

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

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

121. A resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The assistance is an exemption from taxable income. The allowance can be carried forward. There are no anticipated changes to the program. Income Tax (Allowance for Increased Exports) Rules 1999 is given in evidence. The Rules contain the following definitions:

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

immediately preceding period. FOB value will exclude the freight charges and insurance cost.

122. The allowance is determined as follows:

a. Manufactured products

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

b. Agricultural products

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

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

**c. Examination by Authority**

124. 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.

125. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Therefore, Authority holds that this scheme is a countervailing scheme. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

**Program No. 17: Tariff Related Incentive**

**a. Submission by the Domestic Industry**

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

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

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

## **c. Examination by Authority**

128. 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).

129. 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. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

## **Program No. 18: Allowance for plants and Machinery**

### **a. Submission by Domestic Industry**

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

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

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

132. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method on the basis of a prescribed rate of allowance. All companies that meet the eligibility criteria can claim the CA. This program is available to all companies and the IRB applies objective criteria in granting CA. Thus, this

program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available

**c. Examination by the Authority**

133. The Authority notes that the program is administered by Inland Revenue Board of Malaysia. According to the record companies / person carrying business or incurs capital expenditure on plant and machinery or the plant and machinery must be used in that business and owner of the plant and machinery at the end of basis period can avail benefit under this scheme. The benefit is the additional capital allowance claimed by the company. To the extent of the capital allowance, the cost will be more, profit will be low. Therefore, the incidence of the tax will be lower. The program is also specific because it is available only on fulfillment of certain eligibility conditions and not to all the companies. Therefore, Authority holds that this scheme is a countervailing scheme
134. Authority notes that capital allowance provides deductions for qualifying expenditure on machinery or plant. It is given to enterprise that incurs the qualifying expenditure. It is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method based on a prescribed rate of allowance.
135. Authority notes that this program does not provide countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight line method to all enterprise. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

**Program No. 19: Export Credit Refinancing**

**a. Submission by the Domestic Industry**

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

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

137. Export Credit Refinancing (ECR) scheme is used to promote Malaysia's exports and international trade in the form of Pre-shipment and Post-shipment financing. ECR is available to all companies incorporated in Malaysia and involved in export activity.
138. The operational procedure of the ECR Scheme is governed by the ECR Guideline which is issued by EXIM Bank.

### **c. Examination by the Authority**

139. The Authority notes that the program is administered by Export-Import Bank of Malaysia (EXIM Bank). Export credit refinancing program provides loan to enterprise to finance export of products. The program is governed by Export Credit Refinancing guideline issued by the Bank, which provides for eligibility criteria including eligibility of product (negative list of products which is maintained by bank) for the purpose of the program. The subsidy program is not restricted to any particular sector and is available to all companies incorporated in Malaysia.
140. 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.
141. The Authority determines that EXIM Bank is a public body because it is owned by Government and is vested with the Government Authority to carry out governmental functions. Accordingly, the loan provided by EXIM Banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by the EXIM bank and the amount of interest charged by the comparable commercial loan. The program is also specific because it is contingent on export. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

### **Program No. 20: Buyer Credit Guarantee**

#### **b. Views of the Domestic Industry**

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

**b. Submission by Government/other interested parties**

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

**c. Examination by Authority**

144. The Authority notes that the program is administered by Exim Bank. There is no law or legal regulation governing the program.
145. 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. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

**Program No. 21: Licensed Manufacturing Warehouse (LMW)**

**a. Views of the Domestic Industry**

146. This program was disclosed through the questionnaire response of the exporter as well response of GOM. The Domestic Industry has further submitted that since this scheme provides benefit of duty exemption, which is not recorded in the books of the company and therefore, proper documents and information should be called for from the Government of Malaysia and Xinyi Smart. If the finds any mismatch, the response of this scheme should be rejected, and the Authority should use best facts available to calculated subsidy duty for this program.

**b. Submission by Government/other interested parties**

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

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

### **c. Examination by Authority**

150. The Authority notes that the program is administered by Royal Malaysian Customs Department. The program is governed by Section 65 and Section 65A of the Customs Act, 1967.
151. The Authority notes that under this program exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products. It is noted from the responses of the cooperating exporter and GOM that only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax under this program. Further, machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax.
152. The Authority notes that this program provides exemption of customs duty and Sales tax on all raw materials/components used directly in the manufacturing process of approved products. The subsidy program is also specific because it is contingent on product/enterprise. Therefore, Authority holds that this scheme is a countervailing scheme
153. Xinyi Energy Smart (Malaysia) Sdn. Bhd. Has also admitted receiving benefit under this program and therefore, the Authority confirms receipt of benefit under this Program for Xinyi. It is however noted that Kibing has not availed any benefit under this scheme.

### **Producers Exporters from Malaysia**

#### **Xinyi Energy Smart (Malaysia) Sdn. Bhd**

154. Xinyi is cooperating producer / exporter of the subject goods from Malaysia and export the subject goods directly to India. Xinyi has filed responses to the questionnaire, and has provided information regarding the subsidy programs availed by them.

155. The Authority has verified the information provided by both the companies and determined subsidy margin for programs mentioned in the Table below for which benefit was received or accrued during the POI. The Authority has also determined that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to both Xinyi as a recipient of following program. Subsidy program was also specific because they were limited to certain enterprise including Xinyi.
156. The Authority further notes that with respect to Program no. 1, no claim on receipt/non-receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, Xinyi provided documents which showed that the company is availing subsidy benefits.
157. The Authority has considered the subsidy amount specifically mentioned in invoices raised by the gas companies to both Xinyi and Kibing for computing the amount of subsidy margin for Gas subsidy. The total subsidy amount was then determined for the POI, which was then divided by the total sales quantity of the respective companies to arrive at subsidy amount per MT. This per MT subsidy margin was divided by the CIF price per MT of the respective companies to arrive at the subsidy as a % of CIF price to India for both the cooperative companies. Since no other producer / exporter has participated in the investigation, the Authority has applied best facts to arrive at the subsidy margin for all other Malaysian producers of the subject goods.
158. With respect to Program no. 9, the Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions. The Authority has also noted that Float Glass was not under the specific exempted list published as ‘SALES TAX (GOODS EXEMPTED FROM TAX) ORDER 2018 DISIARKAN OLEH/PUBLISHED BY JABATAN PEGUAM NEGARA/ATTORNEY GENERAL’S CHAMBERS’. The Authority notes that Xinyi is situated in designated tariff area. Since this tax exemption is provided because Xinyi is situated in a particular geographical location, it renders the tax exemption to be specific and, therefore, the Authority has computed subsidy margin by considering exemption of sales tax on their domestic sales. For working out the subsidy amount, the Authority has divided the sales tax exemption amount by the total sales quantity of the Xinyi to arrive at subsidy amount per MT. This per MT subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Xinyi. The subsidy margin so determined is given in the Subsidy margin table below.
159. In relation to Program no. 5 pertaining to tax allowance, it is noted that since Xinyi Energy Smart is getting tax exemption under this scheme, the amount equal to the income tax not paid is a direct subsidy. The amount of investment tax allowance utilized by the company, is then divided by the total sales quantity of the Xinyi Energy Smart to arrive at subsidy amount per MT. This per MT

subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Xinyi Energy Smart. The Authority has computed subsidy from the income tax return submitted by Xinyi for the year 2018. It is further noted that as per information available on record the benefit is available for the period of 10 years i.e., from 2015 to 2025. Since the benefit available in POI can be utilized for next 8 years including POI, the Authority has computed the subsidy margin for POI accordingly.

160. For Program no. 21, Xinyi Energy Smart (Malaysia) Sdn. Bhd has admitted receiving benefit under this program. The table below provides name of the subsidy programs, and the corresponding subsidy margins.

**Xinyi**

<b>Program No.</b>	<b>Name of the grant program</b>	<b>Brief Description/Comment</b>	<b>Subsidy margin %</b>	<b>Subsidy Margin Range %</b>
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 3	Investment Tax Allowance	Exemption of 100% on capital expenditures. The total investment cost on production facilities incurred within the period of ten (10) years from February 2015 can be used to offset the taxable profit incurred since year 2015 till the accumulated ITA is fully utilised.	***	0-10
Program No. 9	Sales Tax Exemption	Exemption from payment of sales tax on their output (Sales Tax (Person Exempted from Payment of Tax) Order 2018)	***	0-10
Program No. 21	Licensed Manufacturing Warehouse	Exemption from custom duties and sales tax to all raw materials / components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for exports or local market from the initial stage of manufacture until the finished products	***	0-10
<b>Total</b>			<b>***</b>	<b>0-10</b>

**Kibing Group (M) Sdn. Bhd.**

161. Kibing is cooperating producer / exporter of the subject goods from Malaysia and export the subject goods directly to India. Kibing has filed responses to the

questionnaire, and has provided information regarding the subsidy programs availed by them.

162. The Authority has verified the information provided by the company and determined subsidy margin for programs mentioned in the Table below for which benefit was received or accrued during the POI. The Authority has also determined that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to Kibing as a recipient of following program. Subsidy program was also specific because they were limited to certain enterprises including Kibing.
163. The Authority further notes that with respect to Program no. 1, no claim on receipt/non receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, Kibing provided documents which showed that the company is availing subsidy benefits.
164. The Authority has considered the subsidy amount specifically mentioned in invoices raised by the gas companies to Kibing for computing the amount of subsidy margin for Gas subsidy. The total subsidy amount was determined for the POI, which was then divided by the total sales quantity of the Kibing to arrive at subsidy amount per MT. This per MT subsidy margin was divided by the CIF price per MT of the respective companies to arrive at the subsidy as a % of CIF price to India for both the cooperative companies.
165. With respect to Program no. 9, the Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions. The Authority has also noted that Float Glass was not under the specific exempted list published as ‘SALES TAX (GOODS EXEMPTED FROM TAX) ORDER 2018 DISIARKAN OLEH/PUBLISHED BY JABATAN PEGUAM NEGARA/ATTORNEY GENERAL’S CHAMBERS’. Since Kibing Group has got this benefit, it shows that this exemption is specifically provided to them. This program provides exemption of Sales tax due to the exporters which is otherwise due. For working out the subsidy amount, the Authority has divided the sales tax exemption amount by the total sales quantity of the Kibing to arrive at subsidy amount per MT. This per MT subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Kibing. The subsidy margin so determined is given in the Subsidy table below.
166. The table below provides name of the subsidy programs, and the corresponding subsidy margin

## Kibing

<b>Program No.</b>	<b>Name of the grant program</b>	<b>Brief Description/Comment</b>	<b>Subsidy margin %</b>	<b>Subsidy Margin Range %</b>
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 9	Sales Tax Exemption	Exemption from payment of sales tax on their output (Sales Tax (Person Exempted from Payment of Tax) Order 2018)	***	0-10
Total			***	10-20

### **For other non-participating Producers / Exporters from Malaysia**

167. Countervailing duty for all other producers/exporters from Malaysia has been determined based on the highest of the subsidy margins for the cooperating parties, and based on facts available for other subsidy programs. The subsidy margin so determined is \*\*\*% [Subsidy Margin Range (10-20) %].

### **METHODOLOGY FOR INJURY ASSESSMENT AND EXAMINATION OF INJURY AND CAUSAL LINK**

#### **a. Submissions made by the Domestic Industry**

168. The following are the injury related submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:
- i. Domestic Industry has requested to issue preliminary findings in the instant investigation, as they are continuing to suffer injury during the interim period.
  - ii. Domestic industry has submitted that it is currently going through a deep crisis due to the prolonged lockdown in India. They have further submitted that Float glass production is a continuous process, and therefore, the Domestic Industry has no choice but to continuously produce the subject goods despite poor off-take in the market. According to the Domestic Industry, Xinyi and Kibing continue to export the subject goods in export markets including India and once the current Covid-19 crisis gets over, India will become the hot destination for exports of the subject goods from Malaysia particularly in view of the fact that their major markets including the European Union have been severely affected by the Covid-19 crisis. Contention of the Domestic Industry is based on the market information provided by it according to which imports in February 2020 (13622 MT) increased by around 85% (6264MT) as compared to January 2020 (7358 MT) imports from Malaysia
  - iii. Imports of the product under consideration from Malaysia have shown massive increase in the POI as compared to previous year, which has caused

injury to the Domestic Industry.

- iv. Market share of Malaysia in demand has become significant in POI. Imports from Malaysia have not only taken the share of Domestic Industry but also of other countries in a short span of time. Market share of the Domestic Industry has decreased in the POI as compared to the base year.
- v. With reduction in the prices by the foreign producers, the only choice available to the Indian producer is to either realign their prices with the changes in the import prices or to lose orders. Hence the market share reduced during the entire injury investigation period.
- vi. Domestic industry prices reflect the effect of the prices that are being offered by the exporters in the domestic market. The Domestic Industry has also firmly contended that exporters are giving post sales discount to Indian customers to make their offers more attractive to them. Domestic Industry has requested to insist upon the importer to provide factual information about their contracts with their foreign suppliers and also with their customers along with the payment receipts to ascertain the actual import price.
- vii. The price underselling, price undercutting is positive and substantial. Further, the Domestic Industry is suffering from price depression as they are not able to increase its prices to reasonable terms.
- viii. Performance of the domestic industry has steeply deteriorated in terms of profits. In fact, the profitable situation of the Domestic Industry has turned into losses and return on investments and cash profits have also followed the same trend.
- ix. The decline in profitability of the domestic industry was due to significant increase in the import volume at non-remunerative prices from Malaysia.
- x. The increase in selling price was lower than the increase in cost of production and thus the subsidized imports are creating price suppression effect on the domestic industry.
- xi. The domestic industry has suffered material injury in connection with subsidy of subject goods from Malaysia. Further, the domestic industry is threatened with continued injury, should the present condition continue.

**b. Submissions made by the producers/exporters/importers/other interested parties**

169. The following are the injury related submissions made by the producers/exporters/importers/other interested parties during the course of the present investigation and considered relevant by the Authority.
  - i. There is no volume effect, as the market share of the Domestic Industry has increased in the POI as compared to previous year.

- ii. Domestic Industry has increased its capacity during the POI and this increased capacity, has resulted into higher capital employed, negative return on capital employed, and huge losses.
- iii. The Domestic Industry is not suffering any injury, as their balance sheet is showing significant profits. Moreover, no injury can be attributed to the imports from Malaysia.
- iv. Interested parties requested the Authority to critically examine the injury parameters and other factors causing injury to the Domestic Industry.

**c. Examination by the Authority**

170. The Authority has taken note of the arguments and counterarguments of the all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.
171. As regards the profitability of the company, it is noted that the Applicants are multi-product company and to compare profitability of the company with profitability of the product under consideration is incorrect. Further, the Authority is required to examine the performance of the Domestic Industry with respect to domestic like product and not for the company as a whole. The Authority has, therefore, analyzed the data accordingly. Therefore, the contention of the interested parties based on total profitability of the company is not correct.
172. As regards the issues of analysis of the injury parameters, it is noted that the same are addressed in the subsequent paragraphs while making injury analysis.
173. As regards the issue of capacity expansion, it is noted that the Domestic Industry has increased its capacity to cater the increased demand in the country. However, the sudden increase in POI is because of the fact that one of the constituents of the Domestic Industry started its operations during the injury investigation period (December 2017). In view thereof, the contention of the interested parties in relation to sudden increase in capacity is appropriately analyzed and taken care during the injury analysis. Therefore, no prejudice is caused to any interested parties.
174. Rule 13 read with Annexure-I of the Rules provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry. In considering the effect of the subsidized imports on prices, it is necessary to examine whether there has been a significant price undercutting by the subsidized imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the subsidized imports on the domestic industry in India, indices having a bearing on the state of the

industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of subsidy, etc. have been considered in accordance with Annexure-II of the Rules. The Authority has taken note of various submissions of the domestic industry and the exporters / importers / traders / users on injury to the domestic industry 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. Volume Effect of Subsidized Imports and impact on the Domestic Industry**

**i. Assessment of Demand**

175. For the purpose of the present investigation, demand or apparent consumption of the subject goods has been defined as the sum of domestic sales of the Applicants and imports from all sources. The demand so assessed is given in the table below:

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Imports from Malaysia	MT	-	-	1,29,794	1,92,379
Imports from Other Countries attracting ADD	MT	1,22,768	1,54,210	75,604	33,263
Imports from Other Countries	MT	24,071	62,776	56,517	10,628
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Sales of Domestic Industry	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales of Other Domestic Producers	MT	1,43,650	1,44,500	1,90,000	2,30,000
Trend	Indexed	100	101	132	160
Total Domestic Sales	MT	9,42,691	9,60,169	10,65,931	12,43,390
Trend	Indexed	100	102	113	132
Demand	MT	10,89,530	11,77,155	13,27,845	14,79,660
Trend	Indexed	100	108	122	136

176. From the above, it is noted that the demand of the subject goods has been on the increasing trend throughout the injury investigation period.

**ii. Imports volume and share of the imports from Malaysia**

177. With regard to the volume of subsidized imports, the Authority is required to consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India. The volume of imports of the subject goods from Malaysia has been analyzed as under:

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Imports from Malaysia	MT	-	-	1,29,794	1,92,379
Imports from Other Countries	MT	1,46,839	2,16,986	1,32,121	43,891
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Total PUC Production	MT	11,87,674	11,86,379	12,96,914	17,05,946
Demand of Subject goods in India	MT	10,89,530	11,77,155	13,27,845	14,79,660
<b>Imports from Malaysia in relation to</b>					
Production	%	-	-	10.01%	11.28%
Trend	Indexed	-	-	100	113
Consumption	%	-	-	9.77%	13.00%
Trend	Indexed	-	-	100	133
Total Imports	%	-	-	49.56%	81.42%
Trend	Indexed	-	-	100	164

178. From the above table, it is noted that-

- a. Imports of subject goods from Malaysia have increased significantly during the injury period in absolute terms.
- b. The imports from Malaysia have increased significantly in relation to total imports and consumption in India.

**iii. Price Effect of Subsidized Imports on the Domestic Industry**

179. With regard to the effect of the subsidized imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the

subsidized imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the subsidized imports from the subject country has been examined with reference to the price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from Malaysia.

**a. Price Undercutting**

180. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry as below:

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Landed price from Subject Country	Rs/MT	-	-	17,980	18,124
Net selling price of Domestic Industry	Rs/MT	-	-	22,755	21,206
Price undercutting	Rs/MT	-	-	4,775	3,082
Price undercutting	%	-	-	27%	17%
Price undercutting	Range	-	-	20-30	10-20

181. It is noted that the landed value from Malaysia is below the selling price of the Domestic Industry during the POI and immediately preceding years. This has created huge pressure on the Domestic Industry.

**b. Price Suppression and Depression**

182. In order to determine whether the imports from Malaysia 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 increases which otherwise would have occurred in normal course, the Authority has considered the changes in the costs and prices over the injury period, as detailed below:

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Cost of Sales	Rs/MT	22,253	21,519	20,346	21,365
Trend	Indexed	100	97	91	96
Selling Price	Rs/MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Landed Value from Malaysia	Rs/MT	0	0	17,980	18,124
Trend	Indexed	0	0	100	101

183. From the above table, it is noted that the landed value of imports from Malaysia was below the selling price and cost of sales of the Domestic Industry in the POI and immediately preceding years. This has depressed the prices of the Domestic Industry to a significant degree. It is also noted that both the selling price as well as cost of sales of subject goods have declined during the injury period. However, the decline in the selling price is much more than decline in the cost of production, indicating that the domestic industry has also suffered price suppression.

**c. Price Underselling**

184. The Authority has also examined price underselling if any, suffered by the domestic industry on account of subsidized imports from Malaysia. After examination, it is determined that the domestic industry has suffered price underselling during the POI.

<b>Particulars</b>	<b>Unit</b>	<b>Malaysia</b>
Non-Injurious Price (NIP)	Rs/MT	***
Landed price of imports from subject country	Rs/MT	18,124
Price underselling	Rs/MT	***
Price underselling	%	***%
Price underselling	Range	30-40

**iv. Economic Parameters of the Domestic Industry**

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

**v. Sales Volume and Value**

186. The sales volume and value of the Domestic Industry is given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Sales Quantity	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales Value	Rs. Lacs	1,93,734	1,95,771	1,99,322	2,14,898
Trend	Indexed	100	101	103	111
Sales Price	Rs. /MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87

187. It is noted from the above table, that the sales volume and value of the subject goods have increased during the POI as compared to the preceding years. However, during the same time the selling price of the subject goods decreased. Domestic Industry has submitted that in order to retain the customers, they had no option but to reduce the selling price of the subject goods.

**vi. Production and Capacity Utilization:**

188. The details of production and capacity utilization are given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Capacity	MT	14,11,700	14,08,900	14,99,264	19,95,360
Total Production	MT	11,87,674	11,86,379	12,96,914	17,05,946
Production PUC only	MT	8,93,924	9,10,076	10,17,204	12,61,606
Capacity Utilization (Total Production)	%	84.13%	84.21%	86.50%	85.50%

189. It is noted from above table that the Domestic Industry have sufficient capacity to cater the need of the domestic demand. It is further noted that the capacity utilization has declined marginally during the POI as compared to previous year.

**vii. Market share:**

190. The details of imports, domestic sales and the market share of the domestic industry is as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Imports from Malaysia	MT	-	-	1,29,794	1,92,379

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Imports from Other Countries attracting ADD	MT	1,22,768	1,54,210	75,604	33,263
Imports from Other Countries	MT	24,071	62,776	56,517	10,628
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Sales of Domestic Industry	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales of Other Domestic Producers	MT	1,43,650	1,44,500	1,90,000	2,30,000
Trend	Indexed	100	101	132	160
Total Domestic Sales	MT	9,42,691	9,60,169	10,65,931	12,43,390
Trend	Indexed	100	102	113	132
Demand	MT	10,89,530	11,77,155	13,27,845	14,79,660
Trend	Indexed	100	108	122	136
Share in Demand of					
Imports from Malaysia	%	0%	0%	10%	13%
Imports from Other Countries attracting ADD	%	11%	13%	6%	2%
Imports from Other Countries	%	2%	5%	4%	1%
Total Imports	%	13%	18%	20%	16%
Sales of Domestic Industry	%	73%	69%	66%	68%
Sales of Other Domestic Producers	%	13%	12%	14%	16%

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Total Domestic Sales share in Demand	%	87%	82%	80%	84%

191. From the above, it is noted that imports of the subject goods from Malaysia has increased in the POI as compared to the previous year. It is further noted that the market share of the Domestic Industry has decreased during the period of investigation over the base year despite increase in the demand over the same period.

**viii. Productivity:**

192. The productivity of the Domestic Industry is given in table below:

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Employees	Nos	2,722	2,847	3,671	3,812
Average no. of Working Days	Days	365	365	365	365
No. of Man Days	Man Days	9,93,530	10,39,155	13,39,915	13,91,380
Productivity	MT/man-days	0.90	0.88	0.76	0.91
Trend	Indexed	100	97	84	101

193. It is noted from the above table that the productivity in terms of total production per man-days has remained in the same band. However, the same has increased as compared to the preceding two years.

**ix. Inventories:**

194. The inventory of the subject goods is shown in the following table.

<b>Particulars</b>	<b>UoM</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Average Inventory	MT	51,113	59,186	94,046	1,40,794
Trend	Indexed	100	116	184	275

195. From the above table, it is noted that the inventory has increased substantially during the POI as compared to any of the previous year. This increased inventory indicates the injurious impact of imports from subject country.

**x. Employment and Wages:**

196. The position with regard to employment and wages is given in table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Employees	Nos	2,722	2,847	3,671	3,812
Trend	Indexed	100	105	135	140
Wages	Rs. Lacs	9,108	10,228	12,057	14,153
Trend	Indexed	100	112	132	155
Wages/employee (Rs. per annum)		3,34,59	3,59,26	3,28,45	3,71,28
	Rs/Nos	6	5	0	4
Trend	Indexed	100	107	98	111

197. It is noted from above table that the number of the employees and wages paid to them has increased during the POI. It is further noticed that the wages paid to the employees has increased, although such increase in wages paid has been commensurate to the increase in wages in the country in general.

xi. **Profitability:**

198. The Profits, return on investment and cash flow of the domestic industry has been examined as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Selling Price	Rs./MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87
Cost of Sales Price	Rs./MT	22,253	21,519	20,346	21,365
Trend	Indexed	100	97	91	96
Profit & Loss	Rs. Lacs	15,927	20,250	21,109	-1,610
Trend	Indexed	100	127	133	-10
Profit & Loss	Rs./MT	1,993	2,483	2,410	-159
Trend	Indexed	100	125	121	-8
Cash Profit	Rs./MT	3,916	4,454	4,069	1,345
Trend	Indexed	100	114	104	34
Return on Capital Employed (ROCE)	%	7.2%	8.8%	7.0%	-0.5%
Trend	Indexed	100	123	98	-7

199. As noted earlier that due to the subsidized and low-priced imports, the performance of the domestic industry has been adversely affected in the period of investigation. This is essentially on account of the subsidized imports from Malaysia coming at lower prices due to which the domestic industry has been forced to reduce its prices to match the low prices of imports. This price pressure on the Domestic Industry has adversely affected the profitability of the Domestic

Industry which turned negative during the POI. The ROCE has also followed the same trend as of profitability.

**xii. Growth**

200. There was negative growth of the domestic industry in terms of sales price and market share in the POI. Similarly, profits, as well as ROI turned into negative from profitable situation. The Domestic industry has contended that they were not able to achieve the same due to the presence of the subsidized imports from Malaysia.

<b>Particulars (Year on year)</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>POI</b>
Selling Price	-	-1.01%	-5.19%	-6.81%
Profitability	-	25%	-3%	-107%
Return on investment	-	1.6%	-1.8%	-7.5%
Capacity utilization	-	0.1%	2.3%	-1.0%
Inventory	-	16%	59%	50%

**xiii. Magnitude of Subsidy:**

201. Magnitude of subsidy is an indicator of the extent to which the subsidized imports can cause injury to the domestic industry. The data shows that the subsidy margin determined against Malaysia is above *de minimis* and significant.

**xiv. Ability to raise Capital Investment:**

202. The Authority notes that the performance of the domestic industry has deteriorated considerably and subsidy of the product under consideration may adversely impact the ability of the domestic industry to raise capital investment.

**xv. Factors affecting domestic prices**

203. Consideration the import prices from Malaysia, change in the cost structure, competition in the domestic market, factors other than subsidized imports that might be affecting the prices of the Domestic Industry in the domestic market show that the landed value of imported material from Malaysia is significantly below the selling price of the domestic industry, causing significant price undercutting in the Indian market. The domestic industry contended that benchmark for the domestic prices are the import prices from the subject country. It is also noted that the demand for the subject goods was showing increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, it can be concluded that the principal factor affecting the domestic prices is the landed value of subject goods from subject country.

xvi. **Injury Margin**

204. The Authority has determined Non-Injurious Price (NIP) for the domestic industry on the basis of principles laid down in the Rules read with Annexure-III to the Rules, as amended from time to time. The NIP of the domestic like product has been determined by adopting the verified information/data relating to the cost to make and sell for the period of investigation. The NIP of the domestic industry has been worked out in accordance with Annexure III to the Rules. For determining NIP, the best utilization of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilization of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilization and the same production has been considered for arriving per unit fixed costs. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed for recovery of interest, corporate tax and profit to arrive at the NIP as prescribed in Annexure-III and being consistently followed by the Authority. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries to determine the injury margin.

Country	Producer	Non-Injurious Price (US\$/MT)	Landed Value (US\$/MT)	Injury Margin US\$/MT	Injury Margin (%)	Injury Margin % (Range)
Malaysia	Kibing Group (M) Sdn. Bhd	***	***	***	***%	30-40
	Xinyi Energy Smart (Malaysia) Sdn. Bhd.	***	***	***	***%	30-40
	Others	***	***	***	***%	60-70

xvii. **Conclusion on Material Injury**

205. An examination of the various parameters of injury along with the volume and price effects of imports reveals that there is an increase in the volume of imports of subject goods from the subject country during the POI in absolute terms as well as in relation to the total imports, domestic production and total demand in the country. With regard to price effect, it is noted that imports of the subject goods from the subject country are undercutting the selling price of the domestic industry. The domestic industry has also suffered price depression on account of

subsidized imports of subject goods from subject country as selling price of subject goods has decreased during the injury period. It is also noted that both the selling price as well as cost of sales of subject goods have declined during the injury period. However, the decline in the selling price is much more than decline in the cost of production, indicating that the domestic industry has also suffered price suppression.

206. With regard to impact of volume and price effect on the domestic industry, it is noted that selling price, inventory and market share of the domestic industry has been adversely affected. Further, it is also noted that profitability and ROCE of the domestic industry has been adversely affected on account of subsidized imports of subject goods from the subject country.
207. On the basis of above analysis, it is concluded that due to injurious effect of the subsidized imports, the domestic industry has suffered injury.

xviii. **Non-Attribution Analysis**

208. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, so that the 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, the 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 the 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.

xix. **Volume and price of imports from third countries**

209. The imports from the countries other than Malaysia and countries already attracting anti-subsidy duties are not significant in volume terms so as to cause or threaten to cause injury to the Domestic Industry. Imports from other countries accounted for less than 5% in total imports and 1% of total demand/consumption in India. Thus, it cannot be said that imports from other countries are currently causing injury.

xx. **Export Performance**

210. It is noted that the injury information examined by the Authority is for domestic operations and therefore possible changes in exports volume have not caused injury to the Domestic Industry.

xxi. **Development of Technology**

211. None of the interested parties have furnished any evidence to demonstrate significant changes in the technology that could have caused injury to the domestic industry. It is further noted that technology for production of the product concerned has not undergone any change. Thus, development in technology is not a factor causing injury to the domestic injury.

**xxii. Performance of other products of the company**

212. The Authority notes that the performance of other products being produced and sold by the Domestic Industry does not appear to be a possible cause of injury to the domestic industry.

**xxiii. Trade Restrictive Practices and Competition between the Foreign and Domestic producers**

213. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

**xxiv. Productivity of the Domestic Industry**

214. It is noted that the productivity of the domestic industry in terms of production per employee as well as production per day has marginally increased over the period.

**xxv. Contraction in Demand and Changes in pattern of consumption**

215. It is noted that the demand of the subject goods has increased consistently over the entire injury period. Thus, it can be concluded that the injury to the Domestic industry was not due to contraction in demand.

**xxvi. Examination by the Authority on injury and causal link:**

216. It is thus noted that listed known other factors do not show that the domestic industry could have suffered injury due to these other factors. The Authority examined whether the subsidy of the product has caused injury to the domestic industry. The following parameters show that injury to the domestic industry has been caused by subsidized imports:

- a. Imports of the subject goods from the subject country has increased in absolute terms during the POI as compared to the immediately preceding year i.e., 2017-18. Imports of the PUC from the subject country has also increased in absolute terms as well as increased relative to production and consumption in India.
- b. The domestic industry has not been able to increase its production and sales commensurate with the increase in demand.

- c. Market share of the Domestic Industry has decreased from during the injury period even though demand for the subject goods has been rising in India during the same period. This is due to the reason that imports have aggressively captured the increase in demand.
- d. The imports of subject goods from subject countries were significantly undercutting the prices of the domestic industry in the market. Resultantly, the domestic industry was forced to reduce its prices. The price depression suffered by the domestic industry is primarily because of subsidy of the product in the country.
- e. The domestic industry was forced to reduce its prices even below its cost causing financial losses. The price depression caused by the subsidized imports from subject country has thus resulted in negative profit from positive profit during the POI.
- f. Performance of the domestic industry with regard to profits, cash flow and return on investments deteriorated as a result of price depression. Thus, subsidy of the product has led to deterioration in performance of the domestic industry in terms of profits, cash flow and return on investments.

## **POST-DISCLOSURE SUBMISSIONS**

217. The post disclosure submissions have been received from the interested parties, and it is noted that the most of the issues raised are reiterations and have already been raised earlier and also addressed appropriately. Additional submissions have been analyzed as under:

### **Submissions of the Other Interested Parties**

#### **Program No. 1. Subsidies on Natural Gas**

##### **Submission by Government of Malaysia**

218. The specificity element essentially required for this program to be subjected to any countervailing measure undoubtedly does not exist. The non-specific element has been clearly demonstrated from the following information:
- i. Regulated gas price is made available to all GMB customers. The GOM did not explicitly limits access of this program to certain enterprises and therefore the specificity principle in Article 2.1(a) of the WTO SCM Agreement is not applicable.
  - ii. Gas price charged to customers is according to tariff categories which is based on the customers' average annual gas consumption. The GOM further explained that no application is required for the customers to apply for a specific tariff category. This conforms with Article 2.1(b) of the WTO SCM Agreement where GMB established objective criteria or condition which are neutral and do not favour certain enterprise over others. The tariff category based on average annual gas consumption is also economic in nature and horizontal in application.

219. It is submitted by GOM that the Designated Authority has inaccurately concluded that this program has been granted to a limited number of persons engaged in the manufacture or production of the product under consideration. Further, it is submitted that the Designated Authority plainly overlooked the evidence provided by the Petitioner itself with regards to GMB's gas volume distribution. The Petitioner has furnished GMB's Annual Report 2017 as the legal basis evidence on the program which was duly acknowledged by the Designated Authority in paragraph 33 of the Disclosure Statement. It is clearly evidently from page 42 of GMB's Annual Report 2017 that Malaysia has a diverse and wide range of industries utilizing natural gas in their operation. It is also obviously illustrated that glass products manufacturers with only 8% of total natural gas consumed were not the bulk consumer of natural gas in Malaysia. The GOM is highly astonished that the Designated Authority has neglected this imperative information and erroneously made an arbitrary conclusion on the specificity of natural gas distribution in Malaysia has only benefiting the manufacturers of the product under consideration.

#### Submission by Xinyi

220. That although the Government of Malaysia (GOM) has admitted Gas prices are regulated by Government, the gas price offered to Malaysian users is higher than in other Asian markets and India as well.
221. DGTR has also not analyzed the specificity of the programs. The GOM has stated in the Questionnaire response that the industrial users of gas in Malaysia are charged based on tariff category and enterprises within the same category will be charged same price. Therefore, Program No.1 is not specific and thus cannot be regarded as countervailable.
222. It is further submitted that under Gas Cost Pass-Through (GCPT) mechanism, gas pricing is adjusted every 6 months in order to match with market price and is expected to reach market price in 2020. In fact, GCPT mechanism has ended at the end of 2019. The gas supplier, Gas Malaysia Berhad has made company announcement regarding the change of gas price.
223. Xinyi Energy Smart submitted that no subsidy was granted to Gas suppliers in Malaysia since January 2020. Starting from January 2020 the gas bill no longer has GCPT section or "Government subsidies" ("Subsidi Oleh Kerajaan Persekutuan" in Malay) which proved that GCPT mechanism has ended and the assistance has been cancelled since then. However, it is further submitted that the Government of Malaysia has now fixed the gas price at the average price of RM \*\*\*/Mmbtu for the year 2020. The price for the year 2021 shall be reviewed and set by the GOM before end of 2020.

#### Submission by Kibing

224. There is no gas subsidy given by the Government to Kibing. The amount shown in the Gas Invoices represent the difference between Export Price of Gas from Malaysia and Gas Price charged from the buyers.
225. That there is a change in Gas Pricing Mechanism from Jan 2020 and since then no such amount is mentioned on the Gas Invoices. No specificity has been claimed by the Domestic Industry and also the Authority could not establish any specificity in this Program. Hence this Program is not countervailable.

### **Program No. 3 Pioneer Status Program**

#### **Submission by Government of Malaysia**

226. GOM has submitted that it has approved either Pioneer Status or ITA to the participating Malaysian producers. However, because of certain criteria/requirements which have not been met by these companies, they are yet to receive any benefit from the Program. Further, it has been submitted that if the tax exemption were claimed by the companies during the Period of Investigation (POI), the tax exemption amount will be reflected in the companies' annual tax return of the corresponding assessment year.
227. Kibing has never utilized the Pioneer Status program since the approval by the GOM dated 29 January 2016. A company is required to apply for Pioneer Certificate (PC) in order to avail its benefits under this program. As such, Kibing has not applied for, accrued, or received benefit from this program. The Designated Authority would be able to verify this information from Kibing's audit report and annual tax return of the corresponding years.

#### **Submission by Kibing**

228. Kibing has submitted that since it has not completed the procedural requirements, hence, no benefit is availed under this scheme during POI and therefore, no benefit under Pioneer Scheme/Investment Tax Allowance can be applied to them. It was further clarified that assumption of Capital Allowance shown in the Income tax Return of the Company for 2018 as Investment Tax Allowance/Pioneer Status is totally incorrect as both these schemes are independent. Further, since the Authority has concluded that Capital Allowance indicated in Income Tax Return is not countervailable, no benefit for not paying income tax is accrued to them. Annual Reports of Kibing for 2016, 2017, 2018 and 2019 also do not reflect any benefit from these schemes received by Kibing.
229. It is also submitted that permission for Pioneer Scheme has been converted into Investment Tax Allowance only in May 2019. However, Kibing has not yet notified the MITI about date of commencement of the program, hence no benefit has accrued or received by Kibing under this program

### **Program No. 5 Investment Tax Allowance**

#### **Submission by Government of Malaysia**

230. GOM has submitted that it has approved either Pioneer Status or ITA to the participating Malaysian producers. However, because of certain criteria/requirements which have not been met by these companies, they are yet to receive any benefit from the Program. Further, it is submitted that if the tax exemption were claimed by the companies during the Period of Investigation (POI), the tax exemption amount will be reflected in the companies' annual tax return of the corresponding assessment year.

#### Submission by Xinyi

231. It is submitted that during the most recent tax audit carried out by Malaysia Tax Authority, it has been concluded that Xinyi Energy Smart has failed to meet one of the conditions. As a result, Malaysia Tax Authority had decided to withdraw the ITA benefit to the company. One of the important conditions for availing ITA benefit was that the applicant should not have employed more than 20% of unskilled foreign workers. Xinyi has failed to meet such condition for period in question.

232. It is also submitted that the adoption of 6 years as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP.

233. Xinyi Energy Smart has submitted that "Xinyi" (Malaysia) is enjoying tax incentive of Investment Tax Allowance (ITA) whereby the total investment cost on production facilities incurred within the period of ten (10) years from January 2015 can be used to offset the taxable profit incurred since the year 2015 till the accumulated ITA is fully utilized. However, as the ITA won't be utilized until Capital Allowance amount has been fully utilized, the ITA utilized for Year of assessment 2018 is MYR 0. During the year of Assessment 2017 and 2018, the statutory income of Xinyi Energy Smart was both zero, therefore, the amount of ITA that had been actually utilized was zero as well. Therefore, Xinyi Energy Smart submits no subsidy margin shall be calculated since Xinyi Energy Smart did not actually avail any ITA benefits during the POI and pre-POI.

#### **Program No.9. Sales Tax Exemption**

##### Submission by Kibing

234. It is submitted that Sales Tax Charge to Customer is not an income to Kibing. It is further submitted that Kibing manufactures float glass and sells float glass to its customers. The float glass is a raw material/material to the customers. If a customer who has obtained the Sales Tax exemption from the Royal Malaysian Custom Department (RMCD), the customer is exempted to pay the sales tax on the materials they purchased from Kibing. For those customers who did not get the Sales Tax Exemption from the RMCD, Kibing is required, under the Sales Tax

Order 2018, to collect the Sales Tax from the customers, on behalf of the RMCD, and make payment to the RMCD according to the prescribe schedule.

### **Program No. 11 Exemption from Import Duty and Sales Tax on Spares Part**

#### **Submission by Kibing**

235. Kibing has stated that the amount mentioned in Exhibit-9 as Exemption of Import Duty and Sales Tax on Spares and Consumables is totally incorrect and unfounded. In fact, SST1 and SST represents the amount of goods sold for during the period when SST was applicable. It is not the SST Exemption of Import Duty and Sales Tax on Spares and Consumables but value of goods sold with sales tax exemption applied by Kibing's customers to RMCD and approval given to Kibing's customers. In fact, Sales Tax paid on input is set off against Sales Tax collected in respect of domestic sales. The same is shown in the Sales Tax Return for the respective periods. Hence the assumption that the amount shown in Exhibit-9 of the Questionnaire Response of Kibing is the Exemption of Import Duty and Sales Tax on Spares and Consumables is totally incorrect. The Amounts indicated in Exhibit-9 under SST1 and SST 3 reflect amount of Goods sold during the period Sept 2018 to April 2018. The same is duly reflected in the Sales Tax Returns for the said period.

### **Program No. 12 Exemption from Import Duty and Sales Tax on Machinery and Equipment**

236. Kibing has stated that the amount mentioned in Exhibit-9 as Exemption of Import Duty and Sales Tax on Machinery and Equipment is totally incorrect and unfounded. In fact, PTC1 and PTC2 represents the amount of SST on certain inputs purchased during the period when SST was applicable. It is not the SST exemption amount on Exemption of Import Duty and Sales Tax on Machinery and Equipment. In fact, Sales Tax paid on input is set off against Sales Tax collected in respect of domestic sales. The amount is shown in the Sales Tax Return for the respective periods. Therefore, the assumption that the amount shown in Exhibit 9 of the Questionnaire Response of Kibing is the Exemption of Import Duty and Sales Tax on Machinery and Equipment is totally incorrect.

237. The exporters have further submitted that the adoption of 8.5 years as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP.

#### **Submissions of the Domestic Industry:**

238. The so-called cooperating Malaysian exporters namely M/s Xinyi Smart Energy (Malaysia) Sdn. Bhd. (Xinyi) and M/s Kibing Group (M) Sdn. Bhd. (Kibing) as well as the Government of Malaysia (GOM) have willfully and unjustifiably

suppressed the information which has direct bearing on the quantum of the subsidy duties.

239. That the GOM has specifically stated that the present scheme is not available for industrial users, and the Malaysian exporters, Xinyi and Kibing, also denied availing any benefit under the present scheme. However, at the time of the verification of documents, the Authority was able to figure out that the Malaysian exporters have indeed availed benefit under the present scheme and therefore, the Authority should reject the exporters.
240. That in an anti-subsidy investigation, the Authority is predominantly dependent upon the information and documents submitted by the concerned parties, any misrepresentation, willful suppression of facts, or failure to provide full and sufficient questionnaire response by the parties to the investigation has to be taken very seriously. Therefore, the Authority has been consistently rejecting the entire response of the parties in trade remedy investigations even when there is a suspicion that the said party has not come out clean before the Authority or if any part of the questionnaire response filed by it is incomplete. In the instant, investigation, both the exporters have not provided information about their related parties and therefore, their responses are liable to be rejected.
241. It is further submitted that the responding Malaysian exporters have apparently provided some half-baked information after their lies with respect to gas subsidy program was found by the Authority during verification, the Authority should use best facts available to determine their subsidy.
242. Domestic Industry has further submitted that the US Investigating Authority in the Countervailing Duty Investigation concerning imports of Fine Denier Polyester Staple Fiber from India [C-533-876 dated 16.1.2018], has used facts available for that scheme (TUFS) despite the fact that Indian producer had provided complete information during verification about the scheme in question taken by textile company and not the company producing PSF despite the fact that the company had also refunded back the amount to the bank with interest and, therefore, no subsidy should be added. US Authority imposed Adverse Facts only because information about that scheme was not disclosed prior to the verification.
243. The submissions of the responding exporters and GOM with respect to the countervailable schemes found to be existing in Malaysia cannot be accepted since it has specifically been found by the Authority that the said exporter and the Government of Malaysia has willfully suppressed material information from the Authority and provided incorrect information.
244. That the disclosure statement fails to record that certain benefit received by subsidiaries are fungible in nature and can be utilized by the group companies and, therefore, it is of utmost importance that the analysis of all the related companies is carried out appropriately. Since the Malaysian exporters did not provide the names of related parties and schemes availed by them, their responses should be rejected.

### **Examination by the Authority,**

245. The Authority notes that most of the submission made by interested parties are repetitive in nature and were already addressed earlier in the disclosure statement. The finding above ipso facto deal with these arguments of parties. Further, the Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere.

### **Natural Gas Subsidy**

246. The Authority notes the submissions of the domestic industry, the cooperative exporter and the Government of Malaysia regarding the availability and quantification including mechanism of subsidy granted on natural gas to various entities. The Government of Malaysia has provided the mechanism of gas pricing in their response. However, despite request they have not been able to either explain GCPT mechanism or provide minutes of the meeting for GCPT mechanism during the course of the investigation. This has restricted the ability of the Authority to understand the mechanism. It is further noted that the GOM has accepted that the prices of Gas are regulated in the market. Further, the participating exporters during desk verification have also shown actual invoices, wherein amounts of gas subsidy received are clearly mentioned, despite initially denying the existence of gas subsidy. The Authority after finding actual amount of gas subsidy on the invoices produced by the exporters have calculated the subsidy margin accordingly. Therefore, the Authority confirms the amount of subsidy received by the exporters under this Program.

### **Pioneer status programme (PS)**

247. In relation to PS, it is noted that the Authority had proposed to countervail this scheme in the disclosure statement. However, after analyzing the post disclosure comments made by Kibing and GOM regarding Pioneer Status Program, the Authority notes that the company had not paid income tax because of capital allowance available to them, which is already decided as a non-countervailable scheme in this investigation. It is further noted that since Kibing has not completed the procedural requirements, hence, no benefit is availed by them under this scheme during POI and therefore, no benefit under Pioneer Scheme can be applied to them. In view thereof, it is noted that despite this scheme being countervailable, no subsidy amount is being recommended for Kibing, as the same has not been availed by them.

### **Investment Tax Allowance (ITA)**

248. In relation to the submission made by Xinyi regarding the fact that no benefit was available under the ITA, it is noted that in post disclosure submissions, the methodology used by the Authority for reaching the benefit amount for POI was contested. In this context, it is noted that the Authority has, in light of the post disclosure comments, re-examined the benefit. While analyzing, it is confirmed that Xinyi has indeed availed benefit under this scheme as the same was reflected

in their Annual Report as well as ITR filed by them. The Authority has relied upon the Annual Report and Income Tax return submitted by Xinyi.

249. In this connection, it is further noted that the company has reflected the amount of RM \*\*\* that is brought forward from the previous year and RM \*\*\* for the current year totaling to RM \*\*\* which the company could not utilize, and the amount was carried forward to be utilized in subsequent years. Since the scheme is available for a period of 10 years from 29 January 2015 to 28 January 2025 and effectively only six years are left for utilizing the carried forward amount of RM \*\*\*, accordingly the unutilized amount of investment allowance reflected in the ITR has been spread over a period of six years, and accordingly the subsidy margin has been calculated.
250. In relation to the submission of Xinyi regarding their ITA claims and its consequential refund along with penalty to the GOM, the Authority holds that the claim of refund is not verifiable at this stage for reasons of its non-admissibility or its restoration to the producer/exporter later. The Authority notes that the cooperating exporter has in continuation of their earlier comments, submitted that ITA has been discontinued to them. However, the Authority could not verify the claims at this late stage. Further, complete details of the same have also not been explained. Therefore, the Authority notes that if the exporter would not get any benefit under this scheme in future, the exporter may file a review in accordance with relevant rules. In view of the above, the Authority holds that Xinyi has got benefit under this scheme.

### **Sales Tax Exemption**

251. The Authority has taken note of the submissions made by Kibing and GOM in relation to Program No 9, 11 and 12 and the margin calculated thereunder. The Authority has taken due cognizance of their explanation and submissions, which ought to have been clarified / submitted at the stage of verification process. The Authority has made efforts to understand the submissions made by the exporter in this regard and have accordingly accepted the clarification submitted by the exporter regarding 'SST1 and SST3' and 'PTC1 and PTC2'. The Authority has re-examined Exhibit-9 in the light of the post disclosure statement comments and found that the amount mentioned in Sales Tax Exemption category under the head 'POI Actually Received Subsidy' is the actual subsidy received by the exporter and claimed by them in Exhibit-9. Since the exporter has himself admitted the subsidy received during the POI under Sales Tax Exemption, the Authority has determined subsidy margin for Sales Tax Exemption based on the subsidy amount claimed by Kibing in questionnaire response.

### **Exemption from Import Duty and Sales Tax on Spares and Consumables**

252. The Authority has examined the response filed by Kibing in relation to this Program and has taken note of explanation of the terms 'SST1' and 'SST3' and the corroborative documents submitted along with the post disclosure comments in this regard. Since the terms 'SST1' and 'SST3' are not related to Sales Tax on Spares and Consumables, as was explained by the exporter, the Authority has

decided not to countervail this scheme for Kibing and accordingly, no subsidy margin is calculated for this scheme in these final findings.

### **Exemption from Import Duty and Sales Tax on Machinery and Equipment**

253. The Authority has examined the response filed by Kibing in relation to this Program and has taken note of explanation of the terms ‘PTC1’ and ‘PTC2’ and the corroborative documents submitted along with the post disclosure comments in this regard. Since the terms ‘PTC1’ and ‘PTC2’ are not related to Sales Tax on Machinery and Equipment, as was explained by the exporter, the Authority has decided not to countervail this scheme for Kibing and accordingly, no subsidy margin is calculated for this scheme in these final findings.

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

### **Conclusion**

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

- i. The product under consideration has been exported to India from Malaysia at subsidized price.
- ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.
- iii. The material injury’ has been caused by the subsidized imports of the subject goods originating in or exported from Malaysia.

### **Indian Industry’s Interests and Other Issues**

256. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty would not restrict imports from the subject country in any way and, therefore, would not affect the availability of the products to the consumers. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

## **RECOMMENDATION**

257. It is noted that the Authority has already recommended anti-dumping duties on the same product under consideration vide final findings F. No. 6/15/2018-DGTR dated 20.8.2020. The same was accepted by Ministry of Finance vide notification No. 37/2020-Customs (ADD) dated 11.11.2020. It is further noted that in terms of Section 9B(1)(a) of the Act, no article shall be subject to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization. Considering the above provision, the Authority has taken due care that the product under consideration should not be subject to both anti-dumping and export subsidy. In this context, it is important to highlight that the subsidy margin quantified by the Authority in relevant paragraphs above pertains to subsidies other than export subsidies. Therefore, the current subsidy duties are in accordance to the Act and Rules. Further, there will be no double protection to the Domestic Industry and will cause no prejudice to any interested party whatsoever.
258. It is further noted that anti-dumping duty was recommended on reference-price based on the factual matrix of the case. Therefore, now the anti-dumping is only payable if the subject goods will be landing below the reference price notified vide notification No. 37/2020-Customs (ADD) dated 11.11.2020 and the amount of ADD would be to the extent of difference between the landed value of subject goods, and the reference price indicated in column 7 of the duty table of the above Notification.
259. In addition to above, it is further noted that since the POI of anti-dumping and countervailing duty is same, the Authority has also taken due precaution of the fact that the anti-dumping margin and anti-subsidy margin should not exceed the injury margin calculated for the Domestic Industry for the POI. The same is also reflected in the Table below:

Particulars	Dumping Margin in the AD investigations	Dumping Margin% in the AD investigations	Subsidy Margin	Subsidy Margin %	Dumping Margin + Subsidy Margin		Injury Margin	
	USD/MT	%	USD/MT	%	USD/MT	%	USD/MT	%
Xinyi Energy Smart (Malaysia) Sdn. Bhd.	***	***	***	***	***	***	***	***
Kibing Group (M) Sdn. Bhd.	***	***	***	***	***	***	***	***
Others	***	***	***	***	***	***	***	***

260. From the above, it is clear that the injury margin which is same for both the anti-dumping investigation and anti-subsidy investigation because of same POI, is

significantly higher than the sum of both dumping margin and subsidy margin taken together for both the cooperating producers and exporters. Since injury margin percentage determined for other producers and exporters is lower than sum of dumping and subsidy margin percentages, the anti-subsidy duty is restricted to the amount by which injury margin exceeds dumping margin i.e., \*\*\*%.

261. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury' and causal link. Having initiated and conducted the investigation into subsidization, injury and causal link in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject country in the form and manner described hereunder.
262. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive countervailing duty as mentioned in Col No.7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of the subject goods from the subject country.

**Duty Table:**

S.no. (1)	Heading/ Sub- heading (2)	Description of Group (3)	Country of origin (4)	Country of export (5)	Producer (6)	Duty Amount as % of CIF value (7)
1.	7005	Clear Float Glass of nominal thicknesses ranging from 4 mm to 12 mm (both inclusive), the nominal thickness being as per BIS14900:2000	Malaysia	Any country including Malaysia	Xinyi Energy Smart (Malaysia) Sdn. Bhd.	9.74%
2	-do-	-do-	Malaysia	Any country including Malaysia	Kibing Group (M) Sdn. Bhd.	11.15%
3	-do-	-do-	Malaysia	Any country including Malaysia	Any other than Sl no 1 & 2	4.02%

S.no. (1)	Heading/ Sub- heading (2)	Description of Group (3)	Country of origin (4)	Country of export (5)	Producer (6)	Duty Amount as % of CIF value (7)
4	-do-	-do-	Any country other than Malaysia	Malaysia	Any	4.02%

1. CIF value means the assessable value as determined under section 14 of Customs Act. 1962 (52 of 1962).
2. The Authority further notes that due to ASEAN Free Trade Agreement, the basic custom duty is zero and therefore, landed value and CIF amount will be same.
3. To clarify how both anti-dumping and anti-subsidy duty will operate, an illustration is provided below:

❖ *If the CIF / Landed Value of exports to India by Xinyi for PUC is USD 250/MT, Xinyi has to pay USD 22.87 / MT (USD 272.87/MT minus USD 250 / MT) as Anti-dumping duty and USD 24.35 / MT (9.74% of USD 250/MT) as countervailing duty. With the same price of exports, the other producers and exporters would be paying US\$ 76/MT (US\$ 326/MT minus US\$250/MT) as ADD, and US\$10.05/MT as CVD.*

#### Further Procedure

263. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(B. B. Swain)

Special Secretary & Designated Authority