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**F.No. 6/17/2018-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF TRADE REMEDIES)
Jeevan Tara Building, 4th Floor 5, Parliament Street, New Delhi-110001**

Dated 05.11.2019

NOTIFICATION

FINAL FINDINGS

Sub: Final Findings in Anti-subsidy investigation concerning imports of “Continuous Cast Copper Wire Rods” from Indonesia, Malaysia, Thailand and Vietnam.

No. 6/17/2018 -DGAD: Having regard to the Customs Tariff Act, 1975, as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time thereof:

A. BACKGROUND OF THE CASE

1. Whereas, M/s. Hindalco Industries Limited and M/s. Vedanta Industries (Sterlite Copper) (collectively referred as “Petitioners” or “Applicants”), have filed an application on behalf of Domestic Industry before the Designated Authority (hereinafter also referred to as the “Authority”), in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the “Rules”) for imposition of Countervailing Duty on imports of “Continuous Cast Copper Wire Rods” (hereinafter also referred to as the “subject goods” or “PUC”) from Indonesia, Malaysia, Thailand and Vietnam (hereinafter also referred to as the “subject countries”).
2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the Petitioners, issued a public notice vide Notification No. 6/17/2018 - DGAD dated 10th September, 2018, published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
 - a) The Authority notified the Embassies of subject countries in India about the receipt of the present anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.
 - b) The Authority invited the Government of Indonesia, Malaysia, Thailand and Vietnam 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 12th July, 2018 and 13th July, 2018 in New Delhi, which was attended by the representatives of the Government of Indonesia, Malaysia, Thailand and Vietnam.
 - c) The Authority issued a public notice dated 10th September, 2018 published in the Gazette of India Extraordinary, initiating countervailing duty/anti-subsidy investigation concerning imports of the subject goods.
 - d) The Authority sent a copy of the initiation notification dated 10th September, 2018 to the Embassies of subject countries, known producers/exporters from subject countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the Petitioners and requested them to make their views known in writing within the prescribed time limit.
 - e) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassies of subject countries in India in accordance with Rule 7(3) of the Rules supra.
 - f) The Embassies of subject countries in India were also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
 - g) The Authority sent questionnaires to the Governments of subject countries in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred by the Governments. Governments of Thailand, Malaysia, Vietnam and Indonesia filed a questionnaire response, which has also been taken into account.
 - h) The Authority sent questionnaires to the following known producers/exporters in subject countries, in accordance with Rule 7(4) of the Rules:
 - i. M/s. Krontong Scraps Company Ltd., Thailand
 - ii. M/s. Cosco Yu Metal Ltd., Thailand
 - iii. M/s. Siam Pacific Electric Wire & Cableco, Thailand
 - iv. M/s. Sei Thai Electric Conductor Co. Ltd., Thailand
 - v. M/s. Alpha Industries, Malaysia
 - vi. M/s. Metrod, Malaysia
 - vii. M/s. MettubeSdn. Bhd., Malaysia
 - viii. M/s. PM Copper Wire & Cables Sdn. Bhd., Malaysia
 - ix. M/s. LuvataMalasiaSdn. Bhd., Malaysia

- x. M/s. PT. SnolictianTechnolica, Indonesia
 - xi. M/s. PT Karya Sumiden, Indonesia
 - xii. M/s. Nam Trieu Welding Material Industry Joint Stock Company, Vietnam
 - xiii. M/s. Muon Anh Trading Company Limited, Vietnam
 - xiv. M/s. SNC Vietnam JSC, Vietnam
 - xv. M/s. SNC Joint Stock Co., Vietnam
 - xvi. M/s. Dong Viet Non Ferrous Metal Joint Stock Company, Vietnam
 - xvii. M/s. Ngohan Joint Stock Company, Vietnam
- i) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response in the prescribed format:
- i. M/s. CFT Vina Copper Co. Ltd., Vietnam
 - ii. M/s. Dong Viet Non-ferrous Metal and Plastic Joint Stock Company, Vietnam
 - iii. M/s. Alpha Industries Sdn. Bhd., Malaysia
 - iv. M/s. SEI Thai Electric Conductor Co. Ltd., Thailand
 - v. M/s. PT TembagaMuliaSemananTbk, Indonesia
 - vi. M/s. PT Karya Sumiden, Indonesia
 - vii. Metrod Malaysia SdnBhd
 - viii. Metrod (OFHC) Sdn Bhd.
 - ix. Metrod Copper Products SdnBhd
 - x. Panasonic Procurement Malaysia SdnBhd
- j) Pursuant to the initiation notification, apart from the above producers/ exporters from the subject countries, Government of Malaysia, Thailand, Vietnam and Indonesia have also filed the questionnaire response.
- k) The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 7(4) of the Rules:
- i. M/s. Polycab Wires
 - ii. M/s. Trafigura India Pvt. Ltd.
 - iii. M/s. Havells
 - iv. M/s. Precision
 - v. M/s. ASTA India Private Limited
 - vi. M/s. Crompton Greaves
 - vii. M/s. KEC International Limited
 - viii. M/s. Mothersons
 - ix. M/s. Duplex Wires
- l) In response, the following importers/users have responded and filed importer's questionnaire response.
- i. M/s. Apar Industries Ltd.
 - ii. M/s. GK Winding Wires Ltd.
 - iii. M/s. Great White Global Pvt. Ltd.
 - iv. M/s Savli Copper products Pvt. Ltd.

v. M/s Anchor Electricals Pvt. Ltd.

- m) Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of the following parties during the course of this investigation.
- (i) Government of Thailand
 - (ii) Winding Wires Manufacturers' Association of India
- n) The Authority made available non-confidential version of the evidence presented/submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- o) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.
- p) The Non-Injurious Price (NIP) based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-Dumping Rules has been worked out so as to ascertain whether Countervailing duty lower than the subsidy margin would be sufficient to remove injury to the Domestic Industry.
- q) Physical inspection through on-spot verification of the information provided by the applicant domestic industry, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present Final Findings.
- r) Verification of the information provided by the producers/exporters and Government of Vietnam, Thailand, Indonesia and Malaysia to the extent deemed necessary, was carried out by the Authority and such verified information has been relied upon for the purpose of present Final Findings .
- s) The Period of Investigation for the purpose of the present anti-subsidy investigation is from April, 2017 to March, 2018 (12 Months). The injury investigation period has however, been considered as the period 2014-15, 2015-16, 2016-17 and the POI.
- t) 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 29th March, 2019. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were advised to offer their rebuttals.
- u) The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present Final Findings.
- v) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this Final Findings.
- w) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such

information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- x) The Authority also called for comments on the proposed PCN methodology from the interested parties including domestic industry in order to have fair comparison vide Notification dated 5 April, 2019. Thereafter, PCN wise information was called for vide Notification dated 13 May, 2019.
 - y) Further information was sought from the applicants and other interested parties to the extent deemed necessary.
 - z) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the Final Findings on the basis of the facts available.
- aa) A Disclosure Statement was issued to interested parties on 21st October, 2019 containing essential facts under consideration of the Designated Authority, giving time up to 29th October, 2019 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately in the present final findings.
- bb) The exchange rate adopted by the Authority for the subject investigation is US\$1 = ₹65.33.
- cc) In this final findings, *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

The product under consideration in the present investigation is “Continuous Cast Copper Wire Rods”, classifiable under Customs Subheading 7407.1010, 7407.1020, 7408.1190, 7408.1920, 7408.1990, 7409.11, 7409.19.

C.1. Submissions made by the Domestic Industry

5. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:
- a) The product under consideration in the present petition is “Continuous cast copper wire rod”. The product scope specifically includes the following:
 - Continuous cast copper wire rod
 - Copper wire
 - Copper rod
 - Copper wire rod
 - Continuous cast copper rod

- Copper strip
 - Welding wires
- b) The scope of the PUC excludes the following:
- Rods made of copper-zinc base alloys (brass) or bronze (and similar alloys);
 - Copper weld wires
 - Wires made of copper- zinc based alloys (brass) or copper- nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver) or bronze (and similar alloys);
 - Silver plated copper wires;
 - Tinsel wires;
 - Enameled copper wires;
 - Metal coated copper wires;
 - Insulated copper wires cables.
- c) The PUC is a solid uniform cross section along its whole length. The cross section can be round, oval, square, hexagonal, rectangular and other shapes. The PUC is generally in coil form. Copper wire & rod is reddish- orange in color and are made from one of the basic chemical elements- copper, a metal.
- d) The PUC is entering the Indian domestic market with various dimensions including 1.6mm, 1.8mm, 2mm, 2.6mm, 8mm, 10mm, 12mm, 14mm and 20mm.
- e) The Continuous cast copper wire rods of different diameters constitute one article for the purpose of present investigation, as these bear the same technical and physical characteristics.
- f) The investment required for drawing rod for making wires is negligible and cannot be treated as a different article.
- g) Copper wire rod and copper wire contain the same physical and technical characteristics.
- h) Both products are the outputs of continuous casting process. Copper wire imported also remains an intermediate product and is eventually drawn into desired sizes. The basic process up to the stage of rod or rod wire is the same for producing both rod or wire.
- i) The pricing of copper wire rods and wires also have a similar movement across the year.
- j) The primary raw material involved in making the PUC is copper cathode. Copper ore (containing less than 2% copper) is beneficiated into concentrates (containing 25%-30% copper).
- k) As seen in investigations pertaining to Glass Fibre and Articles thereof from China PR, Peroxosulphates also known as Persulphates from China PR and Japan, and Caustic Soda, a mere change in form does not necessarily mean a different article.
- l) All wire rods and wires perform the function of transmission of power and eventually find application in the cable, housing wire, winding wire, strips & transformers and auto industries.
- m) Copper wire rods of 8mm and above or copper wire of 1.6-5.7 mm cannot be directly used. They have to be drawn into wires up to 0.04 mm.

- n) The goods produced by the domestic industry are similar to the product under consideration in terms of physical and technical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers use the two interchangeably.
- o) Further, Chapter 74 of the Customs Tariff Act recognizes only (a) bars, (b) rods, (c) profiles, (d) wires. It does not recognize 'wire rods'. Petitioners are selling the product by clearing their production under '7408'.
- p) There is a significant difference between "wire/rod-in-coil" form which is 7408 products and "rod not in coil" form which is 7407. Petitioners have not sought CVD on the latter.
- q) Alpha Industries has provided a Product Catalogue, wherein they have identified themselves as "rods/wires" manufacturers. It has made no distinction between rods and wires. It is also evident that it uses 2/3rd of its rod production capacity for the purposes of drawing wires. This is indicative of copper wire below and above 6mm being one article with the only difference that rods are further drawn into thinner dia and are commercially described as wire.

C.2. Submissions made by the other interested parties

- 6. The submissions made by the exporters, importers, users and other interested parties with regard to product under consideration and like article, and considered relevant by the Authority, are as follows:
 - a) The present petition has been filed for the product "continuous cast copper wire rods" as per initiation notification. The initiation notification does not specify other forms of the products.
 - b) "Continuous cast copper wire rod", "continuous cast copper rod" and "copper rod" are same product and can be used interchangeably but copper wire is a different product and is different from rods.
 - c) As per para 6.5 of Chapter VI of Report No. 1 of 2017 Union Government (Indirect Taxes-Customs), copper wire and copper rods may be defined as under:

"6.5 Copper wire misclassified as copper bar/rods

As per note 1 (d) & (f) of Chapter 74, Bars and rods are defined as Rolled extruded, drawn or forged products not in coils. While wire is defined as Rolled extruded, drawn products in coils. Further, as per Bureau of Indian Standard (BIS) wire rod means rod products of uniform cross section dimension exceeding 6 mm used as intermediate product for further working supplied in cold form. Copper wire having cross sectional dimension exceeding 6 mm is classifiable under Customs tariff heading (CTH) 74081190 and attract Basic customs duty (BCD) at the rate of 5 per cent."

- d) Copper wire and copper rods are two distinct products and cannot be used interchangeably. The manufacturing process of the two are also different. Copper rod is produced by casting whereas copper wires are drawn from Copper Rods. Copper Wires are downstream products of Copper Rods.
- e) End use of the products are also different, rods are converted into wires and then used primarily for power and communication cables, transformers and magnet wires. Copper wires are made from Copper Rods. Copper Rods cannot be made from wires. Different machines are used for making copper wires from copper rods. The thickness of Rods is above 6 mm and of wires are below 6 mm.
- f) After the initiation of the present investigation, the Authority issued a notice to all the interested parties and requested to file data as per the PUC defined in the Initiation Notification, pursuant to which the petitioner deceived the Authority by furnishing data inclusive for PUC as well as non-PUC.
- g) Further, subsequent to the oral hearing, the Authority has issued a letter dated 5th April 2019 for adopting PCN methodology by adopting following PCNs for having a fair comparison between PUC and like article: (a) Continuous cast copper wire rods and (b) Copper wire. As established above, these are two different products.
- h) Authority has placed confidence in the claims of the petitioners without analyzing the PUC and like article on their own and at this stage proposed PCN methodology by adopting PCN for widening the scope of PUC. It is submitted that the Authority has not done due diligence before defining the scope of PUC.
- i) By adopting the PCN Method, the Authority is enlarging/widening the scope of PUC which is not permissible at this stage as per para 3.4 and 3.5 of Manual of Operating Practices for Trade Remedy Investigations issued by DGTR.
- j) The PCN letter issued by the Authority is in contravention of the operating practices of the Authority.
- k) As per para 3.23 of Manual of Operating Practices for Trade Remedy Investigations issued by DGTR, a letter for PCN shall be issued within 60 days of initiation of the investigation.
- l) The present PCN letter is issued after more than 200 days which is not in conformity with the operating practices followed by Directorate General of Trade Remedies. Thus, the scope of PUC cannot be enhanced at this stage.
- m) The objective of anti-subsidy investigation is to prove the existence of the benefit conferred by the government's financial contribution having specificity and then calculate the amount of such benefit to reach at subsidy rate level. As such, for the calculation of subsidy rate it is not required to compare the domestic price (normal value) with export price. In this situation, PCN may not be required.
- n) The customs headings are indicative only and not sacrosanct. The product may be classifiable under various customs headings, all those cannot be considered unless clearly specified by the Authority.
- o) It has been indicated by the Authority that the product is classifiable under various HS codes. The said HS codes include different products such as copper rods, copper wires, copper plates, sheets, strips and others. The Authority must clearly specify which is more relevant the description mentioned in PUC or the HSN codes.

- p) Reference to Chapter Headings is only for the purpose of indicating that the PUC (as defined by them) is also being imported under various headings. The PUC would be restricted to what is unambiguously mentioned within quotes i.e., “Continuous Cast Copper Wire Rods” both in the application as well as in the initiation notification.
- q) The product being imported from subject countries is only copper wire, not copper rods or other forms.
- r) Copper wires are used in critical sectors of the economy including Power Generation, Power Transmission & Distribution, Railways & Defence, Industrial Equipment, Automobiles, Refrigeration & Air Conditioner, Fans, Washing Machines, Appliances, Lighting, Electronics etc.
- s) Indonesia’s export to India only covers copper wire with a diameter from 2.6mm to 1.6mm (the majority is 1.6mm) which is far below the Petitioners’ copper rod production with a diameter of 8 mm and above.

C.3. Examination by the Authority

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

- a) The very first step in an investigation is to identify the product under consideration. The product under consideration is the imported product which is allegedly causing injury to the domestic industry. On the basis of submissions made by various interested parties and the examination of import statistics, the Authority holds that the product under consideration in the present investigation is “Continuous Cast Copper Wire falling under tariff heading 7408 of the Customs Tariff”. The product under consideration includes Copper Wire of which the maximum cross-sectional dimension exceeds 6 mm as well 6 mm and below. As per Chapter note (f) to Chapter 74, Wire means “Rolled, extruded or drawn products, in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including “flattened circles” and “modified rectangles”, of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including “modified rectangular”) cross-section exceeds one-tenth of the width”. The following are excluded from the scope of the PUC:
 - i. Rods made of copper-zinc base alloys (brass) or bronze (and similar alloys);
 - ii. Copper weld wires;
 - iii. Wires made of copper- zinc based alloys (brass) or copper- nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver) or bronze (and similar alloys);
 - iv. Silver plated copper wires;

- v. Tinsel wires;
 - vi. Enameled copper wires;
 - vii. Metal coated copper wires;
 - viii. Insulated copper wires cables.
- b) The customs classification is indicative only and in no way binding upon the product scope.
- c) Continuous Cast Copper Wire produced by the domestic industry is a like article to the Continuous Cast Copper Wire imported from the subject countries. The Authority holds that there is no known difference in the subject goods produced by the domestic Industry and that exported from the subject countries. Subject goods produced by the domestic industry and imported from subject countries are comparable, collectively and cumulatively, in terms of product characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The Authority holds that product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from subject countries in accordance with the Anti-Subsidy Rules.
- d) As regards to submissions that by adopting the PCN Methodology at a belated stage, the Authority is enlarging/widening the scope of PUC, the Authority notes that in order to have a fair comparison between different types/forms of the product, the Authority has proposed the PCN methodology in the present investigation.
- e) As regards the contention made by some interested parties that for the first time PCN methodology was developed on the basis of tariff code, the Authority notes that it was done to address the concerns raised by some of the stakeholders that the imported product are different from the one produced by the domestic industry. It was therefore considered appropriate to develop a PCN methodology based on tariff code.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the Domestic Industry

8. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing are as follows:
- a) Production of Hindalco constitutes a major proportion of Indian production of the like article. Hindalco has been considered as the domestic industry and all the injury parameters have been analysed considering Hindalco data.
 - b) Vedanta could not provide its injury information in the form and manner prescribed in view of difficulties in compiling relevant information due to difficulties being faced

by the Company due to Government orders. Vedanta is willing to provide relevant information but was unable to.

- c) Hindalco has neither imported the subject goods nor is related to any of the importer or exporter.

D.2. Submission of other interested parties

9. The submissions made by interested parties with regard to the scope and standing of the domestic industry are as follows:

- a) As per the Application, there are three major producers of subject goods namely (a) M/s Hindalco Industries; (b) M/s Vedanta Industries (Sterlite Copper); and (c) Hindustan Copper Ltd. Amongst three producers, leading producers namely M/s Hindalco Industries and M/s Vedanta Industries (Sterlite Copper) have filed the application and supported the application. The third Indian producer namely Hindustan Copper Ltd. has neither claimed subsidy/injury nor supported the Application.
- b) Vedanta could not provide injury information due to difficulties faced by them due to Government orders, therefore, Hindalco has been considered as domestic industry since its production of like article constitutes a major proportion of the total domestic production. There must be some other factors causing injury to the petitioners because of which they are not even able to provide the injury information to the Authority.
- c) Further, the petitioners considered Hindalco as the domestic industry themselves and stated in written submissions that Hindalco constitutes “domestic industry” as its production of the like article constitutes a major proportion of the total domestic production of like article.
- d) The composition of domestic industry must be defined before the initiation and that the petitioners cannot redefine the standing of domestic industry themselves. It is the discretion of Hon’ble Director General to consider the request or not.
- e) In terms of Rule 6 of the Anti-subsidy Rules, the applicants should account for at least 25% of the total domestic production. In the absence of the necessary and mandatory condition being fulfilled, there is no question of this investigation to continue as regards the “Copper Wires”. Applicants clearly would fail the test of standing in terms of Rule 6 for “Copper Wires”.
- f) The applicants also do not constitute the “Domestic Industry” as they do not account for “a major proportion” of the total domestic production once the production of the “Copper Wires” is also included in the total domestic production in the country. As submitted above, the applicants constitute a meagre less than 2% of the total domestic production. It is apparent that the Domestic Industry has attempted to surreptitiously rope in the “Copper Wires” by obfuscating the two altogether different products namely, “Copper Wire Rods” and “Copper Wires”.
- g) Further, as per para 4.9.16 of the Manual of Operating Practices for Trade Remedy Investigations issued by DGTR, if the companies do not provide the relevant information, disciplinary actions shall be taken. In the present investigation, since

Vedanta has not provided the relevant and mandatory injury information, disciplinary actions should be taken and the present investigation must be terminated.

D.3. Examination by the Authority

10. Rule 2(b) of the Rules provides as follows:
“domestic industry means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidized article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry”.
11. The petition was filed by M/s. Hindalco Industries and M/s. Vedanta Industries (Sterlite Copper).
12. There are three producers of the subject goods in India, namely, M/s. Hindalco Industries Limited, M/s. Vedanta Industries (Sterlite Copper) and M/s. Hindustan Copper Limited. The Authority notes that one of the petitioner company M/s. Vedanta Industries (Sterlite Copper) has imported the subject goods during the period of investigation and thus becomes ineligible to be a part of the domestic Industry. M/s. Vedanta Industries (Sterlite Copper) has also not submitted the requisite information to the Authority to consider it as a part of the domestic industry.
13. There are certain producers of copper wire in India who import copper wire of higher dia and draw it into copper wire of lower required dia. The Authority has not considered the production of such producers of copper wire in India because they are importing one form of the PUC and converting it into other form of PUC. With respect to those producers who do not import but procure copper wire of higher dia from domestic producers, taking their production into account would lead to a situation of double counting.
14. The Authority further notes that M/s. Hindalco Industries Limited has neither imported the subject goods nor is related to any importer or exporter of the subject goods. The Authority holds that M/s. Hindalco Industries Limited commands a major proportion of the production of the subject goods in India. Accordingly, for the purpose of this investigation, M/s. Hindalco Industries Limited satisfies the standing requirement and constitute the domestic industry in terms of Rule 2(b) and Rule 6(3) of the Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by domestic industry

15. The following submissions have been made by the domestic industry with regard to confidentiality issues:
 - a) Excessive confidentiality has been claimed by exporters and governments of the subject countries.

- b) The Parent Company of M/s SEI Thai Electric Conductor Co. Ltd. (STEC) Thailand has abstained from responding to the Exporter Questionnaire.
- c) STEC has failed to prove why exports on 'VAT Exemption on Exports Scheme' is not a subsidy and has further claimed excessive confidentiality with regard to information pertaining to the scheme.
- d) Alpha Industries has not stated whether they are related to any company engaged in the production or sales of the PUC. However, one of the responding companies from Indonesia, namely, PT. Tembaga Mulia SemananTbk, in the current investigation itself has provided in their questionnaire response that Alpha Industries is one of their affiliated companies.
- e) The questionnaire response made by the exporters is deficient and suppresses the information, or the information is otherwise incomplete as the responses are not provided as per the format specified in the exporter questionnaire response.
- f) Panasonic Procurement Malaysia has stated that Metrod Malaysia Copper Products Sdn. Bhd. is one of the factories involved in the production of the product. However, Metrod Malaysia Copper Products Sdn. Bhd in its questionnaire response has stated that they are solely a trader. Hence, there is a clear contradiction, making the two responses unreliable.
- g) Indonesia has resorted to excessive confidentiality by not providing the Annual report of "Bank Mandiri" to the extent of abuse of confidentiality law.
- h) Merely because the domestic industry may not be precisely aware of the way schemes operate, eligibility criteria, application process, etc. does not imply that the same can be claimed confidential.

E.2. Submissions by other interested parties

16. The following submissions have been made by other interested parties with regard to confidentiality issues:
- a) The non-confidential version of the petition violates the requirements and standards laid down in in Rule 7 and 8 of the CVD Rules and Trade Notice No 1/2013 dated December 09, 2013 issued by the DGTR.
 - b) The Petition does not comply with Trade Notice no. 10/2018 dated 7th September 2018, which sets standards for disclosure of information in confidential version/non-confidential version of responses filed by the domestic industry and other interested parties with a view to streamline the investigation process.
 - c) The petitioners have claimed excessive confidentiality and filed an incomplete petition.
 - d) The Petitioners have failed to provide sufficient evidence to substantiate the claims of injuries suffered in terms of production, capacity utilisation, sales volume and value, profitability, employment and wages and return on investment.
 - e) The Petitioners have not provided the minimum information in a non-confidential summary or in indices form for price undercutting and stocks to allow affected parties a meaningful understanding to raise appropriate defence.
 - f) The petitioners have provided the numbers of existing and potential capacities of other producers in India. However, the same was not provided for themselves.

- i) The information supplied by the Petitioner in its application does not allow reasonable understanding of the magnitude of subsidy margin and injury suffered by the local industry.
- j) The Petition does not contain the injury information of both the applicants. Therefore, initiation of the present investigation is not valid.

E.3. Examination by the Authority

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

“Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

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

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

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

19. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality to the extent considered relevant were examined by the Authority and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

20. 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 Indonesia, Malaysia, Vietnam and Thailand were invited for consultation, which was held on 12th and 13th July, 2018 in New Delhi. The producers and exporters from Indonesia, Malaysia, Vietnam and Thailand 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.
21. The following producers/exporters from Indonesia, Malaysia, Vietnam and Thailand including the Governments of Indonesia, Malaysia, Vietnam and Thailand have filed questionnaire responses.
- i. M/s. CFT Vina Copper Co. Ltd., Vietnam
 - ii. M/s. Dong Viet Non-ferrous Metal and Plastic Joint Stock Company, Vietnam
 - iii. M/s. Alpha Industries Sdn. Bhd., Malaysia
 - iv. M/s. SEI Thai Electric Conductor Co. Ltd, Thailand
 - v. M/s. PT Tembaga Mulia SemananTbk, Indonesia
 - vi. M/s. PT Karya Sumiden, Indonesia
 - vii. Metrod Malaysia Sdn Bhd
 - viii. Metrod (OFHC) Sdn Bhd.
 - ix. Metrod Copper Products SdnBhd
 - x. Panasonic Procurement Malaysia SdnBhd

General overview of the alleged Subsidy Programs

F.1. Submissions made by domestic industry

22. The following submissions have been made by the domestic industry:
- i. Exporters have stated "not applicable" on all the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe it would not have benefited under program. Thus, either the company should show absence of eligibility or must demonstrates why it has not availed benefit that is available under the program.
 - ii. Alpha Industries has only responded with respect to four programs, and haven't provided even a single submission for the rest of the 30+ programs alleged by the petitioners.
 - iii. The response filed by the Government of Malaysia is contradictory to the response filed by Alpha. The Government of Malaysia has stated that Alpha meets the eligibility criteria for Program 23: Import Duty and Sales Tax on Machinery and Equipment. However, Alpha Industries hasn't responded for this program.
 - iv. Moreover, for Program No. 19- Draw back on Import duty, Sales tax and Excise duty the Government of Malaysia stated that it is not applicable to any of the companies under investigation; however, Alpha Industries has accepted to receive benefits in their specific response.

- v. Government of Vietnam has provided information with regard to other subsidies information apart from initiated schemes.
- vi. Program no. 5 and 9 are not preferential and at concessional rates but Government of Vietnam has not provided the details with regard to interest rate and concessional rate.
- vii. With regard to termination of P-8 Export Support Credit, information has been suppressed. Regarding Decree 151/2006/ND-CP -2006, none of the responding exporters stated that the said scheme is terminated. They simply stated that they have not availed the said benefit.
- viii. Petitioners submit that the Government of Vietnam has not filed a complete questionnaire response.
- ix. Government of Vietnam (GOV) stated in their questionnaire response that there are other “import duty exemption for equipment for equipment and machinery to create fixed asset”. The said program is administered by Ministry of Finance department of Vietnam Customs (GDVC). GOV stated that CFT Vina Copper was entitled to exemption from import duty for imported equipment and machinery to certain fixed assets in 1996, which was prior to POI. However, the exporter has suppressed the said fact.
- x. With regard to exemption on corporate income tax for enterprises Government of Vietnam stated that Copper is entitled for the exemption. However, the responding exporters CFT Vina Copper & Dong Viet Nonferrous and Plastic JSC have suppressed the information with regard to availment of any such benefit.
- xi. Government of Vietnam stated that Program 1 is terminated. In contradiction to Dong Viet Non-Ferrous Metal and Plastic Joint stock Company stated that they have availed the said benefit during POI.
- xii. Information on the companies under investigation as to which companies have applied for, claimed, received or used assistance under Program No. 3 and have met the eligibility criteria has not been provided for. No information is provided whether the companies have taken any benefit under the scheme or not.
- xiii. The company which is eligible for benefit and has applied for benefit under Programme no. 6, 7, 17 has allegedly not received/utilized any benefit. It remains beyond reasonable comprehension that a company applied for benefit but has not received the benefit.
- xiv. The company received a 50% deduction of normal tax rate corporate income tax exemption period granted under Section 31 of Programme No. 8. The mere fact that the company is eligible should be disclosed by the Government of Thailand and further information with regard to the scheme and quantum on the basis of entitlement should be provided.
- xv. The company received double deduction of transportation, electricity and water supply costs from assessable income for a period of 10 years under Programme 9. The Government of Thailand evaded the question related to this posed in the questionnaire.
- xvi. The company received permission to deduct from the net profit an amount not exceeding 25% of the cost of installation and facilities used in the promoted activity under Section 35(3) of Programme 10. The Government of Thailand evaded the question related to this posed in the questionnaire.

- xvii. Programme 18 and 19 are mentioned but no further information has been provided.
- xviii. For loan benchmark schemes, it has been stated that the company has not used program listed in the investigation nor taken loan from any state-owned bank. It cannot be assumed that a loan from a private bank amounts to no subsidy.
- xix. For tax program, the company has stated that it has not availed any benefit under any scheme but has made disclosures under Program No. 7. There is a clear contradiction and suppression of facts.
- xx. For LTAR, the company has stated that there is no provision of goods or services applied in the company. The exporter is completely silent about mining subsidies.
- xxi. No response is provided in the EQR in relation to 'other subsidies'. The exporter should either report 'other subsidies' or state that there are no other subsidies.
- xxii. Program No. 11- Reinvestment Allowance: Benefit under this programme is given to existing companies engaged in manufacturing activities that reinvest for the purposes of expansion, automation, modernization or diversification of its existing businesses into any related products with the same industry on condition that such companies have been in operation for at least 36 months effective from the Year of Assessment 2009. Eligibility is key to consideration of de jure specificity.
- xxiii. Program No. 12: Accelerated Capital Allowance (ACA): The petitioners have submitted that the Accelerated Capital Allowance (ACA) is available to enterprises reinvesting in manufacturing of promoted products. The eligibility criterion thereby becomes specific as only the enterprises that promoted products and thereby reinvest are the only ones who can benefit from manufacture from the special allowance provided under this program.
- xxiv. Program No. 13: Group Relief: The petitioners submit that in order to avail the benefit under the Group Relief program, one of the eligibility criterion requires the enterprise to be using an automation equipment that is used directly in manufacturing activities, and the enterprise should have a paid- up capital in respect of ordinary shares of more than RM 2.5 million at the beginning of the basis period for that year of assessment. Such a criterion which is favourable to existing enterprises engaged in manufacturing activities can't be argued to be neutral, and this program prima facie favours certain enterprises over others. Hence, the concerned program is to be considered countervailable as per ASCM and Indian rules.
- xxv. Program No. 15: Allowance industry Building/ Industrial Building Allowance: In order to avail the benefit under the Industrial Building Allowance program, the enterprise should have incurred capital expenditure on the construction or purchase of a building that is used for specific purposes, which includes manufacturing, agriculture, mining, infrastructure facilities, research, Approved Service Projects and hotels that are registered with the Ministry of Tourism. Since the purposes behind the usage of building has been narrowed down to a list, it is clear that this scheme is only limited to certain kind of enterprises who are engaging in such activities; hence, this program is enterprise specific. Therefore, the concerned program is countervailable as per SCM Agreement and Indian rules.

- xxvi. Program No. 16: Allowance for plants and machinery/Capital Allowance (CA): An objective criteria which is favourable to enterprises carrying out a commercial activity with a certain amount of qualifying expenditure which is then being used in plants and machinery can't be argued to be neutral, and this program prima facie favours certain enterprises over others. Hence, the concerned program is to be considered countervailable as per SCM Agreement and Indian rules.
- xxvii. Program No. 19: Draw back on import duty, sales tax and excise duty, Program No. 21: Exemption from Import duty and sales tax for outsourcing manufacturing activities, Program No. 23: Exemption from Import duty and sales tax on machinery and equipment, Program No. 14: Tariff Related Incentives/ Exemption on import duty from raw materials& Program No. 24: Exemption from import duty on raw materials/equipment:: It is important to check whether the amount of credit is calculated in relation to actual inputs used. Moreover, there should be a system or procedure in place to confirm which inputs (including their amounts and origin) are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (1) of Annex I, and Annexes and III of the basic Regulation.
- xxviii. Program No. 5 (a): Investment Loan & Program 5(b): Loan for entrepreneur: Mandiri Bank is a State-Owned Bank established in 1998 as part of Governments program to restructure banking sector. While majority of the bank's share is owned by Government of Indonesia, 7.01% of share is owned by national investors and the balance 32.99% is owned by foreign investors. This SOE Bank is the administrative authority acting in the form of public body and providing medium and long term credit facility at concessional rate of interest. Program5(a) Investment Loan is specific because it is available only to limited number of business enterprises and individuals, program 5(b) Loan for entrepreneur because it is available only to limited number of enterprises which are new individual entrepreneurs and SME businesses with financing needs above 100 million Rupiah and up to 5 billion Rupiah. The program provides a benefit to the extent that the amount of interest the firm paid on the guaranteed loan is less than the amount of interest the firm would pay for a comparable loan.
- xxix. Program No. 2: Exporter (STEC) has claimed that they have received benefit under Investment Promotion Act 2002, but they have suppressed the fact that the said act has been updated in 2017. Received exemption from Import Duty on capital goods but suppressed the information with regard to AUL period with regard to exemption. Accounting treatment given to the benefits received under this program does not capture the benefit under this program. Exporter has completely suppressed the fact that under which system benefit is reflected.
- xxx. Program no. 5: Exporters stated that it is not applicable because import duty on primary raw material i.e. copper cathode is NIL from 1st Jan 2017.
- xxxi. Program No. 9: Exporters claimed excessive confidentiality with regard to nature of scheme and description.
- xxxii. The Government of Thailand in their response have stated that STEC has taken the benefit under three programs, namely program no. 13, 14, 15. STEC has not agreed

having taken the benefit under any of the above mentioned programs.

F.2. Submissions made by other interested parties

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

- i. 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.
- ii. Para 8 of the initiation notification read as follows:

*“8. The Authority finds that there is **prima facie evidence** of existence of countervailable subsidies on production and export of the subject goods in the subject countries and such subsidized imports are causing material injury to the domestic industry through their volume and price effects. Further the threat of material injury to the domestic industry on account of subsidized imports has also been alleged by the domestic industry.”*
- iii. It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable.
- iv. 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.
- v. 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 continuous cast copper wire rods exporting producers and resulting injury to the Indian industry is a fatal error.
- vi. The GOI should justify:
 - i. whether it has assessed the adequacy and accuracy of evidence concerning subsidization provided by the petitioner; and
 - ii. the basis on which it considers that the petition contains adequate and accurate information with respect to each subsidy scheme as regards to the exporting producers of the product.
- vii. The failure to provide "sufficient evidence" cannot be shielded by the claim that a petition contains such information as is "reasonably available" to the petitioner.
- viii. No details of calculations have been provided. The petitioners cannot keep assessment of subsidy as confidential from the exporting members.
- ix. None of the programs that is claiming to be benefitting the producers/exporters listed in the petition is substantiated with sufficient evidence
- x. In its submission, the petitioners stated that "The Government of Vietnam has specified that the responding producer/exporter CFT Vina Copper Co. Ltd. has taken a benefit under Program No.2: Import duty exemption or reimbursement for raw material" without providing any supporting citation.
- xi. The Government of Vietnam responded to the Authority's questions on Program No.2 on pages 25-32 of the non-confidential response and nowhere in such discussion indicates

that CFT took a benefit under this Program.

- xii. CFT also notes that in its response, it clearly stated that it did not receive any benefit under Program 2 and provided supporting data to show no benefit because the standard import duty rate for the raw materials imported by CFT is 0%.
- xiii. No subsidy allegation is supported by any citation evidence, which demonstrates their superficial understanding of the Vietnam's law and practice applicable to copper wire rod producers or their intention of misleading the authority by using unfounded allegation.
- xiv. In Program 11, Investment support on foreign investors who invested in establishing small and medium scale enterprises, it has been claimed that it is a "Foreign investors specific subsidy".
- xv. CFT discussed the program of "Interest Rate Support by SBV" at pages 34-35 of its initial response. Accordingly, the 4% support on interest payments for short-term loans of up to an 8-month term disbursed by credit institutions between February 1 and December 31, 2009 while 4% support on interest payments for medium- to long-term loans of up to a 24-month-term disbursed by credit institutions between April 1, 2009 and December 31, 2011.¹⁰ Thus, the support under this program ceased long before the POI. The discussion repeatedly demonstrates that the interest rate support by the SBV was not available during the POI and CFT did not receive any benefit from this program. Exhibit 32 to CFT's initial response providing the legal regulations governing this program is the public and obvious evidence to prove that no interest rate support was provided during the POI.
- xvi. Although the Applicants have alleged that the Government of Thailand is providing subsidies under the alleged 20 programs, it is submitted that most of the programs are repetitive and no countervailable duty is leviable on subject goods exported from Thailand.
- xvii. As per the questionnaire response filed by the Government of Thailand, alleged programs can be categorized under three broad categories: (i) First Programs which are terminated; (ii) Second Programs which are consistent with WTO-ASCM; (iii) Third Programs which do not confer a benefit.
- xviii. Program alleged by the Applicants are already terminated by the Applicants: In terms of Rule 5 (3) (b) of the CVD Rules, no investigation should be initiated unless there is evidence of (a) subsidy, (b) injury and (c) causal link. However, the present application is filed based on obsolete data and contrary to the data/notifications filed by the Government of Thailand before the Committee on Subsidies and Countervailing Measures.
- xix. Unless the Applicants substantiate the existence of subsidy, the investigation cannot be initiated against such alleged program.
- xx. It is submitted that programs alleged by the Applicants are either non-countervailable or discontinued or does not exist at all. As an illustration, the Authority may note that program titled 'Gold Card Scheme' has been discontinued by the Government of Thailand
- xxi. Duty exemption and remission programs are not prima-facie countervailable, unless the

Applicants place documents on record to reflect that "the remission of such duties or taxes is in excess of those which have accrued". The duty remission or exemption program in Thailand are WTO compliant.

- xxii. The United States Department of Commerce examined Program No. 5 of the present investigation i.e. Exemption of Import duty on Raw Material Imported for use in Production for Export and determined this alleged program as non-countervailable.
- xxiii. Alleged programs do not confer benefit to the recipients.
- xxiv. The RTG highlights that the USDOC has recently examined Program No. 2 of the present investigation i.e. Exemption/Reduction of Import Duties on Machinery –Section 28 of the Investment Promotion Act ('IPA'). While examining the program, USDOC noted that VAT exemption on import of capital goods from China in terms of Section 28 is not countervailable since the import of capital goods from China is subject NIL VAT rate under ASEAN China Free Trade Area. Accordingly, USDOC held that the importer of capital goods from China has not received a benefit in the form of VAT exemption. Further, in absence of benefit, USDOC held that tax exemption under Section 28 of IPA is not countervailable
- xxv. The Kingdom of Thailand and Republic of India entered into an FTA for enhanced cooperation and progressive reduction of trade barriers. Applicants should not be allowed to offset the benefit under the FTA by seeking a levy of duty.
- xxvi. In terms of Article 15 of the FTA, if the alleged injury is on account of concession under the FTA, the applicant can seek appropriate relief under the FTA framework.
- xxvii. The listing of 34 alleged Malaysian programmes were merely downloaded and without justification the listed programmes were tied to the Product under Consideration (PUC).
- xxviii. The Petition fails to provide on how the Malaysian producers could have availed to the listed programmes. The GOM concerns were substantiated through our submission of questionnaire responses dated 2 November 2018 where it is clearly proven none of the companies under investigation applies for, accrued, or received benefit from all alleged programmes except for six programmes. In fact the six programmes do not constitute countervailable subsidies as it is not linked to export conditions, not specific and it is generally available to all companies in Malaysia.
- xxix. Based on these arguments, it is clearly established that the Petition lacks accuracy and adequacy to establish sufficient evidence to justify even the initiation of anti-subsidy action.
- xxx. The Government of Malaysia (GOM) requests the observations raised be given serious consideration in making the decision on the anti-subsidy investigation. The GOM reserves the right to raise these and any other issues concerning this investigation at a later date.
- xxxi. It is important to emphasize that subsidy allegation concerning export tax regime is no longer the subject of the current investigation.
- xxxii. The essence of our argument on the export tax regime is that it does not constitute subsidy as there is no financial contribution which can confer benefit.
- xxxiii. Moreover, in no way, such restriction can distort the price of copper ore or concentrates

in Indonesia due to the fact that the products that contain copper are determined by the spot price set by the London Metal Exchange (LME). For domestic sales, Indonesian smelter companies purchase materials (Concentrate) using LME's price. Furthermore, the Indonesian Copper Wire Rods producers purchase Cathodes using the same standard. For export sales, Indonesian smelter companies sell their products using LME's price plus premium. Nonetheless, due to the price in the domestic market use LME's price, the export tax regime does not have any impact on the domestic price.

- xxxiv. The Petitioners also refer in their submission on the export restriction for coal. This is again irrelevant, and coal is used for energy and as such this restriction is for all sectors of industry. Thus, the export restriction for coal does not even have specificity.
- xxxv. It is completely unacceptable that the Petitioners' alleged FTA within ASEAN Countries is subsidy which "pass-through" benefit for the countries. This is entirely irrelevant as FTA is justified under the WTO Agreement and numerous FTA are existing nowadays in which India is also taking an active part.
- xxxvi. In petitioners' submission, they claimed that a contradictory response between the Indonesian government and Indonesian producers occurred when answering subsidy program No. 12. Program No. 12 refers to the facility under the Special Economic Zone (SEZ). Since the two producers are not conducting operation within any SEZ in Indonesia, they are not entitled to avail the facilities. However, neither Indonesian government nor Indonesian producer erred in this respect.

F.3. Calculation Methodology

24. 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.

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

Thailand

F.5. Examination of the Subsidy programs alleged by the Petitioners

- (i) **Program No. 1: Gold Card Scheme**
- a. **Submission by the Petitioners**

25. The Petitioners submitted that under this subsidy program, imports and exports are processed via “green line”. These imports and exports are exempted from examination. Tax claims as well as drawback claims are approved at the time of filing. The Gold Card Scheme is administered and provided by Government of Thailand and Ministry of Finance which provides a measure to enable to assist Importer and Exporter for Customs Clearance under Electronic Data Interchange (EDI) as per Custom notification dated 25th January, B.E. 2542 (2000)

b. Submission by Government of Thailand/other interested parties

26. Importer and Exporter with Gold Card Status expired on 1st October 2013. Importer and Exporter with Authorised Economic Operator (AEO) Status has been in force from February 5th, 2013 vide B.E. 2556 (2013). Privileges are granted in the form of speedy tax refund and compensation, customs procedure for import and export, legal case under specified conditions etc.

c. Examination by the Authority

27. The Authority notes that Gold Card Scheme expired on 1st October 2013 and was not in force during the period of investigation. Gold card scheme was replaced by Authorised Economic Operator (AEO) status vide Customs Notification no. 12/2556.

28. Authority notes that certain privileges are granted under the AEO status. Privileges granted under the AEO status to the beneficiary are in the form of trade facilitation measures, which are administrative in nature and are not in the nature of financial contribution. Therefore, the benefit received by AEO status holder is not a subsidy. Authority holds that no countervailing duty should be imposed against this program.

(ii) Program No. 2: Exemption/reduction of import duty on machinery

a. Submission by the Petitioners

29. The petitioners submitted that the said program is administered by the Office of the Board of Investment (“BOI”) and Investment Promotions act (IPA). Section 28 of Investment Promotion Act, 2002 (IPA) provides exemption/reduction on import duty for any imports of machinery/equipment for approved investment projects. The program provides repayment of import duties which is specific because it is available only to limited number of enterprises under this subsidy program, import duty is reduced up to 90% on the import of machineries.

b. Submission by Government of Thailand/other interested parties

30. The purpose of this program is to facilitate companies that are entitled to receive benefits under Section 28 of the Investment Promotion Act (IPA) by exempting import duties of certain imported machinery that is needed for the Board of Investment (BOI)-promoted projects.

31. Companies that wish to apply for BOI investment promotion must submit one application form for each project. If the project meets the approval criteria, the BOI will grant rights and benefits as a package. BOI investment promotion will not be granted on the incentive program basis. In other words, the BOI does not grant incentives program-by-program, but rather as a package of IPA benefits the companies are entitled to receive. However, when (or if) a BOI-promoted company actually decides to utilize particular benefits

granted under the IPA package, the company must submit a request separately for utilizing each benefit. GOT stated that SEI Thai Electric Conductor Co., Ltd applied for BOI investment promotion for production of copper wire rod which is eligible to receive investment promotion under BOI Announcement No. 10/2552 (2009). SEI Thai Electric Conductor Ltd submitted that they have availed the said benefit under Section 28 of the Investment Promotion Act, 2002.

c. Examination by the Authority

32. Authority notes that Investment Promotion Act, 2002 (the Act) provides for certain rights and benefits to promoted entities/projects/activities (Investment Promotion Package Scheme). Section 16 of the Act prescribes that the Board of Investment (BOI) will make an announcement designating the types and sizes of investment activity eligible for benefit specified under the Act.
33. Section 28 of the Act provides exemption from payment of import duties on machinery under approved investment projects and not for reduction of import duties on machinery. Section 30 of the Act provides for reduction (not exceeding ninety percent) of import duty on raw materials and not for exemption/ reduction of import duty on machinery.
34. STEC, the sole responding exporter from Thailand has submitted in its questionnaire response that it availed exemption from import duty on the import of machinery under the Investment Promotion Package Scheme and has provided information with regard to the amount of subsidy received by them during the POI.
35. Program provides for a financial contribution in the form of revenue foregone which is otherwise due and a benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity. The fact that STEC benefitted from the program shows that program was in fact used by the producer/exporter in Thailand that exported the subject product to India during the POI. Therefore, Authority holds that countervailing duty should be imposed against this program.

(iii) Program No. 3: Income Tax Exemption

a. Submission by the Petitioners:

36. The petitioner submitted that under this subsidy program, exemption is provided from income tax to eligible entities.

b. Submission by Government of Thailand/other interested parties

37. This exemption is provided under the BOI scheme. BOI grants benefit on corporate income tax exemption for the BOI-promoted projects only. The benefit will be provided under Section 31 of the Investment Promotion Act.

c. Examination by the Authority

38. The Authority notes that the subsidy program is one of the benefit provided under the investment promotion package scheme. Section 31 of the Act provides exemption from corporate income tax to eligible entities.
39. Program provides for a financial contribution in the form of revenue foregone which is otherwise due and a benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity. STEC, the sole responding producer/exporter from Thailand has submitted in its questionnaire response that it did not avail this subsidy because it did not earn any profit since the commencement of its

business including the POI. Thus, Authority holds that no countervailing duty should be imposed against this program for STEC.

40. However, Authority notes that the benefit under this subsidy program was available to producer/exporter of subject product in Thailand who earned net profit during the POI. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producer/exporters of this product from Thailand.

(iv) Program No. 4: Exemptions with regard to investment promotion zone

a. Submission by the Petitioner

41. Petitioner submits that entities are granted 50 percent reduction in the normal rate of corporate income tax on the net profit derived from the promoted activity for a period of not more than five years.

b. Submission by the Government of Thailand/Other interested parties

42. Under the Investment Promotion Act B.E. 2520 (1977), the exemptions that the BOI grants to the promoted companies include:

- (1) Section 28: Exemption of Import Duties on Machinery
- (2) Section 31: Exemption of Corporate Income Tax
- (3) Section 36: Exemption of Import Duties on Raw and Essential Materials

c. Examination by the Authority

43. Authority notes that exemption of import duties on machinery and raw materials and exemption of corporate income tax have already been countervailed by the Authority in other programs. Therefore, Authority holds that no additional countervailing duty is required to be imposed against this subsidy program.

(v) Program No. 5: Exemption of Import duty on Raw Material Imported for use in Production for Export

a. Submission by the Petitioner

44. Petitioner submitted that under this program, exemption is granted from import duties on raw materials, which are used for producing commodities for export. Exemption is granted from import duties and export duties for promoted persons products and assembly operations.

b. Submission by the Government of Thailand/Other interested parties

45. Investment Promotion Act created the investment promotion program and authorized the BOI to grant investment promotion incentives, including import duty exemption on raw materials or essential materials used in the BOI-promoted projects under Section 36.

46. The investment projects that are entitled to receive benefits under Section 36 are granted one or more of the following special benefits:

(1) Exemption of import duties on the raw and essential materials imported for use specifically in producing, mixing, or assembling products or commodities for export; and

(2) Exemption of import duties on items which the promoted person imports for re-export. The foregoing shall be in accordance with the conditions, procedures, and certain period of time as prescribed by the BOI. Also, the raw materials and essential materials must be used for the promoted projects only.

47. The purpose of this program is to facilitate companies that are entitled to receive benefits under Section 36 by exempting import duty on raw or essential materials used in BOI-promoted projects. BOI has an effective system in place in order to ensure that the import quantity of the raw or essential materials are not exceeding the revolving maximum stock and to ensure that the companies do export those imported raw or essential materials as finished goods.

c. Examination by Authority

48. Authority notes that Section 36 of the Act provides for exemption from import duty on raw or essential materials used in BOI-promoted projects. Under this subsidy program, the products produced using duty free inputs are required to be re-exported or exported after undergoing mixing, assembling and production activity. This subsidy program is a part of investment promotion package scheme.

49. Government of Thailand has submitted that BOI has an effective system to ensure that companies export the imported raw material as finished goods and there is no excess benefit to the producer/exporters carrying out the promoted activity. Government of Thailand has not provided any explanation and has not provided any evidence to show how the mechanism operates under the BOI scheme to ensure that there is no excess benefit and that raw material that is imported duty free is used in the exported product. In absence of any evidence to show that the program provides for permissible tax remission program, it is determined that the subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and a benefit is thereby conferred. Subsidy is also specific because it is contingent on export and is also limited to promoted enterprise carrying out promoted activity.

50. STEC, the sole responding producer/exporter from Thailand has submitted in its questionnaire response that it did not avail this subsidy because the import duty on the raw material copper cathode imported by STEC was already zero. Authority has verified the claim of STEC. Thus, Authority holds that no countervailing duty should be imposed against this program for STEC.

51. However, Authority notes that in absence of complete details with regard to raw material used by other producers/exporters in Thailand, source of procurement and the applicable import duty details, the Authority notes that the benefit under this subsidy program can be availed by other producers/exporters of subject product in Thailand. Therefore, Authority holds that countervailing duty should be imposed against this program for all other producer/exporters from Thailand.

(vi) Program No. 6: Reduction of import duties for raw or essential materials

a. Submission by the Petitioner

52. Petitioner submitted that exemption is granted from import duties on raw or essential materials for the purpose of carrying out promoted producing, assembling or mixing operations.

b. Submissions by the Government of Thailand/other interested parties

53. Investment Promotion Act created the investment promotion program and authorized the BOI to grant investment promotion incentives, including reduction of import duties not exceeding ninety percent of the normal rate on raw materials or essential materials which are imported into the Kingdom for the purpose of producing, mixing, or assembling in the promoted projects.

54. Companies that wish to apply for BOI promotion program, must submit one application form for each project. If the project meets the approval criteria, the board of investment will grant rights and benefits as a package. BOI does not grant incentives program-by-program, but rather as a package of benefits that the companies are entitled to receive. However, if and when a promoted company actually decides to utilize particular benefits granted under the investment promotion package, the company must submit a request separately for each benefit

c. Examination by the Authority

55. Authority notes that Section 30 of the Investment Promotion Act provides for reduction of import duties not exceeding ninety percent of the normal rate on raw materials or essential materials which are imported into the Kingdom for the purpose of producing, mixing, or assembling in the promoted projects, each time for a period not more than one year from the date prescribed by the BOI provided that such raw materials or essential materials comparable in quality are not being produced or originated within the Kingdom in sufficient quantity to be acquired for used in such project. The subsidy program is part of the investment promotion incentive package.

56. The subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and a benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity.

57. However, Authority notes that the benefit under the subsidy program providing exemption from import duty on raw material is already countervailed. Therefore, Authority holds that no additional countervailing duty should be imposed against this program for all other producer/exporters from Thailand.

(vii) Program No. 7: Exemption of Corporate Income Tax for BOI promoted activities

a. Submission by the Petitioner

58. Petitioner submitted that net profit derived out of the Promoted activity is granted exemption from income tax for the period as may be specified by the BOI but not more than 8 years from the date of income. In the case where a loss has been incurred during the eligible exemption, the BOI may grant permission to deduct such annual loss from the net profits accrued after the expiration of the eligible exemption period for a period of not more than five years from the expiry date of such period. The promoted person may choose to deduct such loss from the net profit of any one year or several years

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

59. Investment Promotion Act created the investment promotion program and set forth the authority for the board of investment to grant investment promotion incentives, including

exemption of corporate income tax on the net profit derived from the promoted projects under Section 31.

60. In the case where activities are of special importance and benefit to the country as prescribed by an announcement of the BOI, a promoted person in such activities shall be granted exemption of corporate income tax on the net profit derived from the promoted activity for a period as prescribed by the BOI but not more than eight years from the date income is first derived from such activity.
61. The income on which the computation of net profit is derived from the activity shall include income from the sale of such by-products and semi-manufactured products as the BOI may deem appropriate.
62. Where a loss has been incurred during the period of receiving exemption of corporate income tax referred to under either paragraph one or paragraph two, the BOI may grant permission to the promoted person to deduct such annual loss from the net profits accrued after the expiration of the period of exemption of corporate income tax for a period of not more than five years from the expiry date of such period. The promoted person may choose to deduct such loss from the net profit of any one year or several years.

c. Examination by Authority

63. Authority notes that Section 31 of the Investment Promotion Act provides for exemption of corporate income tax on the net profit derived from the promoted activity as prescribed by an announcement of BOI. Exemption from income tax is not available for more than eight years from the date income is first derived from such activity.
64. In the case where a loss has been incurred during the eligible period in which exemption of corporate income tax was available, the BOI is empowered grant permission to the promoted person to deduct such annual loss from the net profits accrued after the expiration of the eligible period of exemption of corporate income tax for a period of not more than five years from the expiry date of such period. The promoted person may choose to deduct such loss from the net profit of any one year or several years. This subsidy program is part of the investment promotion package scheme.
65. The Authority notes that the subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity.
66. STEC, the sole responding exporter from Thailand did not benefit from this program because it did not earn any profit since its establishment including the POI. However, Authority notes that the benefit under the subsidy program providing exemption from income tax is already countervailed. Therefore, Authority holds that no additional countervailing duty should be imposed against this program for all other producer/exporters from Thailand.

(viii) Program No. 8: 50% reduction of corporate income tax in investment promotion zones

a. Submission by the Petitioner

67. Petitioner submits that the subsidy program provides for 50% reduction from normal rate of income tax rate for net profit derived from promoted activity for a period of not more than five years from the date income is first derived from the promoted activity.

b. Submission by Government of Thailand/other interested parties

68. Investment Promotion Act created the investment promotion program and set forth the authority for the BOI to grant investment promotion incentives, including a 50 percent reduction of the corporate income tax on the net profit derived from the promoted activity under Section 35(1).
69. The investment projects that are entitled to receive benefit under this program are granted 50 percent reduction of the normal rate of corporate income tax on the net profit derived from the promoted activity for a period of not more than five years commencing from the date income is first derived from the promoted activity.
70. Companies that wish to apply for BOI promotion program, must submit one application form for each project. If the project meets the approval criteria, the board of investment will grant rights and benefits as a package. It will not be granted on the incentive program basis. In other words, board of investment does not grant incentives program-by-program, but rather as a package of benefits that the companies are entitled to receive. However, if and when a promoted company actually decides to utilize particular benefits granted under the investment promotion package, the company must submit a request separately for each benefit.

c. Examination by the Authority

71. Authority notes that under this program, 50% reduction is available from normal rate of corporate income tax on the net profit derived from promoted activity. This subsidy program is part of investment promotion package scheme.
72. The Authority notes that the subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and a benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity. However, Authority notes that the benefit under this subsidy program in the form of exemption from income tax is not in addition to the subsidy program granting full exemption from corporate income tax.
73. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. The Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(ix) Program No. 9: Income tax double deduction form the costs of double the cost of transportation, electricity and water

a. Submission by the Petitioners

74. The petitioner submits that under this subsidy program, income derived from promoted activity will be allowed to deduct double the cost of transportation, water and electricity for ten years.

b. Submission by Government of Thailand/other interested parties

75. Investment Promotion Act created the investment promotion program and set forth the authority for the board of investment to grant investment promotion incentives, including permission to deduct double the costs of transportation, electricity, and water supply for the purpose of assessing corporate income tax.
76. The investment projects that are entitled to receive this benefit under Section 35(2) of the Investment Promotion Act are granted permission to deduct for the purpose of assessing

corporate income tax an amount double the costs of transportation, electricity, and water supply incurred by the promoted person in the operation of the promoted activity. Conditions, procedures, and periods of time for availing this benefit are prescribed by the board of investment.

c. Examination by the Authority

77. The Authority notes that under this subsidy program, benefit is provided in the form of double deduction of transport, electricity and water expenses for computing total income for the purpose of income tax. This subsidy program is part of the investment promotion incentive package. The benefit under this subsidy program is equal to the difference between the amount of tax that would have been payable in absence of double deduction and the amount of income tax actually paid.
78. STEC, the sole responding producer/exporter from Thailand claimed double deduction of expenses under this program. However, STEC did not incur net profit and would not have incurred net profit even in absence of double deduction. Thus, no benefit is received by STEC during the POI.
79. The Authority notes that the subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and the benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(x) Program No. 10: Additional 25 percent deduction of the cost of installation or construction of facilities

a. Submission by the Petitioners

80. Petitioner submitted that under this subsidy program, the promoted firms are allowed to deduct on their tax returns 25% of the cost of installation or construction of facilities used in promoted activities.

b. Submission by Government of Thailand/other interested parties

81. The investment projects that are entitled to receive benefit under Section 35(3) of the Investment Promotion Act are granted permission to deduct from the net profit an amount not exceeding 25 percent of the cost of installation or construction of facilities used in the promoted activity, according to the rules prescribed by the board of investment, under which the promoted person may, in addition to normal depreciation, choose to make such deductions from the net profit of any one year or several years within 10 years from the date income is first derived from the promoted activity.

c. Examination by the Authority

82. Section 35(3) of the Act provides for the reduced income tax through deduction from net profit of amount not exceeding 25% of cost of installation or construction of facilities used in the promoted activity. The benefit under this subsidy program is equal to the difference between the amount of tax that would have been payable in absence of such deduction and the amount of income tax actually paid. The subsidy program is part of the investment promotion incentive package.

83. The subsidy program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. Subsidy is also specific because it is limited to promoted enterprise carrying out promoted activity. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xi) Program No. 11: Tax and duty compensation/Tax Coupons

a. Submission by the Petitioners

84. Petitioner submitted that this subsidy program provides for duty drawback on imported inputs that are consumed in the production of exported product. Benefit exist under this duty drawback program to the extent that the amount of drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

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

85. The Ministry of Finance ("MOF") and the Thai Customs Department administer a tax coupon system for exporters. The tax coupon system is authorized under the 1981 Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act. The value of a tax coupon is calculated by multiplying a product-specific coupon rate by the FOB value of a company's exported goods. To derive the coupon rate for a particular exported good, the MOF examines the import duties and indirect taxes paid for the raw materials and other inputs used to produce the exported good. The tax coupon system refunds the import duties and indirect taxes paid for the raw materials and other inputs used in the production of exported goods.

c. Examination by the Authority

86. This program is established pursuant to the Tax and Duty Compensation of Exported Goods produced in the Kingdom Act B.E. 2524 (1981) and became effective on August 15, 1981. Under this subsidy program, import duties and indirect taxes paid for the raw material and other inputs used in the production of exported goods are refunded.

87. To administer this program, the Ministry of Finance and the Thai Customs Department administer a tax coupon system for exporters. The value of a tax coupon is calculated by multiplying a product-specific coupon rate by the FOB value of a company's exported goods. Coupon rate for a particular exported good is determined by the import duties and indirect taxes paid for the raw materials and other inputs used to produce the exported goods. Exporting companies may also use tax coupons as credits against corporate income taxes.

88. The Authority notes that Government of Thailand has not provided any evidence or established the existence of a mechanism to ensure that value of tax coupon does not exceed the amount of import duties and other taxes paid on the raw material used in the production of exported goods. Therefore, the program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. Subsidy is also specific because it is limited to certain enterprise holding tax coupons.

89. However, the Authority notes that the benefit in the form of exemption of import duty on raw material has already been proposed to be countervailed through other subsidy program(s). The Authority therefore holds that no additional benefit is conferred through refund of import duty suffered on raw materials/inputs provided the benefit of duty exemption on the inputs has been availed.

(xii) Program No. 12: Exemption of import/export duty for bonded warehouses

a. Submission by the Petitioners

90. Petitioner submits that under this bonded warehouse scheme, the imported goods stored in a bonded warehouse for the purpose of re-exportation shall be exempted from payment of import/export taxes and duties, regardless of being exported in the same nature as imported or in the nature of having been produced, mixed or assembled as other goods.

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

91. Business operators granted to operate bonded warehouse of manufacturing type shall be exempted from the payment of import taxes and duties provided the goods imported and stored in such bonded warehouse are used in the process of producing, mixing or assembling and then exported, regardless of being exported in the same nature as imported or in the nature of having been produced, mixed, assembled as other goods or transferred to other bonded warehouses or sold to importers under a drawback scheme under Section 29 of the Customs Act.

c. Examination by the Authority

92. Authority notes that countervailing duty is already determined against the subsidy program providing exemption from import duty on raw materials. Therefore, Authority holds that no additional countervailing duty should be imposed against this program for all other producer/exporters from Thailand.

(xiii) Program No. 13: Incentives for activities in infrastructure for the country's development, activities using advanced technology to create value added with no or very few existing investments in Thailand

a. Submission by the Petitioners

93. Petitioner submits that under this program incentives are granted in the form of exemption from import duties on machinery and raw materials used in production of exports for specified investment activities.

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

94. The BOI introduced new investment promotion scheme since January 2015. Under the new scheme, the board grants incentive package according to investment activity instead of investment zone. The aim is to focus on value creation and high technology in line with a new economic model of the country.

95. Board of investment Announcement No.2/2557 (2014) stipulates 2 types of incentives: Activities-based Incentives and Merit-based Incentives. For activities-based incentives, the board of investments classifies this incentive into 2 groups which are Group A (A1 – A4) and Group B (B1 – B2). For each group, the BOI sets clear and objective criteria for granting incentives.

96. Activities in infrastructure for the country's development, activities using advanced technology to create value added with no or very few existing investments in Thailand is the criteria set out for describing activities under group A2. Investment projects that are categorized as group A2 will be entitled to receive benefits as follows: (1) 8-year corporate income tax exemption, accounting for 100% of investment (excluding cost of land and 22 working capital) (2) exemption of import duty on machinery (3) exemption of

import duty on raw or essential materials used in manufacturing export products for 1 year, which can be extended as deemed appropriate by the Board and (4) other non-tax incentives aiming at facilitating investors.

c. Examination by the Authority

97. This subsidy program is announced by the BOI as authorised under the Investment Promotion Act. Under this subsidy program, specified investment projects are entitled to receive exemption from income tax, exemption from import duty on machinery, exemption on import duty of raw materials used in the manufacturing of exported product and other non-tax incentives aiming at facilitating investors. The subsidy program is part of the investment promotion incentive package.
98. The Authority notes that each of the incentive provided under this subsidy program except non-tax incentives has already been examined and countervailed by the Authority. Therefore, Authority holds that additional countervailing duty to the extent of non-tax incentives should be imposed against this subsidy program.

(xiv) Program No. 14: Incentives for High Technology activities which are important to the country's development, with a few investments already existing in Thailand

a. Submission by the Petitioners.

99. Petitioner submits that under this program high technology activities are granted exemption from corporate income tax and from import duties on machinery and raw materials.

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

100. The BOI introduced new investment promotion scheme since January 2015. Under the new scheme, the board grants incentive package according to investment activity instead of investment zone. The aim is to focus on value creation and high technology in line with a new economic model of the country.
101. Board of investment Announcement No.2/2557 (2014) stipulates 2 types of incentives: Activities-based Incentives and Merit-based Incentives. For activities-based incentives, the board of investments classifies this incentive into 2 groups which are Group A (A1 – A4) and Group B (B1 – B2). For each group, the BOI sets clear and objective criteria for granting incentives.
102. “High technology activities which are important to the country's development, with a few investments already existing in Thailand” is the criteria set out for describing activities under group A3. Investment projects that are categorized as group A3 will be entitled to receive benefits as follows: (1) 5-year corporate income tax exemption, accounting for 100% of investment (excluding cost of land and working capital) (2) exemption of import duty on machinery (3) exemption of import duty on raw or essential materials used in manufacturing export products for 1 year, which can be extended as deemed appropriate by the Board and (4) other non-tax incentives aiming at facilitating investors.

c. Examination by the Authority

103. This subsidy program is announced by the BOI as authorised under the Investment Promotion Act. Specified investment projects are entitled to receive exemption from income tax, exemption from import duty on machinery, exemption on import duty of raw materials used in the manufacturing of exported product and other non-tax incentives aiming at facilitating investors. This subsidy program is part of the investment incentive promotion package.
104. The Authority notes that each of the incentive provided under this subsidy program has already been examined and countervailed by the Authority. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xv) Program No. 15: Merit based incentive for increase in competitive enhancement

a. Submission by the Petitioners

105. Petitioner submits that under this program projects that invest or have prescribed expenditure on the activities get additional exemption from Corporate Income Tax for one, two or three years.

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

106. The board of investment introduced new investment promotion scheme since January 2015. Under the new scheme, the board grants incentive package according to investment activity instead of investment zone. The aim is to focus on value creation and high technology in line with a new economic model of the country.
107. Board of investment Announcement No.2/2557 (2014) stipulates 2 types of incentives: Activities-based Incentives and Merit-based Incentives. The aim of merit-based incentives is to attract and stimulate more investment or spending on merit-activities that benefit the country or industry at large. Therefore, the projects that are invest or have expenditure on the prescribed merit-activities are eligible for merit-based incentives as an additional incentive granted on top of what the projects are entitled to receive under the activities-based incentives.
108. Merit-based incentives can be categorized into 3 main groups which are (1) Merit on competitiveness enhancement (2) Merit on decentralization and (3) Merit on industrial area development. Therefore, merit-based incentive on competitiveness enhancement is one of the three types of merit-based incentives the BOI grants to the projects that invest or have expenditure on the activities as prescribed in the BOI Announcement No. 2/2557 (2014). The BOI sets clear and objective criteria for granting merit-based incentive on competitiveness enhancement. These criteria are also made known to public.

c. Examination by the Authority

109. This subsidy program is announced by the BOI as authorised under the Investment Promotion Act. The subsidy program is part of the investment promotion incentive package.
110. Financial contribution is provided in the form of exemption from income tax and benefit is thereby conferred. The Authority has already determined that countervailing duty

should be imposed against exemption from income tax. Therefore, no additional countervailing duty is required to be imposed against this subsidy program.

(xvi) Program No. 16: VAT exemption on exports

a. Submission by the Petitioners

111. Petitioner submits that under this program, exemption is provided from VAT on export of goods.

b. Submission by Government of Thailand/other interested parties

112. A business person who carries on his business in sale of goods or provision of services in Thailand and such business has the prescribed value of tax base, such business person shall be liable to value added tax as prescribed in Section 80/2 of the Revenue code.

113. According to the Section 80/1 of the Revenue code, export of goods which is not exempt from value added tax under Section 81(3) shall use zero rate value added tax calculation.

c. Examination by the Authority

114. Section 82/16 of the Revenue Code of Thailand provides for payment of value added tax by business person engaged in sales of goods or services. However, this value added tax rate is zero for certain specified enterprises.

115. Authority notes that this subsidy program provides for exemption from value added tax on export of goods, which is applicable to other business. The Authority notes that the subsidy program provides for remission of tax on exported goods which is otherwise borne by the like product when destined for domestic consumption in accordance with footnote 1 of the SCM Agreement and Section 9B(b)(i) of the Customs Tariff Act. Therefore, Authority holds that no countervailing duty should be imposed against this subsidy program.

(xvii) Program No. 17: Promotional Privileges

a. Submission by the Petitioners

116. Petitioner submits that under this subsidy program, exemption is granted from the payment of import duty on machinery and from income tax.

b. Submission by Government of Thailand/other interested parties

117. Under the Investment Promotion Act B.E. 2520 (1977), the incentives that the BOI provides include:

Tax Incentives:

1. Section 28: Exemption of import duties on machinery
2. Section 30: Reduction of Import duties for raw materials or essential materials
3. Section 31: Exemption of corporate income tax
4. Section 35(1): A 50 percent reduction of the corporate income tax
5. Section 35(2): Double deduction from the costs of transportation, electricity and water supply
6. Section 35(3): Additional 25 percent deduction of the cost of installation or construction of facilities
7. Section 36: Exemption of import duties on raw and essential materials

118. The BOI also provides non-tax incentives for facilitating foreign investors such as permission for foreign nationals to enter the Kingdom for the purpose of studying investment opportunities, permission to own land, and permission to take out or remit money abroad in foreign currency etc.

c. Examination by Authority

119. The authority notes that under the Investment Promotion Act B.E. 2520 (1977), the incentives that the BOI provides Tax Incentives such as (1) Section 28: Exemption of import duties on machinery (2) Section 30: Reduction of Import duties for raw materials or essential Materials (3) Section 31: Exemption of corporate income tax (4) Section 35(1): A 50 percent reduction of the corporate income tax (5) Section 35(2): Double deduction from the costs of transportation, electricity and water supply (6) Section 35(3): Additional 25 percent deduction of the cost of installation or construction of facilities (7) Section 36: Exemption of import duties on raw and essential materials have already been covered under other schemes. Therefore, the Authority does not find it appropriate to quantify this scheme separately as it will amount to double counting of the benefit.

120. Therefore, no additional countervailing duty is required to be imposed against this subsidy program.

(xviii) Program No. 18: Duty Drawback under Section 19 of the Customs Laws

a. Submission by the Petitioners

121. Petitioner submits that under this program exporting companies obtain a refund of Customs duty paid on imported goods where those goods will have undergone production, mixing, assembling, or packing and then exported

b. Submission by Government of Thailand/Other interested parties

122. Duty drawback under Section 29 of the Customs Act means the refund of import duty already paid or the return of guarantee placed on imports which have undergone production, mixing, assembling, or packing and then exported.

123. Eligible goods for duty drawback are:

1. Raw materials which are obviously seen in the exports e.g. fabrics, buttons, zippers and thread in garments, plastic sheeting in plastic products, etc.
2. Raw materials used directly in the manufacturing process and contained in the exports but not obviously seen e.g. preservatives in canned food, stiffening agents in garments, solvents for glue in cellophane and anti-rust agents in electronic circuits, etc.
3. Raw materials required in the manufacturing process e.g. sizing materials and bleaching agents used in textile products, sand paper, scouring powder, varnish, velvet, scouring agents, chalk, carbon paper and pattern.

c. Examination by Authority

124. Section 29 of the Customs Act provides for duty drawback. The subsidy program provides for refund of import duty paid on raw materials which have undergone production, mixing, assembling, or packing and then exported. There is no evidence before the Authority about the mechanism, which ensures that there is no excess

remission of import duty and that amount of duty drawback will not exceed the amount of duty paid on raw material used in production of exported goods.

125. Thus, Authority notes that the subsidy program provides for financial contribution in the form of revenue foregone and the benefit is thereby conferred. The subsidy program is also specific because it is contingent on export. Therefore, the Authority determines that the subsidy program is countervailable. However, the Authority has already determined that countervailing duty should be imposed against exemption of import duty on raw materials and therefore no additional countervailing duty is required to be imposed against this subsidy program.

(xix) Program No. 19: Free Trade Zone under Chapter X of the Customs Act

a. Submission by the Petitioners

126. Petitioner has not provided any explanation or evidence regarding the existence of this subsidy program.

b. Submission by Government of Thailand/other interested parties

127. The Free Zone Scheme encourages Thailand-based operations by removing certain disincentives associated with manufacturing in Thailand. Products made in the Zone are treated for the purpose of tariff assessment as if it were manufactured abroad. Free trade zone provides number of incentives such as relief from import duty on goods imported into free trade zone, relief from quality control requirements for merchandise imported into free trade zone for producing exported product etc.

c. Examination by Authority

128. Authority notes that free trade zone is an area designated by the Director-General of Customs under Section 136 of the Customs Act for industrial or commercial operation or any other activities beneficial to economy of the country.
129. Free trade zone is treated as foreign territory for the purpose of tariff assessment of goods manufactured in such free trade zone. Free trade zone provides for many incentives to entities located in such zone. For financial incentives in the form of exemption from import duty on raw materials and exemption on import duty on machinery, the Authority has already determined that countervailing duty is required to be imposed. Therefore, no additional countervailing duty is required to be imposed for this subsidy program.

(xx) Program No. 20: Export processing zone (EPZ) under the industrial estate Authority law

a. Submission by the Petitioners

130. Petitioner has not provided any explanation or evidence regarding the existence of this subsidy program.

b. Submission by Government of Thailand/other interested parties

131. Business operator in export processing Zone can submit application for construction/certification of building, additional/change of type of business operation, Tax-Privileges (established in I-EA-T Free Zone only), or Non- Tax Privileges (established in General Industrial Zone, and I-EA-T Free Zone).

132. The privileges are based on Location/Zone of the established operations. Incentives are widely provided to all the industrial operators who are permitted to engage in industrial operations in privilege areas in industrial estates. During the POI, there were fifty-seven general industry zones and thirteen IEA-T free (export processing) zones located in Thailand.

c. Examination by Authority

133. Export processing zones provide for tax incentives to entities located in such zone. For financial incentives in the form of exemption from import duty on raw materials and exemption on import duty on machinery, the Authority has already examined and countervailed the benefit. Therefore, no additional countervailing duty is required to be imposed for this subsidy program.

Producers/Exporters from Thailand

SEI Thai Electric Conductor Co., Ltd (Producer/Exporter)

134. SEI Thai Electric Conductor Co. Ltd (“STEC”) is a producer and exporter of subject goods from Thailand. Subject Goods produced by STEC are exported to India directly by STEC. STEC filed questionnaire response and provided information regarding the benefits availed by them.

135. Authority has verified the information provided by STEC and determined subsidy margin for programs for which benefit was received or accrued during the POI. Authority 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 STEC as a recipient of this grant. Subsidy program was also specific because they were limited to certain enterprise including STEC.

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

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 2	Exemption from import duty on machinery approved by the Board of Investment.	Exemption from import duty on certain machinery has been received by STEC and the details of the same have been provided under Section II of this EQR. Please see Exhibit 13 attached herewith for details of exemption from imported duty upon import of machinery.	***	0-1%

137. The Authority notes that subsidy margin for SEI Thai Electric Conductor Co. Ltd is *de-minimis*.

Summary of Subsidy Programs for Thailand

138. No other producer/exporter from Thailand has filed questionnaire response. Countervailing duty for all other producers/exporters from Thailand has been determined based facts available and countervailability of the respective programs.

Program Nos.	Name of the Program	Subsidy Margin %	Range%
Program No. 2	Exemption of import duty on machinery under Investment Promotion Act	***	0-1
Program No. 3/4/7/8/9/10/15	Exemption from Income Tax under Investment Promotion Act	***	0-5
Program No. 4/5/6/11/12/18/19/20	Exemption of import duty on raw material imported for use in production for export	***	0-1
Program No. 13/14	Incentives for activities in infrastructure for the countries development, activities using advanced technology to create value added with no or very few existing investment in Thailand	***	0-1
Total		***	0-5%

Malaysia

F.6. Examination of the Subsidy programs alleged by the Petitioners

(i) Program No. 1: Market Development Grant (MDG)

a. Submission by the Petitioners

139. 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 parties

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

c. Examination by the Authority

142. 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.
143. 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, the Authority holds that countervailing duty should be imposed against this subsidy program.

(ii) Program No. 2: Science Fund

a. Submission by the Petitioners

144. The Petitioner submitted that this is a grant provided by Government to carry out R&D projects that can contribute to the discovery of new ideas and the advancement of knowledge in applied sciences. The fund is open to all research scientists and engineers who are employed on contractual/permanent basis from Government Research Institutions (GRIs), Government Science, Technology and Innovation (STI) Agencies and Public and Private Institutions of Higher Learning (IHL).

b. Submission by Government of Malaysia/other interested parties

145. The Science Fund is no longer offered beginning 1 January 2017. For this, reference has been made to official announcement by the Ministry of Science, Technology and Innovation (MOSTI). Based on the records, none of the companies under investigation is Science Fund recipient.

c. Examination by the Authority

146. The Authority notes that the program is administered by Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC).
147. Science Fund is a grant provided by Government to carry out R&D projects in applied sciences, focusing on high impact and innovative research. The subsidy program is terminated from 1 January 2017. Subsidy program was operational till 31 December 2016 and during the period of its operation, the subsidy program provided financial contribution in the form of direct transfer of funds and benefit was thereby conferred. The

subsidy program was also specific because it was provided to enterprise engaged in R&D projects. However, the subsidy program was only available to research and educational institutes and therefore was not available to producers of the product under consideration in Malaysia. Thus, Authority holds that no countervailing duty can be imposed for this subsidy program.

(iii) Program No. 3: Techno Fund

a. Submission by the Petitioners

148. The Petitioner submitted that this is a grant scheme which aims to stimulate the growth and successful innovation by Malaysian enterprises, Institutions of Higher Learning (IHL), and Research Institutes. It provides funding for technology development, up to the pre-commercialization stage, with commercial potential to create new businesses and generate economic wealth. Project must contain elements of technological innovation leading to commercialization of innovative products, processes and services. The applicants can be researchers and other individuals from SMEs, IHL, Research Institutes and STI Agencies. All categories of companies must have minimum 51% equity held by Malaysians. Applicant under SME must have minimum paid up capital in cash of RM 10,000, however start-ups are exempted from the same with just explanation. Projects under scope/portfolio of a certain Ministry/ Department/Agency and applications from Research Institutes with internal research funding like CESS Fund are not eligible under Techno Fund.

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

149. MESTECC believes that it can work together with researchers in Research Institutes, Universities and Industry to overcome some of these constraints, thus ensuring that more R&D products are brought to the market, thus spurring economic returns for the country. Hence this category of funds, called Pre-Commercialisation Funds i.e. Techno Fund was introduced.

c. Examination by the Authority

150. The Authority notes that the program is administered by MESTECC. There is no law, regulation or decree governing the administration of this program in Malaysia. MESTECC has created Pre-Commercialisation fund or Techno fund for supporting Research Institutes, Universities and Industry in research and development initiatives.

151. The subsidy program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy program is also specific because it is available to SMEs apart from institutions of higher learning and other research institutes. The Authority holds that countervailing duty should be imposed against this subsidy program.

(iv) Program No. 4: Inno Fund

a. Submission by the Petitioners

152. The Petitioner submitted that under this grant scheme, development/improvement of new or existing products, processes or services with elements of innovation is funded. The project should have economic value leading to development of products, processes and

services that improve society well-being. The funds are categorised as Enterprise Innovation Fund and Community Innovation Fund. The former applies to Individual, Sole Proprietor, Micro Companies, and Small Companies, whereas the latter applies to Registered Associations/NGOs, Registered Companies and Community Groups. Applicant under SME must have minimum paid up capital in cash of RM 10,000, however start-ups are exempted from the same. The Quantum varies according to the Project but it can't exceed RM 500,000.

b. Submission by Government of Malaysia/other interested parties

153. The program intends to support innovation of new products, processes or systems by which value can be created for customers, businesses and society. Realising the importance of innovation for wealth creation and social well-being, Inno Fund was initiated.

c. Examination by the Authority

154. The Authority notes that the program is administered by MESTECC. The program was started in the year 2015. There is no law or legal regulation governing the program. MESTECC created innovation fund for promoting innovation by enterprises.

155. The program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy program is also specific because it is specific to enterprise carrying out innovation activity. Therefore, the Authority holds that countervailing duty should be imposed against this subsidy program.

(v) Program No. 5: Cradle Investment Program

a. Submission by Petitioners

156. The Petitioner submitted that this grant scheme is Malaysia's first development and technology commercialization funding program wherein Malaysia's innovators and aspiring entrepreneurs transform their raw technology-based ideas to commercially viable ventures or local start ups to attain commercialization. The 2 types of conditional grants are- pre-seed development (CIP Catalyst, U-CIP Catalyst) and seed commercialization (CIP 500). The applicant under CIP Catalyst and U-CIP Catalyst should be Malaysian aged 18 years and above, permanent resident of Malaysia, with a team of minimum 2 and maximum 5 applicants. The maximum funding under CIP Catalyst and U-CIP Catalyst is RM 150,000 and under CIP 500 is RM 500,000.

b. Submission by Government of Malaysia/other interested parties

157. Cradle Investment Program ensures that aspiring entrepreneurs become the leading start-up with the necessary assistance provided by Cradle. Cradle has two (2) types of products which are grant funding & equity investment. The grant product, CIP300 is a pre-seed program which provides grant and value-added assistance up to RM300,000. The other product is DEQ800 which provides direct equity investment between RM300,000 and RM800,000 to areas that have good growth potential. Not all individuals/firms who applied and met all the eligibility criteria will benefit on getting the funding.

158. The shortlisted applicants also need to go through the Approval Committees (Grant) or Investment Committees (Equity) before benefiting from this scheme. Traditional businesses are specifically excluded from having access to the program.

c. Examination by the Authority

159. The Authority notes that Cradle was established as an agency under the Ministry of Finance in 2003. Cradle provides effective grant, equity, commercialisation support, coaching etc. to accelerate the growth of start-up companies. There is no law or legal regulation governing this program. The program was used by companies engaged in digital and renewable energy sector.

160. The program provides financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The program is also specific because it is limited to start-up (less than 3 years) enterprise with minimum 51% Malaysian equity. Accordingly, the subsidy program is countervailable. However, the program was not used by any producer of the product under consideration in Malaysia because there has not been any start up enterprise for the product under investigation for last 10 years. Thus, the Authority holds that no countervailing duty should be imposed against this subsidy program.

(vi) Program No. 6: Export excellence award

a. Submission by petitioners

161. The Petitioner submitted that this is an allowance given to increase exports of the prescribed product. Allowance given is equal to 100% of the value of the increased exports which is deductible from 70% of the Statutory Income. The eligibility for the same is that the company must be exporting the prescribed product.

b. Submission by Government of Malaysia/other interested parties

162. Award is to recognize and acknowledge outstanding companies in export performance, market penetration and market operation. Program has been discontinued since 2012.

c. Examination by Authority

163. The Authority notes that the program is administered by Ministry of International Trade and Industry (MITI). The award is provided to companies for export performance, market penetration, market operation and contribution to community and industry. Since 2012, MITI has discontinued this award and Business excellence award has replaced Export excellence award.

164. 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 contingent on export and it is limited to enterprise that satisfy other criteria relating to market penetration, contribution to community etc. The Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. The Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(vii) Program No. 7: Export credit and Export Financing

a. Submission by petitioners

165. The Petitioner 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

166. 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.
167. The operational procedure of the ECR Scheme is governed by the ECR Guideline which is issued by EXIM Bank.

c. Examination by the Authority

168. 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.
169. 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.
170. 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. Authority holds that countervailing duty should be imposed against this subsidy program.

(viii) Program No. 8: Buyer Credit Guarantee

a. Submission by the Petitioner

171. 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

172. Bankers Trade Credit Takaful (BTCT) is a Credit Takaful designed to protect the Islamic Financial Institutions (IFIs) against risk of non-payment by their exporters arising from

default by the overseas buyers. 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

173. The Authority notes that the program is administered by EXIM Bank. There is no law or legal regulation governing the program.
174. 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.
175. The Authority holds that countervailing duty should be imposed against this subsidy program.

(ix) Program No. 9: Pioneer Status

a. Submission by Petitioner

176. The Petitioner 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

177. Pioneer Status may be granted to any company intending to participate in a promoted activity or to produce a promoted product. Promoted activities and promoted products are determined by Minister of Finance and Minister of International Trade and Industry. The promoted products and activities cover all sectors. Pioneer status is limited to companies involved in specific industries. The applicants will need to go through the Approval Committee also. Since Malaysia is committed to adopt the Forum on Harmful Tax Practices program under the OECD, changes will be made to the program.
178. 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.
179. The eligibility criteria for the Pioneer Status are Level of value-added (VA) percentage and Level of technology as measured by the Managerial, Technical and Supervisory (MTS) Index.

c. Examination by Authority

180. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provides for pioneer status program. The program provides for tax incentives in the form of exemption from income tax. Losses incurred during the exemption period can be carried forward for subsequent years to offset taxable income/net profit. The program is available for pre-specified list of promoted products/activities.
181. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to promoted activity/product mentioned in the list. Examination of the list shows that the product list includes the product under investigation. Questionnaire response filed by Alpha Industries Sdn. Bhd shows that benefit is received by producers of the product under investigation for subsidy programs based on the promoted product list. Therefore, The Authority holds that countervailing duty should be imposed against this subsidy program.

(x) Program No. 10: Investment Tax Policies/Allowance

a. Submission by Petitioners

182. The Petitioner submitted that under this program, a company granted Investment Tax Allowance (ITA) is entitled to offset this allowance against the statutory income for each year of assessment. The program encourages investments in promoted activities/products in the manufacturing sector, that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. An allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred is given. Company can offset this allowance against 70% of its statutory income for each year of assessment. Remaining 30% of its statutory income will be taxed at the prevailing company tax rate. As evidence of existence of the program, Petitioners have relied on:
- Promotion of Investment Act, 1986

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

b. Submission by Government of Malaysia/other interested parties

183. 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.
184. 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.
185. The eligibility criteria for the ITA are value added (VA) percentage and level of technology as measured by the MTS Index.
186. 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.
187. A company can elect to receive Pioneer Status but not receive the Investment Tax Allowance, or can elect to receive the Investment Tax Allowance, but not Pioneer Status.

c. Examination by Authority

188. 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. Even for companies that meet the listed criteria of promoted activity, value addition and level of technology, Authority retains the discretion to reject the applicant seeking benefit under this program.
189. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific since it is limited to certain enterprises, which meet the promoted product and are approved by the Authority. A company that has received income tax exemption from Pioneer Status cannot avail benefit

under this program. The Authority has already determined that countervailing duty should be imposed for exemption from income tax under Pioneer Status. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xi) Program No. 11: Re-investment Allowance

a. Submission by Petitioners

190. Deduction is granted for capital expenditure incurred by the company for determining statutory income for purpose of determining income tax.

b. Submission by Government of Malaysia/other interested parties

191. In Certain *Textile Mill Products and Apparel from Malaysia (1985)* & *Certain Steel Wire Nails from Malaysia (1989)* (US CVD determinations), the USDOC determined that re-investment allowance is not countervailable. In *Stainless Steel Fasteners from Malaysia* (EU CVD determination) (2000), the EU determined that the re-investment allowance is not countervailable.

c. Examination by Authority

192. Authority notes that a company or a person resident in Malaysia is granted Reinvestment Allowance if the company is in operation for 3 years and has incurred capital expenditure on factory, plant and machinery for qualifying project. Deduction is granted from 70% of statutory income for 60% of such capital expenditure. Re-investment allowance can be claimed for 15 years beginning from the year of assessment in which a claim is made. Inland Revenue Board is responsible for administration of this program.

193. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. Even though the subsidy program is not limited to promoted activity, the subsidy program is also specific because it is available to enterprise that in operation for at-least 3 years and are undertaking qualifying project (expanding, modernizing or automating its existing business in respect of manufacturing). The Authority has determined subsequently in program no. 12 that deduction from statutory income by way of capital investment and allowance is countervailable. Therefore, the Authority holds that no additional countervailing duty is required to be imposed against this subsidy program.

(xii) Program No. 12: Accelerated Capital Allowance

a. Submission by Petitioners

194. The Petitioner 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

195. 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

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

197. For 2017, Alpha Industries Sdn. Bhd. and Metrod (Malaysia) Sdn. Bhd. used this program.

c. Examination by Authority

198. Authority notes that the program provides for capital allowance i.e. deduction of capital expenditure from statutory income to promoted activity after the expiry of 15 years of re-investment allowance period. 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.

199. 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 re-investment allowance on account of expiry of 15 years period of eligibility. Government of Malaysia has informed that responding exporters Alpha Industries and Metrod Malaysia availed benefit under this program. Therefore, Authority holds that countervailing duty should be imposed against this program.

(xiii) Program No. 13: Group Relief

a. Submission by Petitioners

200. The Petitioner submitted that under this program, group relief is increased from 50% to 70% of the current year's unabsorbed losses to be offset against the income of another company within the same group. It is provided under the Income Tax Act, 1967 to all locally incorporated resident companies. The Claimant and the surrendering company

should have a paid-up capital of ordinary shares exceeding RM2.5mn. As evidence of existence of the program, Petitioners have relied on:

- Income Tax Act 1967
- <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

201. Group relief is available to all locally incorporated resident companies subject to the terms and conditions as provided under section 44A of the Income Tax Act 1967. It allows a company in a group to surrender (referred to as surrendering company) not more than 70% of its loss in the basis period for a year of assessment to offset the income of one or more related companies (referred to as claimant company) within the same group. The assistance is a deduction from defined aggregate income. No deduction can be carried forward.
202. This program is available to all companies and the IRB applies objective criteria in granting Group Relief. Program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available. There are no anticipated changes to the program.

c. Examination by Authority

203. Authority notes that the program is governed by Section 44A of the Income Tax Act. The subsidy program allows to set off not more than 70% of its loss incurred by a company in a group against profit of one or more related companies within the same group. All companies that meet the eligibility criteria can claim the Group Relief. This program is available to all companies.
204. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to enterprise having related companies. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. The Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(xiv) Program No. 14: Tariff Related Incentive

a. Submission by Petitioners

205. The Petitioner 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

206. The subsidy program is same as program No. 24.

c. Examination by Authority

207. 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).
208. The Authority notes that the program provides financial contribution in the form of revenue foregone, which is otherwise due. The program does not qualify to be permissible duty remission program because it provides exemption from import duty for raw material used in all kinds of manufacturing activities and not only for raw materials used in exported products , as provided in footnote 1 of the SCN Agreement and Section 9B(b) of the Customs Tariff Act. The program is specific because it is limited to enterprise that use raw materials that are not available locally. The Authority holds that countervailing duty should be imposed against this subsidy program.

(xv) Program No. 15: Industrial Building Allowance

a. Submission by Petitioners

209. The Petitioner submitted that under this program, Initial allowance of 10% and an annual allowance of 3% is given to companies incurring capital expenditure on the construction or purchase of a building that is used for specific purposes, including manufacturing, agriculture, mining, infrastructure facilities, research, Approved Service Projects and hotels that are registered with the Ministry of Tourism. The evidence given is Income Tax Act 1967.

b. Submission by Government/Other interested parties

210. An industrial building allowance (IBA) is available to a person who has incurred capital expenditure on the construction or purchase of an industrial building which is used for the business of that person. IBA is deducted against adjusted income to arrive at statutory income. The assistance is an allowance to be deducted from taxable income. The allowance can be carried forward. Schedule 3 of the Income Tax Act 1967 is evidence of the same. No changes are anticipated to the program.
211. IBA is generally available to all companies such as resident and non-resident companies and unincorporated businesses such as sole proprietorships and partnerships. Export is not a criterion for granting IBA. IBA is granted to all buildings notwithstanding the use of the building. IBA is also applicable to buildings which are used as warehouses for storage of goods for export or for storage of imported goods which are to be processed and distributed or re-exported.
212. All companies that meet the eligibility criteria can claim the deductions. Program does not constitute a countervailable subsidy because it is not specific. Qualifying person:
- incurs capital expenditure on a building.
 - the building must be an industrial building
 - the building must be used for the purpose of a business carried on by the person

c. Examination by Authority

213. Authority notes that industrial building allowance (IBA) is available to a person who has incurred capital expenditure on the construction or purchase of an industrial building which is used for the purpose of the business of that person. Industrial Building Allowance is deducted against adjusted income to arrive at statutory income.
214. Authority has already determined that countervailing duty should be imposed against accelerated capital allowance. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xvi) Program No. 16: Allowance for Plant & Machinery

a. Submission by Petitioners

215. The Petitioner submitted that under this program, capital allowance is given to give relief for wear and tear of fixed assets for business. The expenditure must be capital in nature and used for business purposes. Initial allowance is fixed at 20% based on the cost of asset at the time when capital expenditure is incurred. Annual allowance is flat rate given every year based on original cost of asset and varies accordingly. As evidence of existence of the program, Petitioners have relied on

- Schedule 3 of Income Tax Act 1967
- Web Research- Inland Revenue Board of Malaysia Qualifying Expenditure and Computation of Capital Allowances Public Ruling No.6/2015

b. Submission by Government of Malaysia/other interested parties

216. Capital allowance (CA) provides deductions for qualifying expenditure on machinery or plant. 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 based on a prescribed rate of allowance. The companies under investigation will be eligible to claim CA if they fulfil the criteria. The allowance can be carried forward. No changes are anticipated to the program.
217. 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. Qualifying person:
- carry on a business
 - incurs capital expenditure on plant and machinery
 - the plant and machinery must be used in that business
 - owner of the plant and machinery at the end of basis period

c. Examination by Authority

218. 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 on the basis of a prescribed rate of allowance.

219. Responding producers/exporters Metrod Malaysia, Metro OFHC and Alpha Industries have claimed allowance on plant and machinery.
220. Authority notes that the program does not provide any countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight-line method to all enterprises. Therefore, Authority holds that no countervailing duty should be imposed against this program.

(xvii) Program No 17: Double deduction for promotion of Malaysian Brand

a. Submission by Petitioners

221. The Petitioner 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

222. 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.

223. No changes are anticipated to the program.

c. Examination by Authority

224. 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.

225. 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. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. The Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(xviii) Program No. 18: Incentives for Manufacturing and manufacturing related services in East coast Economic Corridor

a. Submission by Petitioner

226. The Petitioner 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. Customised 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

227. 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.

228. 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. Changes will be made to the program as Malaysia is committed to adopt the Forum on Harmful Tax Practices (FHTP) program under the OECD. 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.

229. 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.

230. The company under investigation met the eligibility criteria on location, MTS and value added.

c. Examination by Authority

231. 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.

232. 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. The Authority has already determined that countervailing duty should be imposed against income tax exemption. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xix) Program No. 19: Drawback on Import duty, Sales tax and Excise duty

a. Submission by the Petitioner

233. The Petitioner 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

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

c. Examination by Authority

235. Authority notes that the program is administered by the Royal Malaysian Customs Department. The program provides import duty refund on goods that are subsequently re-exported. Responding exporter Alpha Industries has availed benefit under this program.

236. Authority has already determined that exemption from import duty on raw material is countervailable. Authority holds that no additional countervailing duty should be imposed against this subsidy program while working out subsidy margin for residual category.

(xx) Program No. 21: Exemption from Import duty and Sales Tax for Outsourcing Manufacturing Activity

a. Submission by Petitioners

237. The Petitioner 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, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

238. 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.

239. 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).

240. 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

241. 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.

242. The Authority has already determined countervailing duty should be imposed on program providing exemption from import duty/taxes on raw material. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xxi) Program No. 23: Exemption from import duty and sales tax on machinery and equipment

a. Submission by Petitioners

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

b. Submission by Government of Malaysia/other interested parties

244. 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.

245. The company under investigation conformed with the eligibility criteria which are under MIDA's purview. MIDA has issued one confirmation letter to Alpha Industries Sdn. Bhd. dated 2 January 2018 with which the company can apply for import duty exemption starting 1 January 2018 until 31 December 2020.

246. The license which exempts manufacturers from paying sales tax under the Sales Tax Act 1972 is no longer applicable since The Sales Tax Act 1972 [Act 64] was repealed with the enactment of the Goods and Services Tax Act 2014 [Act 762] from 1 July 2014.

c. Examination by Authority

247. 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.

248. Responding producer/exporter Alpha industries has obtained license for the exemption and is eligible to use this exemption from 1st January 2018. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity. The Authority holds that countervailing duty should be imposed against this subsidy program.

(xxii) Program No. 24: Exemption from import duty on raw materials/components

a. Submission by Petitioners

249. The Petitioner submitted that under this program, full exemption from import duty can be given for raw materials/components, regardless of whether finished goods are meant for export or domestic market, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. Where finished products are for export market, full exemption from import duty is normally granted. Where finished products are for domestic market, full exemption from import duty on raw materials/components not produced locally can be considered. Full exemption can also be considered if finished products made from raw materials/components aren't subject to import duty. 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

250. The program involved evaluating import duty exemption on raw material / component to qualified manufacturer. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD and MIDA. To qualify for the exemption, the raw materials / components are not locally available and used directly in the production of the finished product at the approved manufacturer's premise(s). The laws and regulations governing this program are contained in section 14(2) of Customs Act 1967. 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).

251. The company under investigation conformed with the eligibility criteria. Copper Cathode (raw material) for product under consideration carries no import duty.

c. Examination by Authority

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

253. 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 enterprise that use raw material that are not locally available. The Authority has already determined that countervailing duty should be imposed on program providing exemption from import duty/taxes on raw material. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xxiii) Program No. 25: Double deduction for promotion of exports

a. Submission by Petitioner

254. The Petitioner 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

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

255. 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.
256. 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.
257. 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

258. 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.
259. 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. Authority has already determined that

countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed for this subsidy program

(xxiv) Program No. 26: Double deduction for promotion of export cargo

a. Submission by the Petitioners

260. The Petitioner 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 Countries

261. 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.

262. 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

263. 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. The program was recurring in nature and is terminated from 1st January 2017. Thus, Authority holds that no countervailing duty should be imposed against this subsidy program.

(xxv) Program No. 27: Incentives for small and medium enterprise

a. Submission by the Petitioners

264. The Petitioner submitted that under this program, reduced corporate tax from 25% to 20% on chargeable incomes up to RM 500,000 is given to SMEs. This is available only to SME resident in Malaysia with paid up capital of RM 2.5mn or company which is not controlled by other company with a paid-up capital exceeding RM 2.5mn.

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

265. Special tax rate of 18% is applicable for a resident company with paid up capital of RM2.5 million and below, on first RM 500,000 chargeable income and 24% on subsequent chargeable income as per Schedule 1 of the Income Tax Act 1967. There are no anticipated changes to the program. If a company is in a tax loss situation, preferential rate is not applicable.

266. A company is eligible to claim the preferential tax rate upon fulfilling the following conditions:

- resident and incorporated in Malaysia

- has a paid-up capital in respect of ordinary shares of RM2.5 million and less
- the companies must not be part of a group of companies where any of their related companies have a paid-up capital of more than RM2.5 million

267. The companies under investigation will be eligible to claim preferential tax rate if they fulfil the criteria.

c. Examination by Authority

268. The Authority notes that under this program, preferential income tax rate is provided for SMEs i.e. enterprise with paid up capital of RM 2.5 million and below. On the income upto RM 500,000, chargeable income tax rate is 18%. Chargeable income tax for income above RM 500,000 is 24%.

269. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to small and medium scale enterprise. The Authority has already determined that countervailing duty should be imposed for subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed against this subsidy program.

(xxvi) Program No. 28: Allowance for increased export

a. Submission by the petitioners

270. The Petitioner 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

271. 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;

- 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.

272. 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.

273. 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

274. 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.

275. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed for this subsidy program

(xxvii) Program no. 29: Tax exemption for exporters in Free Trade Zone

a. Submission by Petitioners

276. The Petitioner submitted that under this program, as per section 4 of the Free trade zones act 1990, exporters are exempted from custom duty, sales or service tax and excise duty. Free zones such as Port Klang Free Zone, is one of a free commercial zone which is permitted to import raw materials, components, equipment, and machinery free of taxes.

b. Submission by Government of Malaysia/other interested parties

277. Free Zones in Malaysia are established for manufacturing and commercial activities to be carried out on with minimum Customs intervention. A free zone is an area declared by the

Minister of Finance under Section 3(1) of the Free Zone Act 1990. There are two types of free zones, a Free Industrial Zone meant primarily for manufacturing activities and a Free Commercial Zone meant for commercial activities. Free zones are places outside the Principal Customs Area (any part of Malaysia excluding a free zone, Labuan, Langkawi and Tioman) except in respect of prohibition of exports and imports under Section 31 of the Customs Act 1967. As such, goods and services of any description except those specifically and absolutely prohibited by law, may be brought into, produced, manufactured or provided in a free zone without payment of any duty/tax. There is no application form. Application can be submitted to Ministry of Finance for policy approval and will be declared by the Minister of Finance under Section 3(1) of the Free Zone Act 1990. There are no anticipated changes to the program.

278. None of companies are located in any of the gazette free zone areas under the Free Zones Act 1990.

c. Examination by Authority

279. Authority notes that the program is administered by Free Zone Act 1990 and Free Zone Regulations 1991.

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

281. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific since it is available to enterprise located in free zone. The Authority holds that no countervailing duty should be imposed against this subsidy program because no producer/exporter of subject product are located in free trade zone. In any case, Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from import duties. The Authority holds that no additional countervailing duty should be imposed for this subsidy program

(xxviii) Program No. 30: Research and Development Fund

Program No. 30(a): Commercialization of Research and Development Fund (CRDF-1)

Program No. 30(b): Commercialization of Research and Development Fund (CRDF-2)

Program No. 30(c): Commercialization of Research and Development Fund (CRDF-3)

a. Submission by Petitioners

282. The Petitioner submitted that CRDF-1 is a grant for commercialization of R&D output from public and private University (PPU)/Government Research Institute (GRI) by a spin

off company Syarikat Terbitan Universiti (STU). Funding in form of partial grants with a max of 500000 RM or 90% of eligible expenses (whichever is lower) is provided. The STU is required to operate their business from any recognised Technology Centres locally. The company is also required to focus their commercialization activities on business development while producing their product via out-sourcing mode. The proposed technology to be commercialized must be from one of the Priority Technology Clusters identified by MOSTI excluding ICT and project should be tangible in nature. As evidence of existence of the program, Petitioners have relied on Research and Development Booklet prepared by MIDA.

283. The Petitioner submitted that CRDF-2 is funding in form of partial grants with a max of 500000 RM or 70% of eligible expenses (whichever is lower) is provided for commercialization of R&D output from public and private University (PPU)/Government Research Institute (GRI) by a start-up company. The start-up is required to operate their business from any recognised Technology Centres. The company is required to focus their commercialization activities on business development while producing their product via out-sourcing mode. As evidence of existence of the program, Petitioners have relied on Research and Development Booklet prepared by MIDA.

284. The Petitioner submitted that CRDF 3(a) is a grant for commercialization of any local R&D by SME and CRDF 3(b) is a grant for commercialization of public sector R&D by a non-SME. In CRDF-3(a) funding in form of partial grants with a max of 400,000 RM or 70% of eligible expenses (whichever is lower) is provided and in CRDF-3(b) funding in form of partial grants with a max of 400,000 RM or 50% of eligible expenses (whichever is lower) is given. The company should've been incorporated under the Companies Act, 1965, with at least 51% owned by Malaysians and less than RM 25mn annual turnover or less than 150 employees. Also, the proposed technology to be commercialized must be from one of the Priority Technology Clusters identified by MOSTI excluding ICT, and the R&D must be completed successfully, and commercial ready prototype should be available. As evidence of existence of the program, Petitioners have relied on Research and Development Booklet prepared by MIDA.

b. Submission by Government of Malaysia/other interested parties

285. Commercialisation of Research and Development Fund (CRDF) is a program which provides funding assistance to aid commercialization activities of locally developed technologies undertaken by Malaysian-owned companies. The technologies can be those developed by the public sector or an output of in-house research and development (R&D) activities by the companies. The program was established in 1997. Program was not provided pursuant to a statute, regulation, decree, or other legal measure. Any company that intends to apply for CRDF must first participate in a pitching session which is organised by MTDC on a weekly basis. From the pitching session, the potential applicant will be informed if the company is eligible to apply for CRDF. If the company is deemed eligible, they will be invited to submit an application to be processed and evaluated. Eligibility is limited to technology-based companies. There are no anticipated changes to the program.

286. The duration for CRDF 1 is one year and the maximum amount of funding is RM500,000 in the form of a partial grant. The duration of CRDF 2 and 3 is 6 years and the maximum

amount of funding is RM 4,000,000 in the form of partial grant and partial soft loan based on Convertible Promissory Notes.

287. For CRDF2 and 3, disbursement of funds takes place in the first 2 years of the project and repayment of the soft loan portion will take place from the third to sixth year. Throughout the project duration, companies will be monitored on its progress, achievements, funding utilisation and business activities.

c. Examination by Authority

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

- CRDF 1 provides funds for market validation and technology validation for new technologies;
- CRDF 2 provides funds commercialisation activities for start-ups and small and medium enterprises;
- CRDF 3 provides fund for commercialisation activities for large companies.

289. Maximum amount of funding for CRDF-1 is RM 500,000 and maximum amount of funding for CRDF 2 & 3 is RM 4,000,000.

290. The program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The program is also specific because it is limited to enterprise with Malaysian ownership. The Authority holds that countervailing duty should be imposed against this subsidy program.

(xxix) Program No. 31: Tax incentives for in-house R&D

a. Submission by Petitioners

291. The Petitioner submitted that under this program any company which undertakes in-house R&D to further its business can apply for tax allowances. Application for an ITA of 50% of the qualifying capital expenditure incurred within 10 years and Offset of the allowance against 70% (100% for promoted areas) of its statutory income for each year of assessment is available. As evidence of existence of the program, Petitioners have relied on Research and Development Booklet prepared by MIDA.

b. Submission by Government of Malaysia/other interested parties

292. The incentive for In-house R&D activity is an Investment Tax Allowance (ITA) of 50% on the qualifying capital expenditure incurred within 10 years. The ITA can be offset against 70% of statutory income of each year of assessment. In-house R&D is one of the promoted activities which is determined by Ministry of Finance and Ministry of International Trade and Industry. The purpose of this incentive is for its own business. Not all companies who applied and met all the eligibility criteria will be approved of the program. The applicants will still need to go through the Approval Committee. Sections 26E, 27E and 29F of the Promotion of Investment Act 1986 are given in evidence. There are no anticipated changes to the program. Qualifying capital expenditure incurred in the

basis period for a year of assessment is deducted from the statutory income. Losses can be carried forward

293. The eligibility criteria for in-house R&D Incentive:

- The company must be incorporated under the Companies Act 1965 / Companies Act 2016 and resident in Malaysia
- The R&D activities undertaken must comply with the definition of R&D under Section 2 of the Promotion of Investment Act (PIA), 1986
- The R&D activities undertaken must be in accordance with the needs of the country and bring benefit to the Malaysia Economy

c. Examination by Authority

294. Authority notes that the program is governed by Sections 26E, 27E and 29F of the Promotion of Investment Act 1986. Under this program, incentive is provided for in-house R&D activity as an Investment Tax Allowance of 50% of capital expenditure. Allowance can be offset against 70% of statutory income of each year of assessment. The allowance may be granted to any company participating or intending to participate in-house research activity in Malaysia.

295. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to enterprise engaged in research and development. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(xxx) Program No. 32: Double deduction for Research & Development

a. Submission by Petitioners

296. The Petitioner submitted that under this program, any company that undertakes in-house R&D to further its business can apply by application for an ITA of 50% of the qualifying capital expenditure incurred within 10 years and Offset of the allowance against 70% (100% for promoted areas) of its statutory income for each year of assessment is available. As evidence of existence of the program, Petitioners have relied on Research and Development Booklet prepared by MIDA.

b. Submission by Government of Malaysia/other interested parties

297. Revenue expenditure on research directly incurred by a person resident in Malaysia would be eligible for a claim for double deduction. These expenses must be incurred specifically in undertaking in-house research by that person in relation to his business. The said research must be approved by the Minister of Finance. The Minister has, however, delegated such powers to the Director General of Inland Revenue (DGIR). Section 34A Income Tax Act 1967 given in evidence. Government does exercise discretion as to which firm is eligible to benefit. There are no anticipated changes to the program. The deduction can be carried forward.

298. Companies are required to submit the applications for the Research and Development program to the IRB, an agency under MOF. The company will then be required to get the approval letter from IRB. After IRB is satisfied that the company has complied with the conditions, IRB will issue the approval letter. Later, companies approved with the program submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax deductions.

c. Examination by Authority

299. Authority notes that program is administered by Section 34A Income Tax Act 1967 (Annex D-32.1) & Public Ruling No. 5/2004. Revenue expenditure on research directly incurred by a person resident in Malaysia would be eligible for a claim for double deduction from net profit. The research activity in question must meet the prescribed criteria and definition and should be approved by the Minister of Finance.

300. The program provides for financial contribution in the form of revenue foregone, which is other wise due and benefit is thereby foregone. The subsidy program is also specific because it is limited to enterprise engaged in research and development activity. Authority has already determined that countervailing duty should be imposed against subsidy program granting exemption from income tax. Therefore, Authority holds that no additional countervailing duty should be imposed for this subsidy program.

(xxxi) Program No. 34: Soft loans to Small and Medium Enterprise

a. Submission by Petitioners

301. The Petitioner submitted that under this program, loans to SME's and new start up companies in project, fixed assets and working capital financing is given, to relocate their operations to legal industrial sites and improve their productivity through adoption of ICT in business management and operations. Min RM 50000 and Max 3 Million loan is granted. SME incorporated under Companies Act, 1965 should have at least 60% equity by Malaysians, and with shareholding not exceeding 20% held by public listed companies. They should possess a valid premise license. As evidence of existence of the program, Petitioners have relied on SME Corporation of Malaysia.

b. Submission by Government of Malaysia/other interested parties

302. The SLSME was launched in December 2001 to promote the development of small and medium enterprises (SMEs) in Malaysia. The fund for SLSME is channelled by the Government of Malaysia via SME Corporation Malaysia to MIDF for the implementation of the Scheme. There are no anticipated changes to the program. Program was not provided pursuant to a statute, regulation, decree, or other legal measure.

303. SMEs incorporated under the Malaysian Companies Act 2016 or Registration of Business Ordinance 1956 with at least 60% equity held by Malaysians or with shareholdings not exceeding 20% held by public-listed companies (only if applicable) as well as with business operations in manufacturing sector, manufacturing related sector and services sectors (excluding insurance and financial services) are eligible to apply for financing under SLSME.

304. Applicants/SMEs are required to complete the Financing Application Form and submit to MIDF. Application Forms are to be submitted via online through MIDF's official website or to MIDF officers at the Head Office/ regional offices. Thereafter, MIDF's officers will contact the Applicant/SME for further discussion on the financing needs of the SME. MIDF will proceed to process the application once the Applicant/SME submits complete documents to MIDF's officers.

c. Examination by Authority

305. Authority notes that the program was launched in December 2001 and provides for loan to SMEs. This program provides financing for existing as well as newly start-up enterprises for project, fixed assets and working capital requirement.

306. The program provides financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The amount of benefit is equal the difference between the amount of payment to be made on loans granted pursuant to this subsidy program and the amount payment to be made on any other comparable commercial loan. The program is also specific because it is limited to SMEs which meet the specified criteria. The Authority holds that the countervailing duty should be imposed against this subsidy program.

(xxxii) Program No. 35: International Procurement Centre

a. Submission by Petitioners

307. The program provides for exemption of income tax to Malaysian companies.

b. Submission by Government of Malaysia/other interested parties

308. The program was governed by Income Tax Exemptions No. 42 Order 2005. Program has expired on 30th April, 2015. Therefore, no new IPC status and fiscal incentives will be granted to fresh applicants beginning 1st May, 2015. Existing IPC Companies may however complete 10 years of their IPC fiscal incentive and may retain their IPC status thereafter subject to meeting the conditions of IPC Status approval. Not all companies who applied and met all the eligibility criteria were approved for the program.

c. Examination by the Authority

309. Authority notes that program was administered by Income Tax Exemptions No. 42 Order 2005. Program provides full exemption from income tax. Program has terminated on 30 April 2015 but existing status holder will continue to get the benefit of full tax exemption under the program for 10 years and thereafter if they continue to meet the criteria.

310. Program continues to remain in operation for entities who were already granted IPC status before 30th April 2015. The program was in operation during the POI for such enterprises. The program provides full exemption from income tax. 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 enterprise with IPC status. Metrod OFHC has received benefit from the program and the Authority has determined countervailing duty against such benefit.

(xxxiii) Other Program used by Metrod Group: Exemption on import duties on raw material which are used in production of exported goods.

Authority notes that Metrod Malaysia has received benefit in the form of exemption on import of raw material for export production because Metrod Malaysia specifically admitted in its questionnaire response in Exhibit 14 that *“Grant of exemption of import duty on the raw material meant for export goods is covered under the exemption [of import duty on raw material]. No duty exemption under the scheme is available for goods which are imported for production of finished products destined for the domestic market.”* Authority had inadvertently noted in the disclosure statement that this benefit availed by Metrod is a benefit under Program no. 24.

311. The Authority notes that program provides for financial contribution in the form of revenue forgone which is otherwise due through exemption from import duty on raw materials and benefit is thereby conferred. The program is also specific because it is contingent on export performance. The Authority notes that import of raw material for use in the production of exported goods cannot be considered as countervailable subsidy only if there is sufficient evidence to demonstrate that there is a verification mechanism to ensure that there is no excess remission. Metrod group has merely claimed existence of a mechanism and absence of excess remission without providing sufficient evidence or step by step explanation of such verification mechanism. Metrod group has not provided any instance of duty imposition by the Government on the company where it was unable to meet the export obligation.

Producers/Exporters from Malaysia

Alpha Industries Sdn. Bhd.

312. Alpha Industries Sdn. Bhd. is a producer/exporter of subject goods in Malaysia. Alpha Industries filed questionnaire response and provided information regarding the subsidy programs availed by them.
313. Authority examined the response filed by Alpha Industries Sdn. Bhd. and upon examination requested further information from them and also requested for verification of information provided in the response. However, Alpha Industries did not respond to the request of the Authority for further information and verification of information already provided in the questionnaire. Authority determines that Alpha Industries has not co-operated fully in the investigation and accordingly no individual subsidy margin rate can be determined for Alpha Industries. Subsidy margin determined for all other producers/exporters from Malaysia is being made applicable for Alpha Industries.

Metrod Malaysia SdnBhd (Producer), Metrod (OFHC) SdnBhd (Trader), Metrod Copper Products SdnBhd (“MCP”) (Trader), Panasonic Procurement Malaysia SdnBhd, (Trader), Savli Copper Products Pvt Ltd, India (Importer)

314. Metrod Malaysia SdnBhd (“**Metrod Malaysia**”) is a producer of subject goods in Malaysia. Metrod OFHC SdnBhd (“**Metrod OFHC**”) and Metrod Copper Products

SdnBhd (“MCP”) are wholly owned subsidiaries of Metrod Malaysia. Metrod OFHC and MCP are engaged in marketing activities for Metrod Malaysia. Metrod OFHC and MCP also supply raw materials to Metrod Malaysia for manufacturing subject goods. Metrod Malaysia does not export goods directly to India. Goods produced by Metrod Malaysia were sold to Metrod OFHC and MCP. Metrod OFHC exported the goods to India directly to related end user Savli Copper Products Pvt Ltd, India (“Savli”) and to other unrelated end users. MCP exported goods to India through unrelated trader Panasonic Procurement Malaysia SdnBhd, (“Panasonic”). All exports of subject goods to India by Panasonic were made to Anchor Electricals Pvt. Ltd., which is subsidiary of Panasonic.

315. Metrod Malaysia, Metrod OFHC, Metro Copper and Panasonic filed questionnaire response. Metrod Malaysia and Metrod OFHC benefitted from the subsidy programs of Government of Malaysia.

316. Authority has verified the information provided by Metrod Malaysia, Metrod OFHC, Metrod Copper and Panasonic and determined subsidy margin for program no. 23, 24 and 35 for which benefit was received or accrued during the POI. Authority determined that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. The Authority further notes that with respect to Program no. 12, it has been claimed by Metrod Malaysia that no benefit has been availed whereas Government of Malaysia has submitted that Metrod Malaysia has received benefit under Program No. 12. Accordingly, the Authority holds to determine benefit under Program No. 12 for Metrod Malaysia based on facts available. As a result, benefit was conferred to Metrod group as a recipient of this program. Subsidy program was also specific because they were limited to certain enterprise including Metrod group.

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

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 12	Accelerated Capital Allowance	Accelerated deduction of capital expenditure from taxable income	***	0-1%
Program No. 23	Exemption from Import Duty and Sales Tax on Machinery and Equipment	The program involves import duty exemption on machinery and equipment to qualified manufacturer.	***	0-1%
Program No. 35	International Procurement Centre (IPC status)	Full Income Tax exemption on statutory income	***	0-1%
Other program	Exemption from Import Duty on Raw Materials/ Components	The program involves exemption of import duties on the imported raw materials which are used in the production of export	***	0-5%

		goods.		
Total			***	0-5%

Summary of subsidy programs for Malaysia

318. Countervailing duty for all other producers/exporters from Malaysia has been determined based on the highest of the subsidy margins for the cooperating party, Metrod Group for the subsidies availed by them and based on facts available for other subsidy programs.

Program Nos.	Name of the Program	Subsidy Margin %	Range%
Program No. 12	Accelerated Capital Allowance	***	0-1%
Program No. 23	Exemption from Import Duty and Sales Tax on Machinery and Equipment	***	0-1%
Program No. 14/19/21/24	Exemption from Import Duty on Raw Materials/ Components	***	0-5%
Program No. 9/10/11/12/13/15/17/18/25/27/28/31/32/35	International Procurement Centre (IPC status) / Income Tax benefit.	***	0-1%
Program Nos. 1, 3, 4, 6 & 30	Grant Programs	***	0-5
Program No. 34	Loan Programs	***	0-5
Program No. 7&8	Loan Guarantee	***	0-5
Total		***	5-15

Vietnam

F.1. Examination of the Subsidy programs alleged by the Petitioners

(i) **Program No. 1: Income Tax Preferences under Chapter V of Decree 24 (Implementation of the Law on Enterprise Income Tax)**

a. Submission by the Petitioner

319. Petitioner submitted that under Article 9, the Ministry of finance has specified income tax rate applicable to-

1. Business establishments is 28%.
2. Business establishment is involved in activities of exploration and exploitation of Oil and Gas and/or any other rare natural resources, the tax applicable to such enterprise shall range from 28%- 50%.

320. Under the Program, Specific Income tax rates for such establishments (Type 2) shall be decided by the Prime Minister at the proposal of Minister of Finance. The limitation of the program is restricted to certain specified enterprises. As evidence of the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.
- Decree No 48/2009/ND-CP, May 19, 2009
 - Decree No 164/2003/Nd-cp of Dec 22, 2003 detailing the Implementation of the Law on Enterprise Income Tax to the Government
 - Pursuant to the Dec 25, 2001 Law on Organization of the Government
 - Pursuant to the June 17, 2003, Law No. 09/2003/Qh11 on Enterprise Income Tax

b. Submission by Government of Vietnam/other interested parties

321. Decree 24/2007/ND-CP implementing the Law on Enterprise Income Tax 2003 ceased with effect from January 1, 2009 because it was replaced by the Law on Enterprise Income Tax 2008. Thus, Decree 24 was not applicable during the POI of this investigation.
322. Corporate income tax benefits including preferential income tax rate, tax exemption and tax reduction are governed by Article 1.7 of the Amending Law 2013 and Article 1.7 of the Amending Law 2014.
323. Law of Foreign Investment in Vietnam in 1996 was amended in 2000. Corporate income tax benefits including preferential income tax rate, tax exemption and tax reduction are governed by Article 46 to 49 of Decree 24/2000/ND-CP.
324. There is no application and approval process. Enterprises rely on the applicable tax law and regulations to identify the benefits they are entitled to, declare the benefits in the tax returns, and pay the income tax in accordance with the declaration. Eligibility is not contingent upon export performance or on the use of domestic goods.
325. There is no criterion governing the size of the benefit. The amount of income tax benefits is the amount of difference between standard tax rate and preferential tax rate and/or the amount of tax payment in the absence of exemption or reduction.
326. Dong Viet Non-Ferrous Metal and Plastic Joint Stock Company (DOVINA) received corporate income tax benefits under this program. During the period of investigation, DOVINA received a 50% reduction on the tax payable to the Government on income from new investment projects for the 2017 tax period. This preference is based on the fact that DOVINA invested on new projects in Long An Economic Zone, which falls into the list of encouraged geographical areas under Decree No. 218/2013/ND-CP. There is no deferral of taxes owed involved in the program.
327. No anticipated changes in the program have been made.
328. CFT COPPER VINA Ltd., Co received corporate income tax benefits as foreign invested enterprise in Bien Hoa Industrial Park, pursuant to Article 46 of Decree 24/2000/ND-CP. It is subject to a preferential income tax rate of 15% on the tax payable to the Government for the duration of its investment project, which is 30 years from the date of establishment. This preference is based on the fact that CFT COPPER VINA was established as a foreign-invested company.

c. Examination by Authority

329. Authority notes that the program providing exemption from income tax is governed by Corporate Income Tax 2008 as amended in 2013 and Law of Foreign Investment as amended in 2000. Standard rate of corporate income tax in Vietnam is 20%. Decree 218/2013/ND-CP provides cases where tax payers are entitled to tax reduction of 50%. Reduction is available to investment projects falling in the specified sectors or in encouraged geographical region.
330. For foreign invested enterprise, preferential rate of 15% and 10% are specified as per Article 46 of Decree 24/2000/ND-CP.
331. 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 sector specific and region specific because it is limited to encouraged sectors or encouraged geographical regions. The Authority holds that countervailing duty should be imposed against this program.

(ii) Program No. 2: Import duty exemption or reimbursement for raw material

a. Submission by the Petitioner

332. Petitioner submitted that import duty exemption for “raw material and supplies used for manufacture of equipment and machinery” is provided under Law no.45, Chapter IV. Ministry of Finance under Article 16.6(d) & 16.9 has specified raw material, supplies and accessories imported for production activities of investment projects on the list of domains where investments is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties.
333. Under the Program, raw material or supplies imported for the production of export goods, for which tax has been paid, is subject to duty-free imports (u/A. 16.4) or reimbursement (u/A.19). As evidence of the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.
- Law No 45/2005/QH-11 (Law No 45)
 - Decree No 87/2010/ND-CP (Decree 87) Law No. 45 Chapter IV

b. Submission by Government of Vietnam/other interested parties

334. This policy is regulated by the Law on Export and Import Duty and applied to every form and type of business throughout the country.
335. The amount of the exemption is equal to the amount of the duty corresponding to the value of imported materials actually used in the production of the finished goods that are exported. This amount is determined or declared at the time of reporting to Customs on the use of imported raw materials for production of exported goods in accordance with customs regulations. The applicable Customs regulations are Decree 08/2015/ND-CP, dated January 21, 2015 ("Decree 08") and Circular 38/2015/TT-BTC, dated March 25, 2015. General Department of Vietnam Customs (GDVC) under the Ministry of Finance is in charge of development of track system.
336. There is no application and approval process. As long as the imported materials are used in the production of exported goods, such materials are exempted from import duties regardless of the sector, location, or size of the importing producers. No changes are anticipated for this program. There is no deferral of taxes owed.

c. Examination by Authority

337. Authority notes that the program is administered by Law on Import and Export Duty 2016 and Customs Regulations 08/2015/ND-CP dated 21, 2015 and Circular 38/2015/TT-BTC. The program provides for exemption on import duty on raw materials used in the manufacture of exported product. There is no evidence and details regarding the track system maintained by GDVC to ensure that entire raw material imported duty free is consumed in the production of exported product.
338. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The subsidy program is also specific because it is contingent on export. The Authority holds that countervailing duty should be imposed against this program.

(iii) Program No. 3: Exemption on Corporate income tax for enterprises

a. Submission by the Petitioner

339. The petitioner submitted that the above-mentioned program is applicable to enterprises of textile & garments; leather & footwear; electronics & IT products; manufacturing of cars and fabricating mechanics. As per the scheme of the Government of Vietnam enterprises shall be benefited if, -
1. the enterprises opting to 50% tax reduction in the tax period of year 2014, this reduction shall be enjoyed for the tax period of following 3 fiscal years
 2. the maximum duration for exemption is 1 year, commencing from the date of performance of contracts or commencing trail production or production with technologies applied for the first time in Vietnam.
 3. The income of the enterprises is eligible for a preferential tax rate of 20% for 10 years, tax exemption for 02 years and 50% reduction for next 04 years

b. Submission by Government of Vietnam/other interested parties

340. Information regarding income tax program and benefit is provided in response to Program No. 1.

c. Examination by Authority

341. Authority notes that it has already determined that countervailing duty should be imposed against subsidy program providing exemption from Income Tax. The Authority holds that no additional countervailing duty is required to be imposed against this subsidy program.

(iv) Program No. 5: Preferential lending to exporters

a. Submission by the Petitioner

342. The petitioner stated that the Ministry of finance along with banks regulate the loans under the program. Banks provided loans to enterprises for the post-investment interest rate to implement state policies on development investment credits and export credits. It is also submitted that the State is a major regulator in the banking industry and therefore 50% of the loans by the major banks in Vietnam are low- interest loans. As evidence of

the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.

- Decree No 75/2011/ND-CP, Aug 30, 2011
- Decree No 106/2008/Nd-cp
- Decree No 106/2004/Nd-cp
- Resolution No 02/NQ-CP (Government 7 Jan 2013)
- Official Letter no 2667/NHNN-Vp (State Bank of Vietnam 17 April 2014)

b. Submission by Government of Vietnam/other interested parties

343. The GOV does not maintain records of the loans provided by the banks. All financial institutions, regardless of the shareholding structure, carry out their lending operations independently according to commercial considerations.
344. These programs are managed by Vietnam Development Bank (“VDB”), which is a state policy bank established by Decision 108/2006/QĐ-TTg, May 19, 2006 on the Establishment of Vietnam Development Bank. The VDB has three basic state credit tools: (i) investment credit loans; (ii) export credit loans; (iii) post-investment credit assistance.
345. During the POI, the provision of investment credit loans, export credits, and post-investment credit assistance complied with Decree 75/2011/ND-CP and Decree 32/2017/ND-CP.
346. Ministry of Finance issues circulars to provide guidelines for the implementation of the program. The Vietnam Development Bank provides investment credits to eligible entities in accordance with the above regulations and its own regulations on credit provision.

c. Examination by Authority

347. Authority notes that the program is administered by Decree 75/2011/ND-CP. Article 5 of Decree 75 authorises the Vietnamese Development Bank to provide investment credit to investors having investment projects on the list of eligible projects. Investment credit is in the form of credit loans, export credit loan, post-investment credit assistance etc. Guidelines for administering the program are issued by Ministry of Finance.
348. The Vietnam Development Bank (VDB) is established under the Decision No. 108/2006/QĐ-TTg dated May 19th 2006 to execute the state development investment and export credit policies as regulated by the Government. The organizational and operational regulations of VDB are in accordance with the Decision No. 1515/QĐ-TTg dated September 3rd 2015 by the Prime Minister.
349. Financial mechanism of VDB is executed in accordance with the Decision No.44/2007/QĐ-TTg dated March 30th. The Vietnam Development Bank is recognized as legal entity. The operation of VDB is for not profit oriented purposes.
350. Main duties of the Vietnam Development Bank with regard to credit are:
- Mobilize and receive capital from domestic and foreign organizations to implement investment and development credit and export credit of the State.
 - Execute the policy of investment and development credit, policy of export credit of the State.
 - Provide credit guarantee for SMEs’ loans from commercial banks.
351. Authority notes that VDB and other state owned banks in Vietnam are a public body because it is owned and controlled by the Government of Vietnam and exercises Governmental authority. Loans granted by VDB or any other state owned bank are in the

nature of financial contribution in the form of direct transfer of funds. Benefit is conferred on the recipient in the form of difference between the interest charged by VDB and the interest rate charged on comparable commercial loan. The Authority holds that countervailing duty should be imposed against this program.

(v) Program No. 6- Export Promotion Program

a. Submission by the Petitioner

352. The petitioner submitted that under the regulations of Ministry of Trade, Ministry of Finance and other relevant ministries and agencies, the provision and allocation of funds for trade promotion is overseen by the evaluation council. The governing Article is 9 of Decision 279, which specify the types of trade promotion schemes that are eligible for support and the following Article (10) specifies the level of support that is available to each scheme. It is further submitted that the government will cover 50% of the expenses associated with hiring domestic and foreign experts under this program. As evidence of the existence of the program, the petitioners have provided the following decrees or notifications:

- National Trade Promotion program was established by decision 279 and governed by Decision 90

b. Submission by Government of Vietnam/other interested parties

353. The GOV has an annual trade promotion program which aims to support relevant companies to expand trade to foreign markets, mountainous and bordering (poor) areas.

354. The national trade promotion program aims to support trade activities, notably for export and trade in mountainous and poor areas, activities connecting trade with investment and tourism. Annually, the MOIT, based on prescribed criteria and based on proposals submitted by the local authorities and associations, approves trade promotion programs for the year. Associations or local authorities, based on approved programs, conduct promotion activities for its relevant companies. The presiding bodies prepare the proposals and send the proposal to the Trade Promotion Department (the National Trade Promotion Program Management Board) within the prescribed time limit (usually 15 May of the year preceding the project implementation year).

355. Eligibility criteria is that Program owners have a trade promotion plan that meets the objectives, requirements and criteria as provided in Decision No. 72/2010/QD-TTg.

356. The program is still being implemented. Currently this program has not been replaced by any new program.

c. Examination by Authority

357. Authority notes that the program is administered by Decree No. 72/2010/QD-TTg. It provides support to trading activities of enterprises for specified sectors or geographical locations.

358. The program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The program is also specific because it is limited to enterprise performing support activities or enterprise located in the certain geographical region. Therefore, Authority holds that countervailing duty should be imposed against this subsidy program.

(vi) Program No. 7- Export credits from the Vietnam Development Bank

a. Submission by the Petitioner

359. The petitioner submitted that the Ministry of finance had specified certain enterprises eligible for credit loans. Vietnam Development Bank provides loans for investment projects and contracts on export/import of Vietnamese goods which have an impact on the capital. A pre-requirement set-up by the bank is that the financial plans and repayment plans shall be appraised by them beforehand. As evidence of the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.

- Decree No 75/2011/ND-CP, Aug 30, 2011
- Decree No 108/2006/QD-TTg
- US Final finding on Certain Steel Nails from Socialist Republic of Vietnam

b. Submission by Government of Vietnam/other interested parties

360. Information regarding loan program is provided in response to Program 5.

c. Examination by Authority

361. Authority has already determined that countervailing duty should be imposed against credit provided by VDB and state owned banks. Therefore, Authority holds that no additional countervailing duty is required to be imposed against this program.

(vii) Program No. 8- Export Support Credit

a. Submission by the Petitioner

362. Under the program Ministry of Finance has provision for loan for enterprises that qualify the criteria established by the decision. It also provides guidelines for the purpose of the loan. Article 7 & 8 lays down the condition and the loan amount that has been prescribed by the Government of Vietnam. As evidence of the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.

- Decision No. 133/2001-QD-TTg

363. In this decision, the government states that the export credit shall be applicable to the-

1. Investors that have the financial capability to repay the debt;
2. The project must have completed the investment and construction stage;
3. The investor has been evaluated by the Development Assistance Fund for financial plans and loan repayment plans.

364. Under A. 8- the level of loan capital has been divided into three groups by the Ministry. Group A shall follow the Prime Minister's decision and the rest are applicable for not more than 90% of the investment capital.

b. Submission by Government of Vietnam/other interested parties

365. Export support credit program was triggered in 2001 and terminated on 16 January 2007. Therefore, this program is outside the period of investigation.
366. The program was aimed at encouraging enterprises, economic entities and individuals in the production and trading which produce export goods and is contingent upon export performance. As part of Vietnam's commitments to access the WTO, this program was terminated on 16 January 2007 as provided under Decree 151/2006/ND-CP.
367. Export support credits under this program include the following:
- Medium and long-term investment loans for investment projects of producing, manufacturing or processing export goods with export revenue accounting for at least 30% total annual revenue and at least 80% of total revenue if the project is a joint-venture as provided under Article 6 of Decision 133/2001/QD-TTg.
 - Post investment interest rate support for investment projects (i) of producing, manufacturing or processing export goods with export revenue accounting for at least 30% total annual revenue and (ii) not receiving medium and long-term investment loans, as provided under Article 3 of Decision 133/2001/QD-TTg. The interest rate support amount is equal to the difference between the interest rate of credit institutions and that of the state investment credit at the time of receiving the credit.
 - Investment credit guarantee for enterprises of producing, manufacturing or processing export goods with export revenue accounting for at least 30% total annual revenue as provided under Article 6 of Decision 133/2001/QD-TTg.

c. Examination by the Authority

368. The Authority notes that the subsidy program was terminated on 16 January 2007 and is no longer in operation. Moreover, the Authority has already determined that countervailing duty should be imposed against subsidy program providing loans to enterprise by VDB and other state owned banks at lower interest rates. Therefore, Authority holds that no additional countervailing duty is required to imposed against this subsidy program.

(viii) Program No. 9- Preferential lending for investors

a. Submission By the Petitioners

369. Under the program, the Ministry of Finance has reiterated the roles & tasks of the Development bank. The petitioner submitted that the bank was formulated to regulate exporting goods to Vietnam. A loan from the bank has been made a mandatory requirement for an enterprise to avail export credits. As evidence of the existence of the program, the petitioners have provided the following decrees or notifications as was reasonably available to them.
- Decree No 108/2006/QD-TTg
 - Decree No 75/2011/ND-CP
370. Under the program, the bank shall establish & receive capital from investors to execute the Investment credit policy. The amount of credit/loan provided towards the project is 70% at most and for the investor at 15% of the actual charter capital of Vietnam

Development bank. Further, it is submitted that the A. 6 of the decree imposes lending conditions in order to attain export credit on investors.

b. Submission by Government of Vietnam/other interested parties

371. Information regarding loan program is provided in response to Program 5.

c. Examination by Authority

372. Authority has already determined that countervailing duty should be imposed against credit provided by VDB and state owned banks. Therefore, Authority holds that no additional countervailing duty is required to be imposed against this program.

(ix) Program No. 10- Interest rate of the investment credit loans

a. Submission by the Petitioner

373. The petitioner submitted that the Ministry of Finance has specified the interest rate of the investment credit loans granted by the State of Vietnam. As evidence of the existence of the program, the petitioners have provided the following notification as was reasonably available to them

➤ Circular No. 76/2015/TT-BTC

b. Submission by Government of Vietnam/other interested parties

374. Information regarding loan program is provided in response to Program 5.

c. Examination by Authority

375. Authority has already determined that countervailing duty should be imposed against credit provided by VDB and state owned banks. Therefore, Authority holds that no additional countervailing duty is required to be imposed against this program.

(x) Program No. 11- Investment support on foreign investors who invested in establishing small and medium scale enterprises

a. Submission by the Petitioner

376. The petitioner submitted that under this program, assistance at all stages was provided to Small-&Medium Scale Enterprises. The Enterprises are entitled to assistance in the financial, production, innovation & technological field. The subsidy scheme allows for extensive support to foreign investors investing in small business in Vietnam. This subsidy provides an undue advantage to the industry. As evidence of the existence of the program, the petitioners have provided the Decree No 56/2009/ND-CP as evidence.

b. Submission by Government of Vietnam/other interested parties

377. None of companies under investigation is operating business in textile and garment industry.

378. To facilitate development of small and medium sized enterprises (SMEs) in the country, Decree 56/2009/ND-CP was issued to provide guidelines for support of SMEs, which applies to SMEs throughout the country regardless of any form and type of business. The Ministry of Finance is responsible for formulating a mechanism for establishment and

operation of credit guarantee funds, which should be submitted to and approved by the Prime Minister, and for guiding operations of credit guarantee for small- and medium-sized enterprises. The central bank is responsible for proposing the Prime Minister to promulgate incentive mechanisms to expand credits to small- and medium-sized enterprises.

379. Application process is based on principles and guidelines issued by central agencies, local authorities as per their own availability of local budget, develop SMEs support programs.

Sector	Small-sized enterprises	
	Total charter capital	Number of laborers
Agriculture, forestry and fishery	VND 20 billion or less	Between over 10 - 200 employees
Industry and construction	VND 20 billion or less	Between over 10 - 200 employees
Trade and service	VND 10 billion or less	Between over 10 - 50 employees

380. Companies falling under the defined range could apply for available support programs by the local government.

381. Due to very limited state budget, most of provinces have not developed any programs to support SMEs within their geographical regions. This program is not contingent upon export performance or domestic over imported goods. None of the companies under investigation is SME under the criteria of Decree 56/2009/ND-CP. Decree 56/2009/ND-CP was replaced by the Decree 39/2018/ND-CP dated 11 March 2018.

c. Examination by Authority

382. Authority notes that the program provides support to SMEs in the form of financial and non-financial incentives. Support provided to SMEs under the guidance of Ministry of Finance comprises of various types of incentives:

- Training programs
- Awareness of doing business programs for SMEs
- Credit guarantee funds
- Support for payment full or partial payment of fee for obtaining investment certification

383. The incentives provided under the program in monetary terms results in financial contribution in the form of direct transfer of funds and benefit is thereby confirmed. The subsidy program is also specific because it is limited to SMEs. Authority holds that countervailing duty should be imposed against this subsidy program.

(xi) Program No. 13- Financial Guarantees by Vietin Bank

a. Submission by the Petitioner

384. Under the scheme, the Ministry of finance, provides for commitment by Vietin Bank to the guaranteeing party in a contract, in case he fails to oblige his part of the payments and obligations. As an evidence of the existence of the program, the petitioners have submitted the URL of the website of Vietin Bank which has all the required details of the program.

b. Submission by Government of Vietnam/other interested parties

385. None of companies under investigation received any financial guarantees from Vietinbank for the product under investigation. The questions, therefore, are not applicable.

c. Examination by Authority

Authority has already determined that countervailing duty should be imposed against credit provided by VDB and state owned banks. Therefore, Authority holds that no additional countervailing duty is required to be imposed against this program.

(xii) Program No. 14- Land Preferences for Enterprises in Encouraged Industries or Industrial Zones under Decree 142.

a. Submission by the Petitioner

386. The petitioner has submitted that the Government of Vietnam provide preferential land rates and related assistance to enterprises located in the industrial zone land. The land is subleased to the enterprises by People's Committee of Can Tho, a local executive/administrative branch of the national government. As evidence of the existence of the program, the petitioners have provided the following decree document as was reasonably available to them-

➤ Decree No 142/2005/ND-CP dt. Nov 14, 2005

387. As per the decree, provided in evidence, collection of land rents & water surface rents have to be re-adjusted to be close to the market price.

b. Submission by Government of Vietnam/other interested parties

388. In order to encourage enterprises to invest into geographical regions or areas with specially difficult socio-economic conditions, the Government of Vietnam pursues a policy of exemption and reduction of land rent for companies who have investment projects in such regions. Exemption of land rent also applies to investment projects in special cases such as construction of lodging houses for poor workers, dormitory for students in universities, agricultural land for minority citizens in mountainous areas, etc, as well as investment projects in encouraged industries.

389. This policy is regulated by Decree 142/2005/ND-CP dated 14 November 2005. Decree 46/2014/ND-CP was issued to replace decree 142/2005/ND-CP.

390. Companies who invest in encouraged industries or encouraged geographical regions specified in the list or invest special cases specified under the Decree 142/2005 and succeeding Decree 46/2014, are entitled to land rent exemption or reduction. Based on their investment certificate or business registration, the relevant local tax authority shall determine the amounts payable by the land tenants.

c. Examination by Authority

391. Authority notes that the program is governed by Decree 142/2005/ND-CP dated 14th November 2005. Exemption or reduction is provided on land rent to companies who have investment in identified regions and investment projects for encouraged industries as specified under the Decree 142/2005 and succeeding Decree 46/2014.
392. The program provides financial contribution in the form of provision of goods or services at less than adequate remuneration. The program is also specific because it is region specific and is limited to certain encouraged sectors. Authority holds that countervailing duty should be imposed against this subsidy program.

(xiii) Program No. 15- Government Provisions of land for less than adequate remuneration and exemptions or reductions from land and water rents

a. Submission by the Petitioner

393. The petitioner submitted that under the present subsidy scheme, the State Government of Dong nai& Civic Authorities provide exemption of land and water surface rent for a project undertaken to build houses for the workers of the industrial zone. The program further provides for extensive reduction in the land rent for the land leased by a cooperative. Following are examples-
1. Land used for business and productions premises are eligible for 50% reduction on land lease.
 2. Land & water surface rent for a land used for agricultural production, forestry, aquaculture and salt making are eligible for reduction subject to certain conditions.
394. The enterprise, in order to qualify under the program, shall have to meet the criteria set in the decree. As evidence of the existence of the program, the petitioners have provided the following decree document as was reasonably available to them-
- Decree No 46/2014/ND-CP dt. 15/5/2014

b. Submission by Government of Vietnam/other interested parties

395. Information regarding program is provided in response to Program 14.

c. Examination by Authority

396. Authority has already determined that countervailing duty should be imposed against provision of land at less than adequate remuneration. Authority holds that no additional countervailing duty is required to be imposed against this program.

Producers/Exporters from Vietnam

397. Two exporters from Vietnam namely, Dong Viet Non-Ferrous Metal and Plastic Joint Stock Company & CFT Vina Copper Co., Ltd filed questionnaire response and participated in the investigation.

Dong Viet Non-Ferrous Metal and Plastic Joint Stock Company (DOVINA)

398. DOVINA is a producer/exporter of subject goods in Vietnam. DOVINA filed questionnaire response and provided information regarding the subsidy programs availed by them.

399. Authority examined the response filed by DOVINA and upon examination requested further information from them and also requested for verification of information provided in the response. However, DOVINA did not respond fully to the request of the Authority for further information. DOVINA merely shared documents via common drive and was not present during the on-table verification of information already provided in the questionnaire either in person or through their representative to respond to the queries. In view of the above, the Authority determines that DOVINA cannot be treated as co-operating producer/exporter and no individual subsidy margin rate is determined for DOVINA. Subsidy margin determined for all other producers/exporters from Vietnam is being made applicable for DOVINA.

CFT Vina Copper Co.,Ltd (CFT)

400. CFT is a producer/exporter of the subject goods in Vietnam. CFT filed questionnaire response and provided information regarding the subsidy program availed by them.

401. CFT has not exported the subject goods to India directly. With respect to its exports to India, CFT has sold the subject goods to its related entity Toyota Tsusho Asia Pacific Pte. Ltd. in Singapore and Toyota Tsusho Asia Pacific Pte. Ltd has exported the subject product to India. Toyota Tsusho Asia Pacific Pte. Ltd has not filed questionnaire response and has not participated in the investigation process. Supply/export chain of all the exports to India is incomplete in absence of response by the exporter, Toyota Tsusho Asia Pacific Pte. Ltd, Authority is unable to determine the export price of CFT for subject goods to India.

402. Also, PT. TembagaMuliaSemananTbk, producer/exporter of subject product from Indonesia who has participated in the investigation and provided questionnaire response has mentioned that CFT is one of its affiliated party. However, CFT has not disclosed name of PT. TembagaMuliaSemananTbk as one of its related party in response to the specific question in its questionnaire response. Authority notes that CFT has not revealed relevant information from the Authority.

403. In view of the above, the Authority determines that CFT cannot be treated as cooperating producer/exporter and no individual subsidy margin rate can be determined for CFT. Subsidy margin determined for all other producers/exporters from Vietnam is being made applicable for CFT.

Summary of Subsidy Programs for Vietnam

404. Countervailing duty for producers/exporters from Vietnam has been determined based on facts available.

Program Nos.	Name of the Program	Subsidy Margin %	Range%
Program Nos. 1 & 3	Income Tax Preferences	***	0-1%
Program No. 2	Exemption from import duty on raw material	***	0-5%
Program Nos.	Preferential lending	***	0-5%

5/7/8/9/10/13			
Program Nos. 14 & 15	Provision of land at less than adequate remuneration	***	0-1%
Program No. 6/11	Grants	***	0-5%
Total		***	5-15%

Indonesia

(i) Program No. 2 – Export Financing from Indonesia EXIM

a. Submission by the Petitioner

405. The petitioner has submitted that the Export-Import Bank of Indonesia provides export financing at preferential rates for advancement of Indonesian exports. The institution provides funding to financial institutions or banks that lack the financial capability to enter the trade market. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:

406. WTO Document No. WT/TPR/s278

- 2015 annual report, Indonesia Exim bank
- US final finding- certain uncoated paper from Indonesia

b. Submission by the Government/ other interested parties:

407. The Government stated that the Lembaga Pembiayaan Ekspor Indonesia (“Indonesia Exim bank”) officially commenced on 01/09/2009, under Minister of Finance Decree of the Republic of Indonesia no. 366/KMK.06/2009, dated August 24, 2009. It operates independently under a statute (Act of LPEI) and is a Government-owned institution. The said statute regulates the functions, sources of funds, services-provided etc. under various articles.

408. The bank provides two types of financing to support local and overseas industries

1. Working Capital (KMKE);
2. And/or Investment (KIE)

409. Processes followed and documents maintained by the EXIM bank are available. The eligibility criteria are not limited to certain sector/ region or enterprise under the program.

c. Examination by Authority

410. Authority notes that the program is administered under Minister of Finance Decree of the Republic of Indonesia no. 366/KMK.06/2009.

411. EXIM Bank of Indonesia is owned by Government of Indonesia. It is under direct control of the Government of Indonesia and exercises Government Authority. Its main objective is to boost national export growth and to assist exporters in expanding their business capacity. It also assists banks and financial institutions in overcoming any difficulties in

extending funding for exporters. EXIM Bank's domestic financing services comprise of export working capital and export investment facilities.

412. One important task mandated to Indonesia Exim bank is the government-assigned special assignments program known as the National Interest Account (NIA). The Regulation of the Indonesian Finance Ministry No. 134/PMK.08/2015 concerning the Special Assignment for Indonesia Exim bank acts as a legal basis for the program, which began operating in 2015. NIAs are assignments assigned by the Indonesian government to Indonesia Exim bank to provide export financing for transactions and/or projects that are not viable for commercial banks, but are considered promising by the government to boost national export. Financing through the NIA program is limited to sectors of economy, commodities, export destination country, export agent criteria, and export financing. To be considered eligible for NIA financing, the transaction and project in question must be able to increase the competitiveness and value of Indonesian products, support domestic industry growth, and to have the potential for improvement and long-term export development.

413. EXIM bank is a public body because it is created, owned, controlled, and funded by the Government of Indonesia. EXIM bank performs government function of export promotion and exercises governmental authority. The loans provided by EXIM bank amount to financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The amount of benefit is equal to the difference between the amount of payment to be made on loans granted pursuant to this subsidy program and the amount payment to be made on any other comparable commercial loan. The program is also specific because it is contingent on export performance. Authority holds that countervailing duty should be imposed against this program.

(ii) Program No. 3- Exporters being reimbursed for their losses

a. Submission by the Petitioner

414. Under the present program, a State-owned Enterprise, Asuransi Export Indonesia (persero) provides reimbursement to exporters for their losses. The Enterprise reimburses as much as 85% of the losses incurred by the exporters, through their insurance policy. The State-owned enterprise provides protection against the risks of the market to the exporters and banks. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:

- WTO Document no- WT/TPR/S278
- Financial and Service overview, Indonesia Exim Bank
- Final Finding- Certain Uncoated Paper from Indonesia

b. Submission by the Government/ other interested parties:

415. The government under Regulation No. 1/1982 provided for export credit insurance and export credit guarantee programs with an objective to provide protection to Indonesian exporters against the risk of non-payment. This function was to be carried out by State-owned Enterprises (SOE), under regulation no. 20/1983.

416. The government had transferred the performance of aforesaid program from PT. Asuransi Kredit Indonesia (Persero) to Pt. AsuransiEkspro Indonesia (persero), both SOEs with added functions, which was later assigned to be "National Reinsurance Company" due to

an insurance premium outflow to foreign reinsurers. AsuransiAsei, a subsidiary of Pt. AsuransiEkspro Indonesia was assigned the insurance business in December 2014. Although the enterprise is under direct control of the government (99.98%), members of the board are appointed internally. The government submitted that ASEI has not offered export guarantees since 1995.

417. The eligibility criteria under the program is limited to exporters residing in Indonesia, foreign investors and domestic investors. Administering authority can exercise certain amount of discretion in deciding whether a particular firm can benefit under the program or not.

c. Examination by Authority

418. Authority notes that the program is administered by Regulation No. 1/1982. State owned financial institution provides guarantee, credit insurance and re-imburements of losses arising out of non-payment for exports.

419. State owned financial institutions are a public body because it is created, owned, controlled, and funded by the Government of Indonesia. They perform governmental function of export promotion and exercises governmental authority. The program provides for financial contribution in the form of potential direct transfer of funds and benefit is thereby conferred. The program is also specific because it is contingent on export. Authority holds that countervailing duty should be imposed against this program.

(iii) Program No. 5- Various Loans Provided by Mandiri Bank

Program no. 5 (a)- Investment Loan

Program No. 5 (b)- Loan for Entrepreneur

a. Submission by the Petitioner

420. Under the investment loan program, the Mandiri Bank provide middle and long-term loan to aid financing capital goods in order to help the market flourish for expansion and building new projects. The petitioner has submitted that the program is eligible to individual or legal/non-legal entity with financing needs above 100 million Rupiah and up to 5 billion Rupiah. The amount can be given out in foreign currencies too and the maximum period for debt settlement is 15 years.

421. Under loan for entrepreneur program, bank provides working capital loan for entrepreneurs with a limit of 100 million up to 2 billion. The only pre-requisite set by the Mandiri bank herein is that it shall have a business experience of 2 years.

b. Submission by the Government/ other interested parties:

422. Bank Mandiri, an SOE, was established in the year 1998 as part of Government's plan to restructure the banking sector. The majority share is held by the GOI, but the national & foreign investors also are part owners. The government submitted that as a bank, one of its features, Investment Loan are medium and long-term credit facility provided in Rupiah or foreign currency to finance procurement of capital goods. The said loan is based on among others financial statement, feasibility study of the project, legality of the applicant

and its collateral amount is adjusted based on business cash flow. It is directly credited to the current account.

423. Government has set the eligibility for both individual and business entities. Bank Mandiri holds the discretion to provide loan based on the applicant performance and prospects. The government has also submitted that no explicit law has been passed or is available for the above-mentioned program and functions as a regular bank.
424. Under the scheme, Loan for Entrepreneur in Bank Mandiri known as Mandiri Young Entrepreneur (WMM) is the main CSR program of Bank Mandiri which has been implemented since 2007 and aims to assist the government in developing entrepreneurship in Indonesia, especially among the younger generation.
425. The eligibility criteria, as submitted by the Government, is limited to new individual entrepreneurs. The government has laid down the aims, features and processes under the said program but has not passed a law for the same.

c. Examination by Authority

426. Authority has already determined that countervailing duty should be imposed against preferential lending by state owned banks. Authority holds that no additional countervailing duty is required be imposed against this subsidy program.

(iv) Program No. 7- Exemption on Import Duty

a. Submission by the Petitioner

427. The petitioner has submitted that under the scheme of the program, manufacturer for export purposes are exempted to pay any kind of import duty (generally ranging from 0-150%) on the import of raw materials.
428. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
 - Trade Policy Reviews 2013: WT/TPR/S278
 - Web Research- PW(PDF) Indonesian Customs Tax Book 2017

b. Submission by the Government/ other interested parties:

429. Pursuant to Minister of Finance Decision No. 580/KMK. 04/2003 import facility for export purposes (KITE) scheme was established on December 2003. The Decision was amended several times and lastly by Minister Finance Regulation No. 254/PMK.04/2011 and Minister Finance Regulation No. 176/PMK.04/2013.
430. As per the regulations, and exemption from import-duty, VAT and LGST was granted on import of goods when processed, assembled or installed in manufacturing goods for export purposes. In one year period the imported goods are required to be exported. The government has set up a system of strict surveillance of the Regional Custom Officer for such an exemption. Any deficiency between the quantities imported and that used for production shall be penalized. The government has further submitted that the rule of conduct of the Regional Customs officer were laid by Director General of Customs and Excise Regulation No. 16/BC/2012 as partly amended by Director General of Customs and Excise Regulation No. 04/BC/2014.

c. Examination by Authority

431. Authority notes that the KITE program is administered by Minister Finance Regulation No. 254/PMK.04/2011 and Minister Finance Regulation No. 176/PMK.04/2013. Under this program, raw material and capital goods employed in manufacturing of exported goods are exempted from all import duties.
432. The program is not a permissible duty remission program under footnote 1 of SCM Agreement and Section 9B(b) of the Customs Tariff Act. The program provides exemption to both raw material and capital goods used in the production of exported product. There is also no sufficient evidence of verification mechanism which ensures that there is no excess benefit to enterprise. There is no evidence to show that penalty or recovery of duty was actually made from enterprise who were unable to utilize the raw material in the production of exported goods.
433. 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 contingent on export. Authority holds that countervailing duty should be imposed under this program. PT Tembaga Mulia Semanan has used the subsidy program but has not provided complete details of the imports made under this program. Authority has relied on facts available and determined subsidy margin for PT Tembaga Mulia Semanan based on the subsidy margin of PT Karya Sumiden Indonesia.

(v) Program No. 8- Import Duty Drawback

a. Submission by the Petitioner-

434. The petitioner has submitted that the Government of Indonesia provides exemption of import duty on imports of raw material which are converted into finished goods subsequently exported. The program is based on a regulation issued by the authorities in 2012. The exemption is applied on raw material which earlier was subject to no reduction of import duty. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
- Regulations of the Minister of Finance of the Republic of Indonesia No. 254/Pml.04/2011 which has been affected from April 2012
 - Web Research- PWC (PDF) Customs News Flash 2012-01
 - Trade Policy Review 2013- WT/TPR/s278

b. Submission by the Government/ other interested parties:

435. The government of Indonesia submitted that the above-mentioned program is set under import facility for export purposes (KITE) scheme which established on December 2003, pursuant to Minister Finance Decision No. 580/KMK.04/2003, and lastly amended by Minister Finance Regulation No. 253/PMK.04/2011 and Minister Finance Regulation No. 177/PMK.04/2013.
436. As per the Ministry of Finance regulation, the drawback scheme provides import duties payable for imports of goods when processed, assembled or installed in manufacturing goods for export purposes, may be partially or wholly returned, receivable at the time of

export of end-goods. The present scheme is also under the supervision of the Regional Customs Officer operated under Directorate General of Customs and Excise – Ministry of Finance.

437. The eligibility criterion is Company Identification Number (NIPER) as explained in the Minister Finance Regulation No. 177/PMK.04/2013. The amount of the duty drawback is contingent to the amount of the duty paid of goods contained in the end-goods for exports.

c. Examination by Authority

438. Authority has already determined that countervailing duty should be imposed against KITE subsidy program providing exemption on the import of raw material and capital goods. Authority holds that no additional countervailing duty is required be imposed under this subsidy program.

(vi) Program No. 9- Income Tax on Dividend

a. Submission by the Petitioner

439. The petitioner submitted that the Ministry of Finance has stipulated under Article 26 of the Income Tax Law that income tax on dividend is 10%, unless the relevant tax treaty stipulates a lower rate. The government has demarked the higher range of income tax allowed on dividends. The program is applicable to companies for certain sectors and locations and is a financial contribution by the government. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
- WTO Document No. WT/TPR/S/278
 - Indonesia Tax Guide 2016- Deloitte

b. Submission by the Government/ other interested parties:

440. The facility under the program is part of the “Tax Allowance Facility” as stipulated in Government Regulation No. 18/2015 on Income Tax Facility for Capital Investment in Certain Sectors and/or Certain Regions as amended by the Government Regulation No. 9/2016. The government aimed at economic progress by providing fiscal incentive to taxpayer in new capital investment or expansion of investment on certain sectors and/or regions.
441. The government submitted that in principle, the *article 31A* of the Act, allows tax facilities in the form of reduction of 10% on income tax on dividend as referred to *article 26*, contrary to the prior rate of 20% applicable on dividend paid to foreign taxpayer. The program is administered by the Investment Coordinating Board of Indonesia (BKPM) and Ministry of Finance.
442. The government provided for a list of industries and region, in which foreign taxpayers shall be eligible under the program. In addition, certain conditions are also laid. If met, the foreign taxpayer would get the 10% income tax on dividend or lower if there is P3B agreement between origin country of the investor and Indonesia. Moreover, the facility is product bound, the amount of dividend is the dividend derived from the total incomes of subject products.

c. Examination by the Authority

443. Authority notes that the program provides for different tax rates for foreign investor according to tax treaty between Indonesia and other countries.
444. The authority could not find sufficient evidence/material in regard to availment of this subsidy by producers/exporters of subject goods. Authority holds that no countervailing duty should be imposed against this subsidy program.

(vii) Program No. 10- Reduction of Net Taxable Income

a. Submission by the Petitioner

445. The petitioner has submitted that the Government of Indonesia issued laws applicable to industries in the Special Economic Zones. They have issued benefit of 30% reduction on net taxable income from the investment in fixed assets (incl. land) prorated at 5% for six years. The only condition under the program is that the assets is not misused or transferred in the said period. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
- Law Concerning SEZs 39/2009
 - Web Research- PWC (PDF) Tax Flash February 2016

b. Submission by the Government/ other interested parties:

446. The government of Indonesia provided for a facility under Special Economic Zones (KEK) established through Act No. 39/2009 on Special Economic Zone. Currently there are 12 designated KEK across Indonesia region established by KEK National Council.
447. Under the regulation, the net taxable income in KEK as stipulated in Government Regulation No. 96/2015 is reduced by 30% of the amount invested in the form of fixed assets (including land), prorated at 5% for six years of commercial production. Similar reduction is provided under Income Tax Allowance facilities, regulated under Government Regulation No. 18/2015.
448. However, as stipulated in the article 11 of Government Regulation No. 96/2015, the taxpayer in KEK may only apply the reduction of net taxable income facility in the said regulation and none other.

c. Examination by Authority

449. Authority notes that the program is available to industries located in Special Economic Zones and provides for reduction of taxable income by 30%. The program is governed by Government Regulation No. 18/2015. The income tax exemption can be availed by the industry located in Special Economic Zone under this program only and not under any other program.
450. The subsidy program provides for financial contribution the form of revenue foregone, which is otherwise due. The program is also specific because it is region specific. Authority holds that countervailing duty should be imposed against this subsidy program.

(viii) Program No. 11- Carry Forward of losses

a. Submission by the Petitioner

451. Under the program, the Ministry has allowed provision to the investors with an option to carry forward their losses up to a span of 5 years. This period is further extendable to another 5 years. The petitioner submitted that the program is applicable to not only the national investors but includes international investors also subject to investment in Special Economic Zones. As evidence of the existence of the program, the petitioners have provided the following documents or notifications as was reasonably available to them.

- WT/TPR/S278
- Web Research- PWC (PDF) Tax Flash February 2016
- Web Research- PWC (PDF) Tax Flash February 2015

b. Submission by the Government/ other interested parties:

452. The Government of Indonesia, under Act No. 39/2009 established Special Economic Zones (KEK). Various programs have been launched as an incentive to the businesses to adopt these zones. One such regulation is No. 96/2015.

453. Carry forward losses in KEK as stipulated in article 10 of Government Regulation No. 96/2015 compensate losses for more than 5 years but no more than 10 years with provision as follows:

454. Allowances have been provided for under the direct supervision of the Ministry of Finance. The facility shall only be available to two subjects, business entities and business players.

- For business entity- the company should be designated as enterprise administer the KEK, possess KEK development agreement, and establish within boundary of KEK business activity;
- For Business Player- the company or individuals should be designated as corporate taxpayer and obtain principal license for capital investment.

c. Examination by Authority

455. Program provides for carry forward of losses to business enterprise. Authority has determined that countervailing duty should be imposed against subsidy program providing exemption from income tax. Authority holds that no additional countervailing duty should be determined for this subsidy program.

(ix) Program No. 12- Postpone on Import Duty

a. Submission by the Petitioner

456. The petitioner submitted that the Government provides for postponement of import duty on capital goods and equipment, goods & material for processing. Also, under the program, import of capital goods for the purpose of development of a Special Economic Zone is exempted from any import-duty. The aim behind the program is the development and flourishing of the government regulated Special Economic zones by encouraging private sector to propose development and maintenance of such zones. As evidence of the

existence of the program, the petitioners have provided the following documents or notifications:

- Tax Flash No.4, February 2016 (PWC Report)
- Government Regulation no.96 of 2016 (GR 96/2016): Facilities in SEZ

b. Submission by the Government/ other interested parties:

457. The Special Economic Zones (KEK), under Regulation no. 39/2009, are subject to various allowances and incentives, in order to, attract business and business players to operate.
458. Under the current program, The Government of Indonesia approved for postponement of payment of import duty in KEK (Stipulated in Regulation No. 96/2015). The same postponement is eligible to be applied for by 2 subjects, business entities and business players which fulfill the requirements provided in Article 5 of the Government Regulation No. 96/2015 to receive the facility of the program.

c. Examination by Authority

459. Authority notes that the program provides for postpone of import duty for enterprise located in the Special Economic Zone. Thus, the program provides for deferral of taxes owed to certain enterprise. Benefit conferred on the enterprise is in the form of interest free short term or long term loan. Amount of benefit is equivalent to the difference between amount of interest charged by bank on commercial loan.
460. The program provides for financial contribution in the form of revenue foregone. Program is also specific because it provides benefit to certain enterprise located in Special Economic Zone. Authority has already determined that countervailing duty should be imposed against program granting exemption from import duty. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(x) Program No. 13- Exemption of Duty on Raw Material and Supporting Goods for Production Purpose

a. Submission by the Petitioner

461. The petitioner submitted that under the program new investors or existing investors who are expanding within the SEZ and import raw materials and supporting goods are eligible for an exemption from duty. The program is applicable on both taxpayers, organizing and carrying out business the Special Economic zone. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
- WT/TPR/S278
 - Government Regulation no.96 of 2016 (GR 96/2016): Facilities in SEZ

b. Submission by the Government/ other interested parties:

462. Special Economic Zones (KEK) established through Act No. 39/2009 allows company located and operating main business in KEK to obtain wide range of facilities and

incentives from taxation to employment. The government has also provided for that in its operative, KEK National Council forms Region Council to perform implementation duties including establish administrator in each KEK.

463. Under the Ministry of Finance Regulation No. 104/2016, import of capital goods by Business Entities is exempted from import duty for 3 years, while Business Players may get import duty exemption for capital goods and/or materials for 2 years. The said exemption are laid in Article 40 & 41 by the Government.

c. Examination by Authority

464. Authority has already determined that countervailing duty should be imposed against program granting exemption from import duty. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(xi) Program No. 14- Exemption from Income Tax on Imports

a. Submission by the Petitioner

465. The petitioner has submitted that taxpayers, under the program, have been granted exemption of income tax by the Government on importation of certain goods if the company is located in the government designated Special Economic Zones. As evidence of the existence of the program, the petitioners have provided the following documents or notifications as was reasonably available to them.

- WT/TPR/S278
- Government Regulation no.96 of 2016 (GR 96/2016): Facilities in SEZ

b. Submission by the Government/ other interested parties:

466. The government of Indonesia provided for a facility under Special Economic Zones (KEK). KEK as it is established through Act No. 39/2009 on Special Economic Zone. Currently there are 12 designated KEK across Indonesia region established by KEK National Council. The council is also responsible to decide which business shall be the main business in that particular KEK. The government submitted that currently the SEZ is not fully operated yet. As per the program, exemption of income tax imports in KEK as stipulated in Government Regulation No. 96/2015 is applied for goods designated to business players in the KEK from:

1. Outside of Customs Area;
2. Other Business Players within the KEK;
3. Other Business Players in other KEK;
4. Bonded Zones outside of the KEK;
5. Free Trade Zone and Free Port; and/or
6. Other Region TLDPP

467. The benefit under the present program shall be obtained after an application to the Ministry of Finance via the Administrator of the respective KEK. The facility shall only be available to two subjects, business entities and business players.

c. Examination by the Authority

468. Authority notes that the program is available to enterprise located in Special Economic Zone in the nature of revenue foregone. The authority has already determined that exemption from payment of duties on import should be countervailed. Therefore, authority holds that no additional countervailing duty should be imposed against this program.

(xii) Program No. 15- Reduction for Investors investing in SEZ

a. Submission by the Petitioner-

469. The Petitioner has submitted that the Government under the program has stipulated certain heads under which investors are provided reduction in income tax. Following are the heads-

1. Up-to 20-100% for at least 10 years to a maximum of 25 years (required investment of more than 1 trillion Rupiah)
2. Up to 20-100% for at least 5 years to a maximum of 15 years (required investment of more than 500 billion up to 1 trillion Rupiah)
3. Up to certain percentage as determined by the relevant ministry. (required investment of less than 500 billion Rupiah)

470. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:

- Tax Flash No. 4, February 2016 (PWC Report)

b. Submission by the Government/ other interested parties:

471. This facility is set under Special Economic Zones (KEK). KEK, as it is established through Act No. 39/2009 on Special Economic Zone, allows company located and operating main business in KEK to obtain wide range of facilities and incentives from taxation to employment. The 12 designated KEK across Indonesia region are SeiMangke, TanjungApiApi, TanjungKelayang, TanjungLesung, Mandalika, MaloyBatuta Trans Kalimantan, Palu, Bitung, Morotai, Sorong, ArunLhokseumawe, GalangBatang.

472. KEK is established by KEK National Council. One of main duties of KEK National Council is to determine which business sector to be main business in KEK. In its operative, KEK National Council forms Region Council to perform implementation duties including establish administrator in each KEK. Region Council also reports to the KEK National Council of its management performance in each KEK.

473. Reduction in Income Tax for Investors investing or Tax Holiday in KEK as stipulated in Government Regulation No. 96/2015 is:

- a) Investment >Rp. 1 trillion, reduction in income tax ranging from 20 – 100% for 10 – 25 years;
- b) Investment Rp. 500 billion - Rp.1 trillion, reduction in income tax ranging from 20 – 100% for 5 – 15 years;
- c) Investment <Rp. 500 billion, reduction in income tax ranging from 20 – 100% for 5 – 15 years;

474. No enterprise is specifically excluded to the program. No changes are anticipated in the program.
475. The amount of Income Tax reduction for each year of the period remains the same. The facility itself is given upon income specifically received from main business operation in KEK. But, income received from business activities other than its main operation is still subject for taxation.

c. Examination by Authority

476. Authority notes that the program provides exemption from income tax. Authority has already determined that countervailing duty should be imposed against program granting exemption from income tax. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(xiii) Program No. 17- Pioneer Industry Status

a. Submission by the Petitioner-

477. The petitioner has submitted that under the program the Government has simplified the environmental reporting requirements and licensing requirements for the industrial estates. The fiscal incentives such as tax holidays and tax allowances at national and regional levels, reduction or exemption from regional tax & levies are also certain added benefits in the program.
478. The government has made available these incentives to industries in selected 14 industrial parks. Such industries also have allowance to start construction before obtaining a formal permit.
479. As evidence of the existence of the program, the petitioners have provided the following documents or notifications as was reasonably available to them.

- BKPM Report
- Article: Global Legal Monitor- Indonesia: Regulations to encourage investment in Industry
- The Jakarta Post: New regulations aims to attract investment in industry
- The Jakarta Post: Wilmar's Industrial estate to kick off operations this year

b. Submission by the Government/ other interested parties:

480. The Pioneer Industry Tax Benefits program was established on August 15, 2011, renewed and modified on August 14, 2015, and modified for the second time on June 27, 2016. The program provides an income tax reduction in the range of 10 percent to 100 percent over five to fifteen years for certain corporate taxpayers. The tax reduction starts from the first year of the corporation's commercial production time. The corporation receiving the tax reduction has to be working in a "pioneer industry" defined as an industry "with extensive interconnection that provides added value and high externality, introduces new technology, and has strategic value for the national economy."

481. Corporate Income Tax Reduction Facility shall be granted to income received or accrued from main business activity which constitutes a Pioneer Industry as mentioned in the Ministry of Finance Regulation No. 159/PMK.010/2015 and amended by Ministry of Finance Regulation No.103/PMK.010/2016.
482. Ministry of Finance Regulation No. 159/PMK.010/2015 as amended by Minister of Finance Regulation No.103/PMK.010/2016 has been further amended under the Ministry of Finance Regulation No. 35/2018. The amended program provides 100% income tax reductions.

c. Examination by Authority

483. Authority notes that the program provides exemption from income tax. Authority has already determined that countervailing duty should be imposed against program granting exemption from income tax. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(xiv) Program No. 18- Income Tax benefits for listed Investments

a. Submission by the Petitioner

484. The petitioner has submitted that the government of Indonesia, under the program, has established eligibility criteria for tax subsidies on domestic or foreign direct investment-
1. 30% net deduction of the total investment charged for 6 year @ 5%
 2. Accelerated depreciation and amortization as provided by the law.
 3. Income tax charged on dividend paid to Foreign Tax subject shall be 10% lower tariff according to effective DTAA; &
 4. Loss compensation for more than 5 years but not more than 10 years.
485. The geographical demarcation for this program is restricted to government defines “Specific Business Area” which are 77 in number. As evidence of the existence of the program, the petitioners have provided the following documents or notifications:
- Regulation No. 1/2007
 - Regulation No. 18/2015

b. Submission by the Government/ other interested parties:

486. This program was established on January 1, 2007, pursuant to Government Regulation No. 1/2007. The purpose of the program is to stimulate investment in certain business fields and/or certain regions. The program was renewed and modified on April 6, 2015 by Government Regulation No. 18/2015, which was amended by Government Regulation No. 9/2016. Although Government Regulation No. 18/2015 repeals Government Regulation No.1/2007, companies receiving benefits under Government Regulation No. 1/2017 can continue receiving such benefits until their original expiration date. To receive benefits under Government Regulation No. 1/2007, taxpayers must carry out new capital expansion on one of a large number of business fields and/or business fields in certain regions listed in the appendices to Government Regulations No. 1/2007. Recipients of tax facilities under this program may not also receive benefits under Article 29 of Government Regulation No. 94/2010 (institutional income tax exemptions or reductions).

487. Both regulations accomplish their purposes through four principal means: (1) 30 percent (five percent per year for the first six years of the business's operations) tax deduction for investments in the form of tangible fixed assets; (2) accelerated depreciation and amortization; (3) lowered tax rate on dividend distributions to non-resident taxpayers; and (4) loss compensation. These tax benefits are available to companies in 77 listed industries.

488. The eligibility is limited to industries that operate in sectors that listed in the appendix I and II of the Government Regulation No. 18/2015 as amended by the Government Regulation No. 9/2016. No certain enterprise is specifically excluded from to the program. No change is anticipated in the program.

c. Examination by Authority

489. Authority notes that the program provides for exemption from income tax. Authority has already determined that countervailing duty should be imposed against program granting exemption from income tax. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(xv) Program No. 19- Tax Holiday

a. Submission by the Petitioner

490. Under the program, the government of Indonesia has declared exemption from Corporate Tax. Such a relief shall be granted for 10 years and not less than 5 tax years, from the tax year the commercial production commences. And after such period tax reduction of 50% shall be granted for 2 years.

491. The petitioner has submitted that the government has issued strict eligibility criteria under the program to grant such an extensive relief to the industries. As evidence of the existence of the program, the petitioners have provided the following documents or notifications as was reasonably available to them.

- Regulation of the Ministry of Finance of the Republic of Indonesia Number 159/PMK.010/2015
- Regulation of the Ministry of Finance Number 130/ PMK 011/2011- Provision of Corporate Income Tax Relief or Reduction Facility.

b. Submission by the Government/ other interested parties

492. No separate explanation or information is provided for this program.

c. Examination by Authority

493. Authority notes that the program provides for exemption from income tax. Authority has already determined that countervailing duty should be imposed against program granting exemption from income tax. Authority holds that no additional countervailing duty is required to be determined against this subsidy program.

(xvi) Program No. 20- Deduction of Land Tax

a. Submission by the Petitioner

494. The petitioner submitted that under the program, enterprises located in the Special Economic Zones are allowed to get a benefit of land tax deductible from the government of Indonesia. The land tax, presently, is deductible in accordance with the prevailing laws. As evidence of the existence of the program, the petitioners have provided the following documents or notifications as was reasonably available to them.
- WT/TPR/S278
 - Government Regulation no.96 of 2016 (GR 96/2016): Facilities in SEZ

b. Submission by the Government/ and other interested parties:

495. This facility is set under Special Economic Zones (KEK) or Tax Allowance facility. KEK as it is established through Act No. 39/2009 on Special Economic Zone, allows company located and operated in KEK to obtain wide range of facilities and incentives from taxation to employment. The 12 designated KEK across Indonesia region are SeiMangke, TanjungApiApi, TanjungKelayang, TanjungLesung, Mandalika, MaloyBatuta Trans Kalimantan, Palu, Bitung, Morotai, Sorong, ArunLhokseumawe, GalangBatang.
496. KEK is established by KEK National Council. In its operative, KEK National Council forms Region Council to perform implementation duties including establish administrator in each KEK. Region Council also reports to the KEK National Council of its management performance in each KEK.
497. Land and Building Tax (PBB) in Indonesia tax system is part of the regional/city tax or retribution, and it is determined by the regional government through head of regional/mayor regulation. In article 31 Act No. 39/2009, reduction of PBB is provided in line with regulation. However, in Government Regulation No. 96/2015, under article 22, PBB is provided under facilities in KEK for Tourism which provides that regional government may determine reduction or exemption of regional tax or retribution ranging from 50% and 100%.
498. Only KEK with main business in Tourism such as KEK TanjungKelayang, KEK Mandalika, KEK TanjungLesung, KEK Morotai, KEKSorong applied reduction in regional/city tax or retribution.
499. No application process is needed in this program. The eligibility is limited to business entities/business players operate within KEK region. No change is anticipated in the program.

c. Examination by Authority

500. The program provides reduction in land tax application to enterprise if the enterprise is located in Special Economic Zone. However, the benefit of reduction is available to enterprise carrying out tourism related business activity. Therefore, Authority holds that no countervailing duty is required to be imposed under this program.

(xvii) New program discovered during the course of investigation: Provision of Goods and Services at Less than adequate Remuneration

a) Submission made by Domestic Industry

501. The domestic industry has contended during the course of investigation that Government of Indonesia has placed targeted export restraints and other related measures on copper ore and concentrate leading to a situation of excess supply and reduced prices for these products in the domestic market of Indonesia. This results in provision of copper ore and concentrate at less than adequate remuneration to the producers of subject goods in Indonesia.

b) Examination by the Authority

502. The Authority requested information regarding export restraint on raw material from the interested parties. However, no satisfactory information/reply was provided by Government of Indonesia or any of the other interested party. The Authority notes that Government of Indonesia has placed targeted export restraints in the form of levy of export duty on copper concentrate and other related measures which has led to an excess supply and artificially lower prices for copper ore and concentrate in Indonesian domestic market. This has resulted in provision of copper ore and concentrate at less than adequate remuneration to the producers of subject goods in Indonesia. Accordingly, Authority has determined subsidy margin based on facts available for provision of raw material at less than adequate remuneration.

Producers/Exporters from Indonesia

PT Karya Sumiden Indonesia

503. PT Karya Sumiden is a producer/exporter of subject goods in Indonesia. PT Karya Sumiden Indonesia filed questionnaire response and provided information regarding the subsidy program availed by them.

504. Authority examined the response filed by PT Karya Sumiden and upon examination requested further information from them and also requested for verification of information provided in the response. Authority has verified the information provided by PT Karya Sumiden and determined subsidy margin for programs for which benefit was received or accrued during the POI. It is noted that PT Karya Sumiden availed benefit under Program No. 7 and Program No. 13 alleged in the initiation notice. In addition, they have also availed exemption from VAT on electricity as reported by them in their response. Authority determines 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 PT Karya Sumiden as a recipient of this grant. Subsidy program was also specific because they were limited to certain enterprise including PT Karya Sumiden.

505. Authority has also relied on facts available to determine the subsidy margin for provision of raw materials for less than adequate remuneration by relying on information available publicly, to determine subsidy margin for other program discovered during the investigation process.

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

Program No.	Name of the program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 7	Exemption from import duty	Import of machinery is exempted from customs duty	***	0-1%
Program No. 13	Exemption of duty on raw material for production purpose	Import of raw material is subject to preferential customs duty	***	0-5%
Other program	Exemption from VAT on Electricity	Exemption from payment of VAT on electricity	***	0-1%
Other program	Provision of Copper concentrate at less than adequate remuneration	Export duty of 7.5% on copper concentrate in Indonesia results in provision of raw material at less than adequate remuneration	***	0-5%
Total			***	0-5%

PT Tembaga Mulia Semanan Tbk

507. PT TembagaMuliaSemananTbk is the producer/exporter of subject goods in Indonesia. PT Karya Sumiden Indonesia filed questionnaire response and provided information regarding the subsidy program availed by them.

508. Authority examined the response filed by PT TembagaMuliaSemananTbk and upon examination requested further information from them and also requested for verification of information provided in the response. Authority 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 PT TembagaMuliaSemananTbk as a recipient of this grant. Subsidy program was also specific because they were limited to certain enterprise including PT TembagaMuliaSemananTbk.

509. Authority has verified the information provided by PT Tembaga Mulia SemananTbk and determined subsidy margin for programs for which benefit was received or accrued during the POI. However, complete information was not provided regarding the amount of benefit received by PT TembagaMuliaSemananTbk under the subsidy programs availed by them. Accordingly, Authority has determined subsidy margin for PT TembagaMuliaSemananTbk based on facts available by relying on information provided by PT Karya Sumiden.

510. Authority has also relied on facts available to determine the subsidy margin for provision of raw materials for less than adequate remuneration by relying on information available publicly, to determine subsidy margin for other program discovered during the investigation process.

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

Program No.	Name of the program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 7	Exemption from import duty	Import of machinery is exempted from customs duty	***	0-5%
Program No. 13	Exemption of duty on raw material for production purpose	Import of raw material is subject to preferential customs duty	***	0-5%
Other program	Provision of Copper concentrate at less than adequate remuneration	Export duty of 7.5% on copper concentrate in Indonesia results in provision of raw material at less than adequate remuneration	***	0-5%
Total			***	0-10

Summary of Subsidy Programs for Indonesia.

512. Countervailing duty for all other producers/exporters from Indonesia has been determined based on the highest of the subsidy margins for the cooperating parties. In addition, subsidy margin for program nos. 2, 3, & 10 have also been added while determining the all others rate.

Program Nos.	Name of the Program	Subsidy Margin %	Range%
Program No. 7	Exemption from import duty on Machinery	***	0-5%
Program No. 7/8/12/13/14	Exemption of duty on raw material for production purpose	***	0-5%
Program No. 2/3/5	Preferential lending	***	0-1%
Program No. 10/11/15/17/18/19	Income Tax benefit	***	0-1%

Other program	Provision of Copper concentrate at less than adequate remuneration	***	0-5%
Other program	Exemption from VAT on Electricity	***	0-1%
Total		***	0-10%

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submission made by the Domestic Industry

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

- a) The designated authority is requested to cumulatively assess the effect of such imports as (a) the amount of subsidization in relation to the imports from each country is more than one per cent ad valorem; (b) the volume of imports from each country is not negligible and (c) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like domestic product.
- b) Interested parties' contention that the imports were necessitated due to demand-supply gap is highly misleading. The country has always had excessive capacities at the stage of cathode and the industry was forced to export cathodes.
- c) The imports of the product from the subject countries in the last decade were quite low. This shows that the demand of the product was being catered by the domestic industry.
- d) The industry has not set up capacities for wire below 6mm since consumers have preferred to draw wire to the desire dimension in-house considering their requirements.
- e) The volume of imports from the subject countries has increased significantly over the injury period. The imports in the period of investigation have increased by 714% as compared to the base year, while the demand merely increased by 26%.
- f) The rate of duty for the Tariff heading 74081990 has been continuously reduced in the past periods under the ASEAN Free Trade Agreement (AFTA). With the decrease in the rate of duty from the subject countries, the imports have shown an increasing trend.
- g) The subject imports from subject countries are coming to India at prices below the non-injurious price/fair price of the domestic industry, thus resulting in positive and significant price underselling/injury margin.
- h) The domestic industry's production volume shows a very marginal improvement as the production increased only by 6% when the demand grew by more than 26%. The improvement in the production over the period has not resulted in proportionate improvement in the domestic sales volume.
- i) Whereas the demand for the product under consideration increased by *** MT between 2015-16 and POI, the sales of the domestic industry declined by *** MT and the domestic industry had to resort to additional export of the product (*** MT) even at

adverse profitability. Despite such exports, the inventories with the domestic industry increased in the recent period.

- j) The product is sold on the on the concept of 'provisional pricing' where a consumer may book an order to take material and agree to a price which may prevail in the future. It is unclear how the foreign producers have given their data. The domestic industry has given its data on the basis of the sales invoiced during the present period.
- k) Landed value of imported material from subject countries is significantly below the selling price of the domestic industry. The benchmark for the Indian producers' price is the import prices and LME prices. There is no viable substitute to the product. Thus, the only factor responsible for the domestic industry's prices is the import prices and LME prices of the product.
- l) The rate at which the cheap and subsidized imports are flooding the Indian domestic market holds potential to destroy the Indian industry.
- m) Further, the subsidized imports are suppressing the prices of the domestic industry. If the situation remains the same and the imports remain unaddressed, then the situation would surely deteriorate.
- n) The landed price of imports is significantly below the selling price of the domestic industry. This situation clearly indicates that the demand for imports is likely to further increase in view of their being low priced as compared to the price offered by the domestic industry and would keep suppressing the prices of the domestic industry if the same is not addressed.
- o) The positive price undercutting implies that the imports would create a further pressure on the prices of the domestic industry. In the absence of necessary protection, the domestic industry would be left vulnerable.
- p) The subject foreign producers are holding huge surplus production capacities. The exporters are likely to intensify their exports causing further injury to the domestic industry.
- q) Due to the export orientation of the producers, if the current situation is not curtailed the exporters would take advantage of the growing demand making situation further adverse for the domestic industry.
- r) The market share of the imports has increased constantly with an increase of 25% in the POI from that of the base year.
- s) The domestic industry has not expanded the capacity in the investigation period. However, had the cheap and subsidized goods not flooded the domestic market, the domestic industry could have easily achieved higher capacity utilization.
- t) The domestic industry lost more than 8% of its share in the market across the injury period.
- u) The domestic industry is facing accumulated inventories and same has increased during POI. In terms of volume, the monthly inventory has reached to *** MT.
- v) The cost of sales of the domestic industry have increased whereas the selling price has not increased in the same proportion and import prices have declined.
- w) The subject imports are undercutting the prices of the domestic industry in the market

which is clear by a comparison of landed price of imports from the subject countries with the selling price of the domestic industry.

- x) While the undercutting was negative in the initial base year, it has become positive over the injury period for all the subject countries. 1.6 mm, 1.8mm and 8mm constitute approx. 90% of total consumption of the PUC in the POI. The prices of the three product types have moved in tandem.
- y) The prices of the subject goods are very volatile. Daily price movement of the subject goods can be as much as 100 US\$/MT. The price fluctuation implies that prices may change to an extent of Rs. 6000-7000 per MT on a daily basis. With so much variation in the pricing, calculation of the price undercutting on a yearly basis would not reflect the true picture. Therefore, calculations have been made on a month to month basis. The Authority is requested to calculate monthly price undercutting.
- z) The profit per MT of goods sold by the domestic industry in the period of investigation has reduced by more than 30% from the base year. While the profitability did increase in the year 2015-16 from the year 2014-15, it has fallen sharply post that year. Post the increase in profitability the profit per unit sold by the petitioners has reduced by around 43% in the period of investigation.
- aa) The cash profits of the domestic industry on per MT basis also show a deterioration. The cash profits of the domestic industry on per MT basis have reduced by 31% on absolute basis in the period of investigation from base year.
- bb) The wages have increased over the injury period. Wages are not reflective of the adverse effects of the import of subject goods on the domestic industry, as these factors are governed by overall operations of the company and the economy.
- cc) The imports from other countries are not causing injury to the domestic industry as the same are either insignificant in volume or higher in prices.
- dd) It would be seen from the statement of imports that the share of imports from subject countries has constantly increased, while imports from non-subject countries have declined. This clearly shows that the increased imports from the subject countries receiving subsidies being granted to the producers in these countries have caused significant injury not only to the domestic industry, but also has impacted other producers from other countries as well.
- ee) Overall demand for the subject goods has increased over the injury period. Accordingly, fall in demand cannot be a reason for injury to the domestic industry.
- ff) The domestic industry submits that the subject imports in significant volumes and at low prices is causing injury to the domestic industry. There are no trade restrictive practices, technology issues, productivity issues or any other factor which can be attributed to the injury being suffered by the domestic industry.
- gg) The Authority should consider the combined facility of domestic and export operations, given that the exports made by the domestic industry are a result of increase in imports and not the business choice of the domestic industry. No production facility has been set up for exports.
- hh) It would be appropriate to consider total profits in the production and sale of PUC and

not the profits earned solely in domestic operation for the purposes of current investigation.

- ii) Lower profits in exports should be considered as an evidence showing injury caused by the subject imports.
- jj) The pattern of consumption with regard to the product under consideration has not undergone any material change. Possible decline in consumption could not have contributed to the claimed injury to the domestic industry.
- kk) There is no trade restrictive practice which could have contributed to the claimed injury to the domestic industry.
- ll) The technology as also the production process for producing product under consideration has not undergone any significant development.
- mm) The performance of the domestic industry and injury has been examined with respect to the domestic sales operation to the extent possible. The volumes of exports have significantly increased and therefore the decline in domestic sales is being claimed as a result of adverse effect of imports and is not because of the possible deterioration in exports.
- nn) The volume of subject imports has significantly increased over the injury period and resultantly the market shares of the subject countries have increased significantly.
- oo) In order to compete with imports, the domestic industry is forced to sell its products at lower margins, and as a result of this the domestic industry is severally getting impacted.

H.2. Submission by other interested parties

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

- a) Globally, all copper products are indexed to London Metal Exchange (LME) Copper Cathode Price i.e. LME Price + Premium. Its premium is negotiable between buyer and seller while LME Price is fixed on LME through supplier. Generally, an unknown day or average of few days is chosen to fix the LME Price and then premium is added to arrive at final price.
- b) The LME price is very volatile ranged from USD 4200 to 7500 for the period under investigation. The premium ranges from USD 100-400 (2-5% of Copper Price) for Copper wire which is miniscule compared to LME Price.
- c) The Copper wire Rod plants purchase Copper Cathode at a certain Premium and convert them to Copper Rod and then draw down to wire of different sizes and then sell to Customer at certain premium. The premium covers Cathode Premium, cost of production, finance cost, logistics and off-course profit for Copper Wire Rod Plants.
- d) Similar to the applicants, the third Indian producer namely Hindustan Copper determines the selling price on the basis of LME copper price, taking into account the conversion cost and specification of subject goods demanded by the buyer.

- e) The petitioners' allegation that the import price is around 10% cheaper is incorrect.
- f) The producers charge cost component equivalent of import duty on copper wire rod (5%) from customers as a multiplying factor, part of their pricing policy. For the period under investigation, the average multiplying factor charged by both copper rod producers is 1.04.
- g) The difference is, as derived above, abysmal low incentive for any company to Import and take huge risk of highly volatile Copper Prices and USD / Rupee fluctuation.
- h) If the difference is annualised on total Copper Rod sale of 400,000 MT by both Producers, it will be around INR 82 Cr which is far below the avg. yearly combined EBITDA of Rs 3243 Cr of both Producers.
- i) The Govt. of India as a policy protects the domestic Industry by way of imposing Tariff Barrier (5.5% in the case). However, the domestic Producers have made this Protection as a tool to make Profit and added it into their Price Calculation.
- j) We estimate that the total production of "Copper Wires" in the country is in the region of 5-6 lakh MT. The applicants, at best, account for a maximum of 12000 MT per annum which is not more than 2% of the total domestic production. We understand that only Hindalco has some capacity to produce "Copper Wires" (estimated to be about 12000 MT/annum) while Vedanta does not have any facility to produce "Copper Wires".
- k) No meaningful injury analysis can be done in terms of Annexure I of the Rules, as there will be no representation of "Copper Wire" producers in the application. Therefore, no injury analysis can be said to be made for the "Copper Wires" industry.
- l) It is relevant to highlight that the determination of NIP as per the methodology applied in anti-dumping investigations will not enable the applicants to raise their price to the extent of NIP since the imports from non-subject countries and the domestic selling price of the applicant will continue to be governed by the LME price. Therefore, the NIP of subject goods cannot be computed on the basis of 22 percent rate of return on capital employed, as the same is inflated and not appropriate for the subject goods.
- m) Petitioners claim that their output constitutes more than 90% of the Indian production in the POI. However, all the economic data and information as claimed by petitioners to be evidence of injury are pertaining to M/s Hindalco Industries Limited only. No economic parameter of M/s Vedanta is provided, which would undermine a proper examination of the domestic industry.
- n) Injury and causal link evidence presented by the petitioners is insufficient to demonstrate that the imported copper wire from the four subject countries cause injury to the domestic Indian industry.
- o) Both Hindalco and Vedanta produce and sell continuous cast copper rod and copper wire while the exporters only export the copper wire to India. Copper rod serves as the input to draw the copper wire and thus, the imported copper wire does not even directly compete with a large segment of continuous cast copper rod produced by the petitioners. Thus, any injury caused by the concerned imports must be pertaining to the India domestic industry of copper wire only and the petitioners are under obligation to demonstrate that their copper wire industry suffers injury by the imported copper wire.

- p) However, injury evidence presented by the petitioners regarding the market demand and production capacity is specific to copper rod instead of copper wire and thus irrelevant to establish any impact of the imports on the Indian industry's production.
- q) Statistical evidence on the market share, sale volume, inventories and profit does not also separate copper wire and copper rod, which cannot secure a proper examination of injury in this case.
- r) The Sterlite copper plant of Vedanta Limited has been shut since May 2018 as per Tamil Nadu Pollution Control Board's directive to permanently close the unit. This will have wide ranging repercussions on domestic copper consumption, which is estimated to be growing at a compounded annual average rate of 5.9% in the last 10 years and will also affect the supply of the subject goods in India.
- s) Further, since the closure of Vedanta's Copper Smelter, both applicants have revised upwards the multiplying factor from 3.50 % to 5.00 % (by 43%) in their pricing policy. This increase has put additional price pressure on the user industry.
- t) The existing duty structure and government policies are in favour of big producers which has resulted in the electronics sector becoming more vulnerable to imports. The imports of EE and wire & cables in last four years (PUI) have increased by almost 50%. In FY 2018-19 it is expected to cross INR 32000 Cr. Any imposition of duty will further lead to price disadvantage to products. It is also important to note that most of the users of the subject goods are in the MSME sector already operating at a very low capacity utilization.
- u) In the absence of availability of products in India, subject goods shall have to be imported from outside India and accordingly imports will further increase. Imposition of anti-subsidy duty will be counterproductive and will have no impact.
- v) Pricing Policy of Domestic Producers to charge the Customs Duty in their price is also a big factor as imports from these four countries are duty free under AIFTA thus making the imported wire more competitive.
- w) It may also make domestic industry reluctant to improve the production technology and efficiency.
- x) New investment in the Copper Wire Rod (Copper Rod) segment by major entrants like Trafigura and Adani is indicative of optimistic future scenario and attractive payback.
- y) As per Proforma IVA filed by petitioners, the capacity of the petitioner remains unchanged during the injury period and POI. Production and capacity utilization have increased substantially during the POI to 106 and 103 respectively as compared to 100 during the base year 2014-15. Thus, imports from subject goods are not at all causing injury to the domestic industry.
- z) During 2017-2018, many large producers started to install new production lines with a view to replace imported wire rods with local production. First, a 240ktpy Contirod line at Hindalco's Birla Copper unit, was started in March 2018 and has already resulted in a 39% surge in Hindalco's wire rod output to 110kt in the March to September 2018 period compared to 79kt in the same period of 2017. Second, another 240Kktpy Contirod line in Halol, Gujarat state, was commissioned last December at Ryker Base Private, a joint venture between local Indian cable-maker Polycab Wires and trading

house Trafigura. Meanwhile, a further 240ktpy capacity Contirod line was supposed to be started at Vedanta's Silvassa plant before the end of 2018, will be started before year-end.

- aa) With the new installed capacity, the Indian wire rod industry can bring on-stream of new wire rod capacity in 2018, far more than the existing size of the entire Indian market.
- bb) The Applicants are at optimum capacity utilization since last three years. In fact, Hindalco has been regularly outsourcing part of its Rod production from others, as they do not have the capacity to process their cathodes to Rod.
- cc) The combined installed capacity of Copper Wire Rods (Copper Rod) is 400,000 MT (Hindalco: 150,000 MT and Vedanta: 250,000 MT) per annum during the period of investigation. Hindalco has been regularly outsourcing significant quantity of "Copper Wire Rods" production due to exhaustion of its own capacity.
- dd) Petitioners have already announced projects of 240,000 MT which would lead to more than doubling of their existing capacities. Hindalco has already commissioned their new "Copper Wire Rods" capacity in Q1 of FY 2019 while Vedanta's project is expected to be commissioned soon (if not already commissioned).
- ee) The applicants are integrated custom smelters and use copper concentrate and unrefined copper (Blister Copper, Copper Anode & Copper Scrap) as their raw material. They enjoy almost ZERO effective rate of Customs Duty on their raw material imports. Both the applicants source their main inputs predominantly (Copper concentrate & Unrefined Copper) from FTA / PTA / LDCs countries.
- ff) The main focus of the applicants is on selling Copper Cathode and Copper Rod. Resultantly, more than 95% of the revenue of the applicants is from these two products only.
- gg) The sales volume of petitioners remains almost same during the POI as compared to the base year 2014-15. As shown above, the exports sales volume of the petitioners has increased tremendously from 100 during the base year 2014-15 to 1138 during the POI. It seems that the petitioner is focusing on exports only, that too by choice, not by chance, rather than focusing on selling the subject goods in the Indian market.
- hh) The sales volume of M/s Hindustan Copper Ltd. increased by 35 percent during the POI. Further, as per the claims of the Applicants, the sales volume of the Applicants during the POI has remained constant. The sales volume of petitioners remains almost same during the POI as compared to the base year 2014-15. As shown above, the exports sales volume of the petitioners has increased tremendously from 100 during the base year 2014-15 to 1138 during the POI.
- ii) Average stock should not be seen in isolation. Average stock alone has no meaning, it should be seen in relation with the sales or production. The petitioners have not provided the same.
- jj) Petitioners are consistently maintaining "NIL" inventory for Copper Wire Rod (Copper Rod) at the end of each quarter. Therefore, inventory is not the factor which is causing injury to petitioner industry.

- kk) There is sudden and substantial increase in cost of sales of the product under consideration. It appears that there are some other factors which are causing injury to the domestic industry and resulted in higher cost of sales.
- ll) Price undercutting does not provide the basis for determination and shall not be seen in isolation. It has to be seen in light of overall performance of the domestic industry, whether it is resulting into material injury to the Domestic Industry. In present case, the price undercutting from subject countries was negative during 2014-15 and 2015-16 and slightly positive during 2016-17 and POI. .
- mm) It is also essential to ensure that import price (using CIF Value) has to be calculated by adding handling charge and other primary customs duties to obtain the same level position before comparing it with domestic price.
- nn) Moreover, Indonesia's export to India only covers copper wire having a diameter from 2.6mm to 1.6mm which is different from copper rod produced by the Petitioners having a diameter more than 8mm. Copper wire experiences further drawing process from copper rods. As such, it is unfair and economically unjust to compare the domestic selling price of copper wire rods with the cost of imported copper wire.
- oo) There is no correlation between the price undercutting and PBIT. Price undercutting is almost in the same range during the injury period, however, the PBIT has come down substantially during the year 2016-17 and POI.
- pp) It seems that there are some other factors which are causing injury to the domestic industry. Such decline in PBIT might be result of variations in other products and not related to PUC.
- qq) Any reduction in EBITDA of Vedanta and Hindalco may be attributed to reduced TCRC (costlier inputs) from mines and increased Cost of Production. This has nothing to do with imports from the subject countries. The relevant portion of the Annual Report of Hindalco is reproduced below: "adverse concentrate market led to decline of benchmark TCRC value for second year in row...."
- rr) Number of employees declined during the injury period from 100 (2014-15) to 89 during POI, however, salaries and wages have increased substantially from 100 during the base year 2014-15 to 130 during the POI.
- ss) There is a breach in causal link between the subject imports and the petitioner's performance. It is imperative to conduct a detailed examination of the other possible factors that caused injury to the petitioner.
- tt) It is submitted that for the calculation of injury and causal link, the injurious effects of the subject imports must be segregated from other factors that cause injury pursuant to Article 15.5 of the SCM Agreement and Annexure I of the Anti-Subsidy Rules.
- uu) The petitioners have failed to mention that the imports of Continuous Cast Copper Wire Rod from other countries, which are directly competing with their product, are also causing injury to them.

S.No.	Country	2014-2015	2015-2016	2016-2017	2017-2018
1	U ARAB EMTS	40,031	69,195	71,067	63,854
2	RUSSIA	29,286	50,999	12,400	133
3	Others	10,945	13,979	25,587	16,829
	Total Import	80,262	134,173	109,054	80,817

vv) Imports from UAE are substantially higher than any other country. The reason for such substantial increase in imports is that the major exports from UAE is done by FUJAIRAH GOLD, a company owned by Vedanta Group, one of petitioners. The website of Fujairah Gold depicts that:

“Fujairah Gold FZC operates a Precious Metal Refinery and a Continuous Cast Copper Rod Plant strategically located at Fujairah Free Zone II, Fujairah, United Arab Emirates. Fujairah Gold FZC is a part of Vedanta Resources Plc globally diversified natural resources company with interests in Zinc, Lead, Silver, Copper, Iron Ore, Aluminium, Power and Oil & Gas.”

ww) It is clear that Fujairah Gold is involved in the production and export of the subject goods.

xx) Major imports are being made by the Vedanta Group and that’s the reason the same was not included in the subject countries despite having high share in imports.

yy) The petitioners have deliberately left out UAE from the list of subject countries.

zz) The inclusion of imports from UAE is important for the injury analysis, however the domestic industry has ignored the same altogether. The reasons for exclusion of UAE have not been listed in the petition.

aaa) Imports from Russia have stopped due to policy change in their country. The imports from UAE in 2018-19 are expected to be around 75,000 MT which is higher than the subject countries’ exports to India.

bbb) It may be recalled that the Domestic Industry in its presentation before the Authority had clearly spelt out the reasons for their alleged drop in performance.

ccc) It was argued that the genesis of the problems being faced by the domestic producers can be found in the Indo-ASEAN FTA. It was stated that the imports from the FTA countries increased as the customs duties came down. It was suggested that the Government of India should possibly take this as a case study to examine the serious negative effects of the FTA signed by the Government of India. Last but not the least, the Domestic Industry clearly admitted that the major and essential element of the alleged injury is the FTA.

ddd) The Domestic Industry also argued before the Hon’ble Authority that the level of investments varies drastically depending upon where the product is situated in the production chain. It was also admitted that the pricing of “Copper Wire Rods” is dependent upon the LME prices of copper and there is huge fluctuation which could vary on a daily basis or even several times during the day. Therefore, it is not possible to develop a case of anti-subsidy for the Domestic Industry.

eee) Without prejudice to our submission that the entire information/data in support of their claim of injury is misleading and irrelevant, it is submitted that the Domestic Industry

has itself categorically admitted that the alleged injury is due to the other factors which are in no way connected with the alleged subsidization of the subject goods. That being the case, it is humbly requested that the Authority may terminate the investigation on this very ground alone.

- fff) Additionally, the applicants entered into agreements wherein the sales price was determined based on the current LME copper price and the goods were to be supplied in the future ('future contract').
- ggg) The aforesaid form of contracts i.e. forward contract and future contracts allows the parties to hedge risks. Under these contracts, a buyer who expects an increase in future price may purchase subject goods at the current prices and ensure the delivery of goods in the future. Accordingly, by entering into such agreements, the buyers shift the risk of an increase in future price to the seller (Applicants) at the cost of a marginal premium.
- hhh) Since the applicants have entered into future contracts, it is likely that the price of the subject goods is determined prior to the POI and the goods are delivered during the POI. Further, during the POI, the price of input materials has increased substantially (from USD 2.3/lb during 2016-17 to USD 3.2/lb during the POI) and therefore, it is likely that the Applicants had suffered because they were bound to sell subject goods at loss or below appropriate margins while honoring future contracts entered prior to POI. Under the aforesaid factual circumstances and in terms of Para 2 (1) to Annexure I of the CVD Rules, the Authority is requested to adjust the impact of forwarding contracts, futures contracts and other factors which have simultaneously impacted the economic parameters of the applicants.
- iii) The capacity installed remains unchanged during the entire injury period, however, capital employed has increased substantially from 100 during the base year 2014-15 to 121 during the POI.

H.3. Examination by the Authority

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

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

13. Determination of injury-

(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.

(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the

establishment of an industry and the casual link between the subsidized import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –

(i) there is a concentration of subsidized imports into an isolated market, and

(ii) the subsidized imports are causing injury to the producers of almost all of the production within such market.

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

i. Assessment of Demand

517. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of all Indian producers and imports from all countries. It is seen that demand has increased over the injury period. The demand so assessed is as follows-

SN	Particulars	Unit	2014-15	2015-16	2016-17	2017-18
1	Sales of Domestic Industry	MT	***	***	***	***
2	Sales of Other Producers	MT	***	***	***	***
3	Imports from Subject Countries	MT	15,357	46,650	83,912	123,439
4	Import from Other Countries	MT	79,957	89,827	76,358	63,647
5	Total Demand	MT	***	***	***	***
	Trend		100	120	122	125

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

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	2017-18
1	Subject countries					
a	Indonesia	MT	4,093	11,065	22,534	25,714
b	Malaysia	MT	10,841	27,473	32,137	46,328
c	Subsidized imports from Thailand	MT	***	***	***	***
c.1	Non-Subsidized imports from Thailand	MT	***	***	***	***
d	Vietnam	MT	20	4,015	16,096	32,035
2	Total subsidized imports from Subject countries	MT	***	***	***	***
	Trend	Index	100	301	493	712
2.1	Total non-subsidized imports from Subject countries	MT	-	434	8144	14,162
3	Other Countries	MT	79,957	89,827	76,358	63,647
4	Total	MT	95,314	1,36,477	1,60,270	1,87,086

519. It is seen that:

- a. There has been a significant increase in the absolute volume of subsidized imports from subject countries by 612% in POI from the base year.
- b. The subsidized imports have increased sharply in relation to production of the domestic industry from ***% to ***%.
- c. The market share of subject imports has increased significantly, and the share of imports increased from ***% to ***% of demand of the country.

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

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

iii. Price Undercutting

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

SN	Particulars	Unit	74081190	74081990	Weighted Average
1	Indonesia				
a	Landed Price	Rs/MT	-	4,38,937	4,38,937
b	Net Selling Price	Rs/MT	-	***	***
c	Price Undercutting	Rs/MT	-	***	***
d	Price Undercutting	%		***	***
	Range	%		0-5	0-5
2	Malaysia				
a	Landed Price	Rs/MT	4,35,641	4,52,487	4,52,449
b	Net Selling Price	Rs/MT	***	***	***
C	Price Undercutting	Rs/MT	***	***	***
D	Price Undercutting	%	***	***	***
	Range	%	0-5	0-5	0-5
3	Thailand				
A	Landed Price	Rs/MT	-	4,39,784	4,39,784
b	Net Selling Price	Rs/MT	-	***	***
c	Price Undercutting	Rs/MT	-	***	***
d	Price Undercutting	%		***	***
	Range	%		0-5	0-5
4	Vietnam				
a	Landed Price	Rs/MT	-	4,28,243	4,28,243
b	Net Selling Price	Rs/MT	-	***	***
c	Price Undercutting	Rs/MT	-	***	***
d	Price Undercutting	%		***	***
	Trend	%		5-10	5-10
5	Subject Countries as a whole				
a	Landed Price	Rs/MT	4,35,641	4,41,343	4,41,338
c	Price Undercutting	Rs/MT	***	***	***
d	Price Undercutting	%	***	***	***
	Trend	%	0-5	0-5	0-5

522. The Authority notes that the subject imports are undercutting the prices of the domestic industry.

iv. Price Underselling/ Injury Margin

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

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

525. The injury margin for cooperative producers/exporters are evaluated as under :-

Country	Producer	PCN	NIP	Landed Price	Injury Margin	Injury Margin	Injury Margin
			USD/MT	USD/MT	USD/MT	%	Range
Indonesia	PT. Karya Sumiden Indonesia	P5	***	***	***	***	5-10%
	PT. Tembaga Mulia Semanan	P5	***	***	***	***	0-5%
	Others	P5	***	***	***	***	5-10%
Vietnam	All producers	P5	***	***	***	***	5-10%
Thailand	SEI Thai Electric Conductor Company Ltd	P5	***	***	***	***	0-5%
	Others	P5	***	***	***	***	5-10%
Malaysia	Metrod Malaysia Sdn Bhd			***	***	***	0-5%
	74081190	P3	***	***	***	***	0-5%
	74081990	P5	***	***	***	***	0-5%
	Panasonic Procurement Malaysia Sdn Bhd	P5	***	***	***	***	0-5%
	Metrod+ Panasonic			***	***	***	0-5%
	Others	P5	***	***	***	***	10-15%

526. The authority notes that in the disclosure statement inadvertently separate injury margin was given in the injury margin table above for CFT Vina Copper Co. Ltd. despite holding them as a non-cooperating party. The authority has taken the corrective measure in the Final Findings. Since, no party in Vietnam has been treated as cooperating party, the authority has calculated the injury margin of all producers/exporters from Vietnam based on the total imports from Vietnam as per its consistent practice.

v. Price suppression and depression

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	Cost of sales	Rs. /MT	***	***	***	***
2	Trend	<i>Indexed</i>	100	81	86	104
3	Selling price	Rs./MT	***	***	***	***
4	Trend	<i>Indexed</i>	100	84	86	101
5	Landed Price	Rs./MT	***	***	***	***
6	Trend	<i>Indexed</i>	100	85	83	99

528. It is seen that both the selling price and cost of sales of the domestic industry have increased. However, the increase in the selling price is less than the increase in the cost of sales. It is further noted that the landed price of imports are below the selling price of the domestic industry. This shows that the imports are suppressing the prices of the domestic industry and are preventing the price increases, which otherwise would have occurred.

III. Economic parameters relating to the domestic industry

529. The Rules require that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, performance of the domestic industry has been examined over the injury period.

i. Production, capacity, capacity utilization and sales

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	Capacity	MT	***	***	***	***
	Trend		100	100	118	118
2	Production	MT	***	***	***	***
	Trend		100	106	99	106
3	Capacity Utilization	%	***	***	***	***
	Trend		100	104	80	87
4	Domestic Sales	MT	***	***	***	***
	Trend		100	105	99	99
5	Export Sales	MT	***	***	***	***
	Trend		100	87	169	1039

531. The Authority notes that-

- a. The capacity utilization of the domestic industry has declined and significant capacity remained unutilized since 2016-17 onwards.
- b. The production of the domestic industry has increased over the injury period. The domestic sales of the domestic industry have declined whereas the exports of the domestic industry have increased considerably in the POI.

ii. Market Share

532. The market share of the domestic industry and other domestic producers over the injury period is as under:

SN	Market Share	Unit	2014-15	2015-16	2016-17	2017-18
1	Sales of Domestic Industry	%	***	***	***	***
	Range		30-40	30-40	20-30	20-30
2	Sale of Other Producers	%	***	***	***	***
	Range		40-50	40-50	40-50	30-40
3	Subsidized imports from Subject Countries	%	***	***	***	***
	Range		0-10	0-10	10-20	15-25
3.1	Non-Subsidized imports from Subject Countries		***	***	***	***
	Range		-	0-10	0-10	0-10

4	Other Countries	%	***	***	***	***
	Range		10-20	10-20	10-20	10-20
5	Total Demand	%	100%	100%	100%	100%

533. It can be seen that the market share of the domestic industry and other domestic producers have declined in POI whereas share of subject countries' imports have increased. The share of imports from other countries have also declined.

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

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	Cost of sales	Rs./MT	***	***	***	***
2	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>81</i>	<i>86</i>	<i>104</i>
3	Selling price	Rs./MT	***	***	***	***
4	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>84</i>	<i>86</i>	<i>101</i>
5	Profit/(Loss)	Rs./MT	***	***	***	***
6	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>121</i>	<i>96</i>	<i>64</i>
7	Profit/(Loss)	Rs.Lacs	***	***	***	***
8	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>127</i>	<i>95</i>	<i>63</i>
9	PBIT	Rs.Lacs	***	***	***	***
10	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>127</i>	<i>99</i>	<i>68</i>
11	Cash Profits	Rs.Lacs	***	***	***	***
12	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>127</i>	<i>96</i>	<i>66</i>
13	ROCE	%	***	***	***	***
14	<i>Trend</i>	<i>Range</i>	<i>25-35</i>	<i>30-40</i>	<i>25-35</i>	<i>15-25</i>

535. The Authority notes that:

- a. The profit of the domestic industry has come down over the injury period.
- b. Cash profits, PBIT and return on capital employed of the domestic industry have followed a similar trend.

iv. Inventories

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	Average Stock	MT	***	***	***	***
2	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>443</i>	<i>325</i>	<i>461</i>

537. It is noted that the average inventories have increased over the period except some decline in 2016-17.

v. Employment, wages and productivity

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

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	Wages	Rs Lacs	***	***	***	***
2	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>109</i>	<i>111</i>	<i>119</i>
3	Employment	Nos	***	***	***	***
4	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>77</i>	<i>73</i>	<i>72</i>
5	Productivity per day	MT/Day	***	***	***	***
6	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>100</i>	<i>106</i>
7	Productivity per employee	<i>Per No</i>	***	***	***	***
8	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>138</i>	<i>137</i>	<i>147</i>

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

vi. Growth

540. The trends of volume and profit parameters of the domestic industry showed as under-

SN	Particulars	Unit	2014-15	2015-16	2016-17	2017-18
1	Production	%	-	6%	-6%	6%
2	Domestic sales	%	-	5%	-6%	0%
3	Profit per unit	%	-	21%	-20%	-33%
4	Cash profit per unit	%	-	21%	-19%	-31%
5	Return on capital employed	%	-	19%	-23%	-36%

541. It is noted that there is positive growth in production of the domestic industry but, the domestic sales have declined. Growth in production has not resulted in growth in domestic sales and has resulted in increase of the export sales. The market share of the domestic industry has declined. The profits, cash profit and return on capital employed have also shown decline over the injury period.

vii. Factors affecting domestic prices

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

viii. Ability to raise capital investment

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

544. It is noted that the volume parameters of the domestic industry have shown growth. However, there has been a deterioration in price parameters. The profits, cash profit and return on capital employed have also shown a significant decline over the injury period. The profitability of the domestic industry has declined over the injury period.

IV. Conclusions on Injury

545. The Authority notes that the imports have increased significantly in absolute terms as well as in relation to production and consumption in India. The imports are undercutting the prices of the domestic industry and have had a suppressing effect on the prices of the domestic industry. The price underselling is also positive. While the market share of subject imports has increased significantly, that of domestic producers has declined. The capacity utilisation of the domestic industry has declined. Even though performance of the domestic industry has improved in terms of production, domestic sales and capacity utilization have declined; it is seen that the domestic industry is suffering from underutilized capacities. Further, the profitability of the domestic industry has declined and its cash profits, PBIT and return on investment has followed the same trend. Accordingly, the Authority concludes that the domestic industry has suffered material injury.

V. Causal Link

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

a. Volume and prices of imports from third countries

547. The imports from other countries are not significant enough to break the causal link between subsidized import from subject countries and injury to the domestic industry.

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

548. The Authority notes that there is no contraction of demand. On the contrary, overall demand for subject goods has shown improvement over the injury period. Further, there

have been no changes in the pattern of consumption which could have caused injury to the domestic industry.

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

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

d. Developments in technology

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

e. Export performance of the domestic industry

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

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

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

VI. Conclusion on causal link

553. The authority notes as under:-

- a. The subsidized imports from subject countries are undercutting the prices of the domestic industry.
- b. Subsidized imports from subject countries are coming into India in substantial volumes.
- c. The imports are undercutting the prices of the domestic industry which have led to a decline in the selling price of the domestic industry as the imports are suppressing the prices of the domestic industry and prevented price increases, which otherwise would have occurred.
- d. There is decline in market share of domestic producers due to the positive price undercutting.
- e. Consequent impact of subsidized imports on the domestic industry have been significantly adverse in terms of reduced capacity utilisation, domestic sales, profitability, ROCE, etc.

554. The Authority therefore holds that there is causal link between the subsidization of the subject goods and the injury suffered by the domestic industry.

J. Post Disclosure comments

555. The Authority issued a disclosure statement on 21st October 2019 disclosing essential facts of the case and inviting comment from all the interested parties. The post disclosure submissions have been received from the interested parties. Majority of the issues raised had already been raised earlier and also addressed appropriately. Additional submissions to the extent deemed relevant have been examined as under:

Submission made by the domestic industry

The domestic industry reiterated its submissions stating that:

- The import data & domestic industry data completely pertain to copper wire under 7408. Copper wire rod is an industry terminology and wire rod are used as a terminology for rod in coil form falling under 7407 and are clearly beyond the scope of PUC. Petitioners did not include rod not in coil form within the scope of the present petition.
- Customs Tariff Act only uses wire and rod as terminologies, and wire has no restriction of diameter in it.
- Wire above or below 6mm, all are further drawn for the eventual end use requirement. It is eventually wire from 0.19 – 0.20mm which is the end product.
- Vedanta has not provided injury information as it has been considered ineligible on grounds of imports, but it is a matter of fact that Vedanta has also suffered injury.
- The domestic industry can meet full demand as the installed capacities for wire below 6mm are in the region of 11.33 lacs MT as against established demand of 6.6 lacs MT.
- Authority rightly determined that Alpha, DOVINA, CFT cannot be treated as co-operating producers/exporters and no individual subsidy margin should be determined for these parties.
- The producers in subject countries have benefited from subsidized cathode or wire above 8mm procured from Indonesia and subsidy margin is required to be determined for all the inputs procured by the producers in subject countries from Indonesia.
- Since preferential rules of origin do not apply to a CVD investigation, the producers have claimed that goods have been produced in Thailand, Vietnam or Malaysia even when inputs have been sourced from Indonesia. Further, these producers have even admitted that part production activity has happened in Indonesia. Producers in Indonesia are clearly benefited from the mining subsidies received in the input consumed by these producers. Thus, subsidy in the inputs procured from Indonesia is required to be captured and included in the subsidy in the product exported from Thailand, Vietnam and Malaysia.
- The questionnaire response of the GOV and producers/exporters of Vietnam should be rejected for suppression of facts that the producers have partly sourced cathode produced from domestic mining.
- With respect to Indonesian schemes, Authority is requested to consider that electricity is also being provided to these producers at less than adequate remuneration due to capping of selling price of coal and other measures applied by Government of Indonesia.
- The Authority has given separate margin for preferential lending in Indonesia under Program Nos. 2, 3, and 5, to other Indonesian producers/exporters but the same should

be applied for both the responding producers/exporters of the subject goods as the lending rates are much lower to the prime lending rate.

- Under Program nos. 10, 11, 15, 17, 18, 19 of Indonesia, separate margin for income tax benefits are imposed on other Indonesian producers/exporters and same should be applied to both the responding companies as petitioners believe that both the responding producers/exporters are paying income tax at concessional rates.
- Program No. 14 of Indonesia i.e. ‘Exemption of income tax on import’ is all together a different subsidy scheme which should not be clubbed with import duty exemption. The scheme allows exemption on income tax of 2.5% under Article 14 of PMK 147/04.2011. The duty should be imposed separately to both the companies.
- Program No. 33 of Malaysia also constitutes countervailable subsidy.
- The Authority may kindly consider other authority findings and their margins to determine CVD margins in Malaysia, at least for non-cooperative producers.
- Malaysian scheme/program No. 16 i.e. ‘Allowance for plants and machinery/Capital Allowance (CA)’, the responding producer/exporter, Alpha Industries SDN BHD, Metrod OFHC and Metrod Malaysia have accepted availment of benefit. Schedule 3 of the ITA and P.U.(A) 52/2000 includes the allowance percentages for Plant and Machinery as 20% Initial allowance and 14% Annual allowance and provides a countervailable benefit in contrary to what the Authority has held.
- Malaysian scheme/Program No. 9 i.e. ‘Pioneer Status’ does not just provide income tax exemptions but also other incentives. The Authority should re-determine margins in residual category relying upon the other authority CVD margin.
- Thailand schemes/Program no. 13 and 14 are non-tax incentives provided by Board of investment (BOI) and companies with foreign ownership are eligible. Since STEC is foreign owned company and they met the criteria as per BOI, hence they are eligible to avail benefit in addition to the tax incentives under these schemes. The Authority is requested to determine CVD margin under this scheme.
- STEC has acknowledged and the Authority has confirmed that STEC has incurred losses during the period of investigation. The Authority is requested to check the past records of the company. In a situation of consistent losses, it appears that the exporter’s losses are being absorbed by some other entity. Thus, exports at losses and sales at losses implies existence of dumping. The Authority may kindly initiate suo moto anti-dumping investigation in respect of imports from Thailand. The same approach was adopted by the Authority in past.
- STEC is a subsidiary of Sumitomo Electric, Japan and is highly unlikely to be in losses unless they are selling transferring material on lower premiums/prices. Information shows that contrary to their claims of consistent losses since inception, the company has been in profits and the same are rising. Further, the company has sourced raw material from outside ASEAN as well.
- In Vietnam, the Authority should consider two programs (i) “Interest Rate Support Program under the SBV”, on which the investigation was initiated by the Authority based on the information furnished by the petitioner, and (ii) “Import duty exemption for equipment and machinery to create fixed asset” as disclosed by the GOV in its questionnaire response. The scheme has been examined and quantified by the Authority in past. The Authority is requested to re-examine the scheme relying upon past finding and determine subsidy margin accordingly.
- The Authority has rightly determined that domestic industry has suffered material injury as a result of subsidized imports. Grossly underutilized production capacities for wire

below 8mm despite significant demand, significant price undercutting and injury margin, collectively & cumulatively establish that the domestic industry has suffered injury.

- Subsidy duty may be imposed only on ad valorem basis expressed as % of CIF price because of (a) changes in LME on frequent basis, (b) existence of two PCNs, (c) CVD margins having been determined on ad valorem basis.

Views of other Interested Parties

The other interested parties have made following submissions:

- The Authority has proposed a different product under consideration in the Disclosure Statement, i.e. “Continuous Cast Copper Wire falling under tariff heading 7408 of the Customs Tariff”, which is different from the PUC as defined in the initiation notice. The proposed scope of the product under consideration resulted in enlarging the scope of the investigation. The changes proposed in the product under considering resulting in enlarging its scope is without the authority of law.
- From the disclosure statement, the respondent is unable to ascertain the parties who have requested for change in the scope of the product under consideration. Incidentally, even the inspection of the public file as late as on 25.10.2019 does not indicate any such information.
- Metrod submits that its comments on the explanation given by the Authority in its letter dated 05 April 2019 to introduce PCN and other substantive comments have not been considered at all in the disclosure statement.
- “Copper Wire Rods” and “Copper Wires” are two completely different products and any attempt to suggest that the two terms can be used interchangeably, is bereft of any merit. It may also be noted that the CTH Codes for “Copper Wire Rods” and “Copper Wires” are different at the 4-digit level. While “Copper Wire Rods” fall under the CTH 7407, “Copper Wires” fall under CTH Code 7408. “Copper Wire” is a separate industry, none of the producers of “Copper Wires” are mentioned by the applicants in their application. This further proves and establishes beyond any doubt that “Copper Wire” is not included in the scope of the investigation.
- Copper Wires of thickness below 3MM was not produced by the petitioner industry during the POI and therefore, the same should be excluded from the scope of Product under Consideration.
- The exclusion of Sterlite from the purview of the Domestic Industry is contrary to the law and the well-established practices of the Authority.
- The Petitioner Industry has withheld the information about their relationship with UAE party in the non-confidential version of the petition.
- Hindustan Copper Ltd. has been left out despite the fact that their Price is benchmark rate for all Government procurement and majority of industry.
- The Authority has also not disclosed total production in India, the names of domestic producers whose production has been considered for determining total production and the percentage share of Hindalco in total domestic production and why such percentage share is considered as sufficient to command major proportion in total domestic production.
- There are many other manufacturers of the subject goods which have not been considered apart from the three producers such as Finolex Cables Ltd., TDT Copper Ltd., JMW, Omega Rolling Mills, Leebo Metals Pvt. Ltd., Gujarat Copper, Ramay Copper,

TamradhatuUdyog, KC Metals, Coprod, COSMOS, Bhagyanagar Metals, Malhotra Industries and many others. The combined production of these companies is around 300,000 MT p.a., which is higher than the production of Hindalco under POI.

- The concept of double counting introduced by the Authority, is incorrect and needs reconsideration. When the applicants plead for imposition of duties on two different products at the same time, it makes logical and legal sense to consider only the downstream products for the purposes of standing as well as injury.
- Since the Authority is obliged to consider the impact of subsidized imports on the prices of the Copper Wire Producers, any analysis without considering the data/information of the Wire producers, would not only be illogical but also against the Rules.
- Production of Hindalco alone cannot be considered as sufficient for establishing the standing of the domestic industry.
- No comments can be offered on the Injury Parameters in the absence of clarity about PUC / Domestic Industry and Segregated Import data.
- The reduction in profits suffered by the Domestic Industry is on account of the incapability of the petitioner industry to provide Copper Wire to the Indian Consumers.
- Change in the demand pattern from Copper Rod to Copper Wire by the users of the subject goods has increased fixed costs and lowered profit margins.
- Reduction in the import duties from ASEAN countries under FTA is another cause for reduction in profitability.
- Vedanta has stopped its production due to strict pollution control norms and not imports.
- Since copper wire and copper rods are not internally comparable, clubbing them together for the purposes of assessing injury would not be commercially logical.
- The volume of imports from subject countries determined by the Authority is same as the volume of imports from subject countries provided in the petition. It is not possible that total imports of Copper Wire under tariff heading 7408 is same as total import of Copper rod, Copper Wire & Copper Strips imported under tariff headings 7407, 7408 & 7409 respectively. If there were no imports of Copper bars & rod or Copper strips from subject countries, domestic industry would not have requested inclusion of Copper Rod and Copper Strips within the scope of product under consideration for imposition of anti-dumping duty.
- If correct volume of imports of product under consideration is taken into account after excluding imports of copper rod under tariff heading 7407 and copper strips under tariff heading 7408, it would reflect lower volume of imports.
- Authority has determined that subsidy margin of STEC is de-minimis. This means that the exports of product under consideration by STEC are unsubsidized. Thus, while considering increase in subject imports and for assessment of material injury, the Authority is required to exclude exports of STEC from the total volume of exports.
- There continues to be a gap between the domestic demand and ability of the Petitioners to supply the product under consideration. Indeed, it may be seen that the increase in capacities of the Petitioners has not been able to keep up with the increase in demand.
- The price and cost of the Petitioners have moved largely in tandem with each other.
- Despite the landed price being below the selling price of the domestic industry, there was no price suppression or depression in the three years prior to the period of investigation. Indeed, the only year where there is a small gap between the cost and price of the Petitioners is in the period of investigation, where the increase in price was only 3 index points lesser than the increase in cost.
- Domestic industry has been successfully able to increase production over the injury period.

- While domestic sales have remained at the same level over the injury period, there is a substantial increase in export sales.
- The return on capital employed earned by the domestic industry appears to be in the prescribed range already i.e. 15-25%.
- Price undercutting margin for imports from Malaysia is 0-5% and the injury margin for imports from Malaysian cooperative exporters is also 0-5%.
- Prices of copper products worldwide tend to be pegged to the London Metal Exchange (LME) with an additional premium, which is usually negotiated. However, during the period of investigation, the LME price was in a very volatile range which is bound to have affected the domestic industry's performance.
- The impact of non-subject imports on the domestic industry must be considered and analysed separately.
- Imports from UAE, accounted for about 30% of the total imports into India. These imports were also entering India at comparable or lower prices as compared to import prices from the subject countries. Volume of Imports from UAE are higher than import from any of the subject countries taken individually.
- Domestic Industry's statement on accumulated inventories is factually incorrect as every quarter they reduce the inventory to NIL.
- Copper producers have excellent capacity utilization and very healthy EBITDA. Combined average EBITDA is INR 3242 Crore per year for the PUI.
- The reduction in EBITDA of Vedanta is mainly due to reduced TCRC from mines and increased Cost of Production.

Malaysia Subsidy Programs

- It has been submitted that Alpha's audited financial statement for FY 2017-18 show that it has not received any benefit under Program 1, 3, 4, 7, 8, 14, 24, 30, 34, and 35.
- Alpha does not have any financial arrangement with EXIM bank.
- In relation to the observation of the Authority relating to Program No. 12, it is submitted that Metrod is not eligible to take benefit under this scheme. It is important to highlight that the Accelerated Capital Allowance, which Metrod Malaysia Sdn. Bhd. has availed, is part of Program No. 16- Allowance for plant and machinery.
- The exemption from Import Duty and Sales Tax on Machinery and Equipment has been availed by Metrod for refractories to be used in the new furnace as capital goods. It was also explained that the company requested for exemption from MIDA on the basis that imports of capital goods attract 0% import duty and, therefore, import duties should be exempt on refractories also. The company also requested the Authority that since exemption was granted in line with the policy of 0% import duty on capital goods, this scheme should not be considered as any benefit to the company or as a countervailable subsidy.
- Program 12 is available to all companies and the Inland Revenue Board applies objective criteria in granting the ACA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific in the manner required under the WTO agreement on subsidies and countervailing measures (SCM Agreement).
- Under Program 23, Alpha only received import duty exemption on machinery and equipment where such machinery and equipment were unavailable locally.
- It is submitted that Program 24 cannot be countervailable because the program involves exemption of import duties on the imported raw materials which are used in the production of export goods. Considering the exemption of import duties contained in the

production of export goods as countervailable subsidy, would be in complete violation of the obligations under Paragraph (h) of Annex I of the ASCM and Annexure II Part 1 (h) of the CVD Rules.

- The alleged benefit under Program 35 ought to be adjusted only to the extent of the tax saved (24%) on the total profits earned by the exporter to arrive at the actual benefit. It appears that the calculation is based on the total amount of profit earned and not the tax saved.
- Alpha had been granted Pioneer status for a period of five years from 1 October 1987 to 30 September 1992. However, the pioneer status expired in 1992 and Alpha has not received any further pioneer status incentive subsequent to the expiry of the earlier incentive covering the period of investigation.
- Authority has not noted any evidence of receipt of subsidy programs by any producer/exporter from Malaysia.
- None of the companies under investigation has applied for or received any benefit from Programs 1, 3, 4, 6, 7,8, 9, 10 11, 13, 18, 21, 25, 27, 28, 30, 31, 32 34.
- Program 1 and 34 are only for Small and Medium Enterprises and the investigated producers are not eligible for this program.
- Program 11 is not linked to export conditions, not specific, and is generally available. Investigations by other Government Authorities have also determined that Program 11 is not specific in nature.
- The Authority has considered Program 16 – Allowance on Plants and Machineries (Capital Allowance) as a non-countervailable program. The provisions relating to depreciation were specifically explained and it was clarified that the scheme of depreciation works like any other depreciation elsewhere in the world. Both are depreciation related scheme which should be given the same treatment and shall not be considered as countervailable.
- Program 15 is not countervailable since it is not specific in nature. It is available to all companies such as resident and non-resident companies and unincorporated businesses such as sole proprietorships and partnerships. Export is not a criterion for granting IBA.
- Program 19 is not countervailable since it conforms with the provisions of Annexes I, II, and III of the SCM Agreement.
- DGTR has erred in their interpretation of Article 2 of ASCM Agreement resulting a distorted consideration of this program specificity with regard to Programs 14, 23, and 24.
- All programs for which DGTR has relied on Adverse Inferences, were verified by the DGTR during on-spot verification held on 30 September 2019.
- The GOM has in its 2 November 2018 questionnaire response and its Supplementary Response provided first-hand information to the DGTR with respect to the programs and policies carried on by the GOM. This first-hand information should be used and relied upon without having to rely upon secondary information which may no longer be applicable.

Thailand Subsidy Programs

Program No. 2 is not limited to a certain enterprise, industry or the geographical area. There is no industry or market segment which is excluded from the scope of the program or not eligible to seek approval of the Board of Investment.

- With regard to Program No. 3, the income tax exemption under Investment Promotion Act is non-countervailable since the same is not limited to certain enterprise, sectors or

geographical location. All enterprise, companies or sectors are eligible to receive benefit under this program. The Authority has countervailed this program on the presumption that the benefit was available to the producers who earned net profit during the POI. However, it is submitted that the company allowed to avail benefit under this program by the Board of Investment, may choose not to receive benefit under the program and such companies may forgo their right to claim benefit.

- The investigators accepted the submitted information pertaining to Program 5, provided during the verification, without having further questions or requesting additional documents.
- BOI has already explained in the verification meeting that Program No. 13 and 14 is not a subsidy program but rather a category of benefits under the new investment promotion scheme, which took effect on 1 January 2015, so it does not constitute a subsidy.
- With regard to Program No. 6, 7, 8, 9, and 10, the criteria for granting BOI investment promotion is NOT specific under the definition of Article 2 Specificity of the SCM Agreement. This is because investment promotion is granted not limited to company, industry, or area. The BOI also does not impose criteria that fall under Article 3 Prohibition of the SCM Agreement.

Indonesia Subsidy Programs

- The BZ program is not specific as it applies to all sectors of industry and region without limitation. BZ can also be an area of goods storage and this program applies to movement of goods within Bonded Zone, from Bonded Zone to free trade zone, to stock piling and export.
- Under strict monitoring, verification and regular audit, there will be no excess in using this program by any company within BZ including KSI.
- Even if the DGTR wants to calculate the subsidy margin for KSI under this program, it can only do so by referring to the interest factor as presented in its comments on disclosure:
- No legal basis for the DGTR to include export duty resulting in provision of raw material at less than adequate remuneration (LTAR) on copper concentrate as part of this investigation. The DGTR has never informed KSI on this program and the calculation made in the EF Disclosure remains unclear as KSI does not know wherefrom the figures have been derived. DGTR has failed to meet the burden of showing how this program results in the entrustment or direction to private entities to supply Indonesian producers of the product concerned with a financial contribution that confers a benefit.
- TMS is under KITE, not at all located in SEZ. The EF Disclosure mistakenly states in recital 430 quoted above that KITE also covers program on exemption of import duty for machinery. Article 2 of Minister Finance Regulation No. 254/PMK.04/2011 Sates
- “Exemption shall be provided on Import of goods and/or materials to be processed, assembled with, or installed on other goods for export purpose.”
- The program, which on the import of raw material is subject to preferential customs duty, is not countervailable since (i) it has a strict verification process through the Customs Department; (ii) there is no excess in using the program; (iii) all imported materials are exported; and (iv) virtually all imports of copper cathodes by TMS were from FTA countries with 0% import duty.
- Export restraint on raw material copper ore and concentrate does not amount to a financial contribution in the form of provision of raw material at less than adequate remuneration. In US-Export Restraint, the WTO Panel observed that export restraint

cannot constitute as government-entrusted or government-directed provision of goods and therefore does not constitute a financial contribution.

- Preferential Rate by EXIM Bank and Bank Mandiri have not been used by Indonesian producers participating in the investigation. EXIM Bank and Bank Mandiri are profit oriented financial institutions and they are not specific as the implementation of the programs is not limited to sector or region.
- SEZ is not countervailable as being in SEZ does not mean that the programs will automatically apply. The companies are required to apply separately for the programs.
- The VAT Exemption program was revoked and replaced by Government Regulation No. 81 of 2015. Under this, strategic industry covers various range of industries and is not limited to a particular region. This program is not specific.

Vietnam Subsidy Programs

- Under Program No. 1 and Program No. 3, reduction of corporate income tax is based on principles of "encouraged industries" and "encouraged geographical areas"
- There is a system in place for the General Department of Customs of Vietnam to monitor utilization of import duty exempt raw material in production of export goods as per Article 59 of Circular No. 38/2015/TT-BTC with regard to Program No. 2. This is a popular and widely used policy whereby Governments of other countries also exempt/reimburse import duty on raw material for export production. Indian producers/exporters also enjoy benefits of such policy in India, which is known as Advance Licensing.
- Commercial Banks cannot be treated as government bodies. The Authority has made a false accusation of the nature of operation and loans given by Vietnamese commercial banks with partial or whole State-ownership, without providing any evidence.
- Financial guarantee provided by Vietin bank is a regular for-profit service by commercial banks all over the world.
- There are no pre-defined lists of eligible sectors or eligible regions for the Trade Promotion Program by GOV. Each year, the governmental body of the Program approves the programs for the year based on the proposals submitted by local authorities and associations. Therefore, the regions and the sectors eligible for promotion activities differ by year and are by no means "specific".
- No benefit has been received by any of the producers/exporters under investigation under Program 14 and 15.

Miscellaneous submissions on subsidy programs

- Due to certain developments it was unable to respond to the request for onsite verification. However, Alpha would like to request the Hon'ble Designated Authority to allow it to participate in the investigation as a cooperative producer, and prove that it has actually either (a) not availed; or (b) not benefitted from; any of the subsidies / programs examined by the Hon'ble Designated Authority
- TMS has fully cooperated with the DGTR by satisfactorily submitting its complete response to the DGTR followed by on-spot verification visit. TMS has indeed submitted all of its verification Exhibits from which the DGTR can use to determine which alleged programs were used, whether any used program is countervailable and if so, based on the available data to determine the subsidy margin.

- Authority has not disclosed the exact basis for determining subsidy margin for exports from Vietnam and only noted that subsidy margin has been determined based on facts available.
- The Authority has not taken into account the information regarding subsidy program provided by CFT Vina Copper and DOVINA while determining subsidy margin for all other exporters.
- The entire questionnaire response, especially the information regarding the use of specific subsidy programs and the amount of benefit availed by exporters from Vietnam should not be rejected if the information provided by the exporters was not complete or was not fully verified.
- Use of ‘facts available’ by the Authority under Rule 7(8) can be made to fill the gaps of missing information. It is also settled that such facts can include facts provided by interested party even if such facts do not provide for complete information.
- If majority of exports to India from the subject countries are made by cooperating exporters, then subsidy programs received by them are representative of subsidy programs received by all other exporters of the subject countries and such information should be used as facts available.
- The Public File does not contain any document which reflects that the Thai producers have availed income tax exemption or exemption of import duty on raw material. The input raw material used for production of subject goods is subject to NIL rate of duty which has been verified by the Authority during on-spot verification.
- In respect to the subsidy determination of all others rate for non-participating exporters, it is submitted that the methodology for computation of subsidy margin as well as the actual rate for “all other exporters” from Thailand cannot be claimed confidential.

K. EXAMINATION BY THE AUTHORITY

556. 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.

- As regards the submission concerning the widening of the scope of the product under consideration, the Authority notes that (i) “Copper bars, rods and profiles” are imported under tariff heading 7407 (ii) “Copper Wire” is imported under tariff heading 7408 and (iii) “Copper Plates, sheets and strip of a thickness exceeding 0.15 mm” are imported under tariff heading 7409. Product under consideration in the countervailing duty investigation is the product imported into India. Upon examination of the claims made by the interested parties and the import data obtained from DGCI&S, the Authority determined that the product under consideration in the present investigation is “Continuous Cast Copper Wire” falling under tariff heading 7408 of the Customs Tariff. The product under consideration includes Copper Wire of which the maximum cross-sectional dimension exceeds 6 mm as well as 6 mm and below.
- At the stage of initiation of investigation, the product under consideration was defined as “Continuous Cast Copper Wire Rods”, classifiable under Customs Subheading 7407.1010, 7407.1020, 7408.1190, 7408.1920, 7408.1990, 7409.11, 7409.19. The Authority has in fact narrowed down the scope of product under consideration to include

only “Continuous Cast Copper Wire” falling under tariff heading 7408 and has not widened the scope of product under consideration.

- As regards the submission that the product under consideration contains two different products, the Authority notes that the product under consideration is only a single product namely “Continuous Cast Copper Wire”. Different cross-section dimensions of Continuous Cast Copper Wire do not result in different products.
- Authority has already responded to the claim concerning PCN methodology based on tariff code in the disclosure statement. As regards the submission that the PCN included products beyond the scope of product under consideration, the Authority notes that PCN based on tariff code was developed taking into account the entire scope of product under consideration suggested by the domestic industry at the stage of initiation of investigation and to ensure a fair comparison between different types/forms of the product. There is no rule that the PCN cannot be based on tariff codes. Interested party has not claimed that PCN based on tariff code has prejudiced their interest or has resulted in unfair comparison between the product under consideration and the like domestic product.
- As regards the submission that Copper Wires of below 3MM should be excluded because it is not produced by the domestic industry, the Authority notes that domestic industry produces copper wires of below 3MM and therefore the same cannot be excluded from the scope of product under consideration.
- Non-disclosure of information by M/s. Vedanta Industries (Sterlite Copper) of its related entity in the UAE does not affect the standing of the domestic industry because Vedanta Industries does not constitute part of the domestic industry.
- Other producers of “Continuous Cast Copper Wire” mentioned by interested parties are either importers of “Continuous Cast Copper Wire” or are buying “Continuous Cast Copper Wire” of higher cross-section diameter from the domestic industry to draw “Continuous Cast Copper Wire” into lower cross-sectional diameter. Inclusion of production of such domestic producers will result in double counting of total production in India.
- Unsubsidized import volume has been excluded by the Authority for determining total volume of subject imports and for assessment of material injury to the domestic industry.
- Authority has considered only the volume of imports of “Continuous Cast Copper Wire” falling under tariff heading 7408 and not included imports of “Copper Rod” and “Copper Strips” imported under tariff heading 7407 and tariff heading 7409 respectively in the injury analysis.
- Gap between demand and supply cannot be the reason for not recommending imposition of countervailing duty if the Authority finds that the imports of the product under consideration were subsidized and were causing material injury to the domestic industry.
- As regards the submission that injury is caused to the domestic industry due to imports from non-subject countries, Authority notes that even though import volume from non-subject countries are substantial but it is not significant enough to break the causal link between subsidized imports from subject countries and material injury to the domestic industry.

Claims concerning subsidization by the domestic industry

- The domestic industry has made a submission that the producers in Malaysia, Thailand and Vietnam are procuring inputs (copper cathode) from Indonesia and therefore the Indonesian subsidies are being passed through to the producers of subject goods in Malaysia, Thailand and Vietnam. The domestic industry has requested that while determining subsidy margin for Malaysia, Thailand and Vietnam, Indonesian subsidies passed through to the producers in these three countries should also be added. In this regard the Authority notes that the information submitted by the producers in Malaysia, Thailand Vietnam shows that majority of their input sourcing is from countries other than Indonesia.
- As regards the submission that subsidy margin should be determined for preferential lending for responding producers/exporters in Indonesia, the Authority notes that the Authority has verified the information provided by co-operating producers/exporters from Indonesia and no countervailable subsidy margin can be determined for preferential lending programs for the cooperating parties.
- As regards the submission that subsidy margin should be determined for Allowance on Plant and Machinery by Government of Malaysia and for Non-tax benefits granted by Government of Thailand, Authority notes that normal Allowance on Plant and Machinery programs do not provide for countervailable subsidy in accordance with Countervailing Duty Rules and the SCM Agreement. It is further noted that Authority has already determined subsidy margin for Accelerated Capital Allowance Program for all producers and exporters from Malaysia. Authority has also determined subsidy margin for all other producers/exporters from Thailand based on facts available for subsidy program providing non-tax incentives to producers/exporters in Thailand.
- As regards the submission that STEC is earning profits, the Authority notes that close scrutiny of the information provided by the domestic industry in the form of screenshots of third party website itself shows that STEC did not earn any profit during the calendar year 2017 and 2018.
- As regards the submission that if producers/exporters are non-co-operative, Authority must apply adverse facts available, the Authority notes that it has in fact applied adverse facts available against non-cooperative producers/exporters from subject countries.

Claims concerning Malaysian subsidy programs

- Authority has determined subsidy margin for Alpha Industries based on facts available and not based on claims made in their questionnaire response because Alpha Industries has not been considered as co-operating producer/exporter in the subject investigation.
- As regards the submission that exemption from import duty and sales tax on machinery by Government of Malaysia cannot be considered as countervailable because exemption granted was in line with policy of 0% duty on import of capital goods, the Authority notes that there is no legal basis for such argument under the Countervailing Duty Rules or under the SCM Agreement.
- As regards the countervailability of Program No. 12 concerning Accelerated Capital Allowance, Authority notes that Accelerated Capital Allowance is provided by Government of Malaysia to certain enterprises carrying out the promoted activity and therefore it cannot be clubbed with normal allowance/depreciation of plant and machinery available to all enterprises and duly fulfils the criteria of specificity.

- Metrod Malaysia did not disclose complete facts regarding the use of Accelerated Capital Allowance program even though it was specifically alleged by the domestic industry and information regarding the same was specifically requested in the questionnaire response. As part of the comments on disclosure, Metrod Malaysia has disclosed for the first time that Accelerated Capital Allowance was used by them and the corresponding amount of the benefit was incorporated in the total amount disclosed for Allowance on Plant and Machinery under Program No. 16. Authority notes that in the response filed by Government of Malaysia, the amount of benefit for Allowance of Plant and Machinery availed by Metrod Malaysia under Program No. 16 is provided in addition to the amount of benefit availed by Metrod Malaysia for Accelerated Capital Allowance under Program No. 12. Moreover, Authority notes that interested parties are required to provide complete information regarding the use of each of the subsidy programs for which specific information is requested in the questionnaire response. Authority is required to determine countervailability for each program specifically. Interested parties cannot cumulate different subsidy programs under one common category for the purpose of providing information.
- Authority further notes that Metrod Malaysia has incorrectly claimed that Accelerated Capital Allowance is available to all enterprises under the relevant rules and is therefore not specific. Rule 8.2.1 of the Rules of the Income Tax (Accelerated Capital Allowances) (Reinvestment of Eligible Projects) 2000 [P.U.(A) 506/2000] provides that such rules apply to qualifying plant expenditure incurred on the provision of plant or machinery for the purpose of a qualifying project in respect of promoted activity or promoted product. Rule 8.2.4 also says that the rules do not apply to company, which has been given Re-investment allowance. Thus, Authority confirms that the program is specific and does not provide for normal allowance/depreciation of plant and machinery and is not available to all enterprises. Thus, considering absence of full disclosure in the response filed by Metrod Malaysia and the inconsistency in the response filed by Metrod Malaysia and the Government of Malaysia in this regard, the Authority has not considered the information provided by Metrod Malaysia for determining benefit under Accelerated Capital Allowance.
- Metrod Group has wrongly stated that program no. 24 was countervailed by the Authority by stating that it involves exemption of import duties on the imported raw material used in the production of export goods. Authority has clearly noted in paragraph 253 of disclosure statement that the program No. 24 provides financial contribution in the form of revenue foregone and is also specific because it is limited to enterprise that use raw material that are not locally available.
- Authority has noted that Metrod Malaysia has received benefit in the form of exemption on import of raw material used in the production of export goods because Metrod Malaysia specifically admitted in its questionnaire response in Exhibit 14 that “*Grant of exemption of import duty on the raw material meant for export goods is covered under the exemption [of import duty on raw material]. No duty exemption under the scheme is available for goods which are imported for production of finished products destined for the domestic market.*” Authority had inadvertently noted in the disclosure statement this benefit availed by Metrod is a benefit under program no. 24. This does not change the admitted position that Metrod has availed this benefit and the same is countervailable. The Authority has now categorized this benefit availed by Metrod under “other program”.
- As regards the submission that export contingent exemption of import duty on raw material by the Government of Malaysia cannot be considered as countervailable subsidy because it is compliant with specific provision of Annex I of the SCM Agreement, the

Authority notes that import of raw material for use in the production of exported goods cannot be considered as countervailable subsidy only if there is sufficient evidence to demonstrate that there is a verification mechanism to ensure that there is no excess remission have merely claimed existence of a mechanism and absence of excess remission without providing sufficient evidence or step by step explanation of such verification mechanism. Interested parties have not provided any instance of duty imposition by the Government on the company where it was unable to meet the export obligation. There is also no explanation by the exporter and especially by the Government of Malaysia to demonstrate how the amount of import quantity eligible for import duty exemption was fixed generally by the Government and especially in the case of raw material used for the production of product under consideration.

- The Authority has calculated subsidy margin for program granting exemption from income tax for Metrod Group based on the actual amount of benefit availed. Subsidy margin is based on the amount of tax saved on the total profits earned by the exporter to arrive at the actual benefit. Exporters from Malaysia have not objected to the correctness or legality of the methodology communicated to them and adopted by the Authority.

Claims concerning Thailand Subsidy Programs

- With regard to claim that subsidy programs provided by Government of Thailand are not specific, Authority notes that it has already provided sufficient explanation regarding specificity for each subsidy program.
- As regards the claim that programs No. 13 and 14 do not constitute countervailable subsidy, the Authority notes that Government of Thailand has not provided complete information regarding non-tax incentives under program no. 13 and why such non-tax incentives cannot be considered countervailable benefit.
- As regards the submission that export contingent exemption of import duty on raw material by the Government of Thailand cannot be considered as countervailable subsidy because it is compliant with specific provision of Annex I of the SCM Agreement, the Authority notes that import of raw material for use in the production of exported goods cannot be considered as countervailable subsidy if there is sufficient evidence to demonstrate that there is a verification mechanism to ensure that there is no excess remission. Government of Thailand has merely claimed existence of a mechanism and absence of excess remission without providing sufficient evidence or step by step explanation of such verification mechanism. There is also no explanation by the Government of Thailand to demonstrate how the amount of import quantity eligible for import duty exemption was fixed generally by the Government and especially in the case of raw material used for the production of product under consideration.
- The Authority further notes that no countervailing duty has been determined for cooperating producer/exporter from Thailand under the exemption of import duty on raw material imported for use in export production as the import duty on raw material imported by them was nil during the POI.

Claims concerning Indonesia Subsidy Programs

- With regard to the program concerning import duty exemption on import of raw material, the responding producer/exporter from Indonesia PT Tembaga Mulia Semanan (TMS) has raised two main issues (i) there was no excess remission of import duty on

raw material because there is a strict monitoring mechanism and customs duty was paid by PT Tembaga Mulia Semanan on the short fall &(ii) even if subsidy margin is determined for this program, subsidy margin as a percentage of total turnover is negligible.

- In this regard, Authority notes that PT Tembaga Mulia Semanan did not respond fully to the questionnaire issued by the Authority, especially regarding the subsidy program concerning import duty exemption on import of raw material. PT Tembaga Mulia Semanan only stated that “this program does not confer material benefit to TMS as its vast majority of import of materials were from origin countries having FTA with Indonesia or ASEAN with zero import duty”. During verification, PT Tembaga Mulia Semanan acknowledged that there were in fact imports from non-ASEAN countries and benefit was received under this program in the form of duty exemption. Even during the verification visit, complete details of imports from non-ASEAN countries and the duty saved thereon was not provided. It was only subsequently that such details have been provided. Authority notes PT Tembaga Mulia Semanan did not provide complete information at the appropriate time and did not co-operate to the best of its ability.
- PT Tembaga Mulia Semanan has provided, as part of comments of disclosure statement, calculation of subsidy margin by calculating subsidy margin as a percentage of total turnover instead of total export turnover. Authority notes that subsidy margin calculated by PT Tembaga Mulia Semanan is not in accordance with Countervailing Duty Rules. In view of the above, Authority has determined subsidy margin for PT Tembaga based on facts available by relying on information provided by PT Karya Sumiden.
- As regards the submissions relating to the subsidy program concerning provisions of copper concentrate at less than adequate remuneration, the Authority notes that the same is a countervailable program in terms of SCM Agreement and the Countervailing Duty Rules. In fact, several countries have countervailed similar programs in the countervailing duty investigations conducted by them.

Claims concerning Vietnam Subsidy Programs

- As regards the submission that producers/exporters from Vietnam did not avail benefit for the subsidy programs for which countervailing duty has been determined by the Authority, the Authority notes that producers/exporters from Vietnam have not been treated as co-operating producers/exporters and therefore subsidy margin is determined for producers/exporters from Vietnam based on facts available.

L. CONCLUSIONS

557. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that
- i. The product under consideration has been exported to India from subject countries at subsidized prices except exports from M/s SEI Thai Electric Conductor Co. Ltd., Thailand.

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

M. INDIAN INDUSTRY'S INTERESTS AND OTHER ISSUES

558. 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.

559. 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.

N. RECOMMENDATION

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

DUTY TABLE

S. No.	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Duty amount as % of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	7408	Continuous Cast Copper Wire	Thailand	Any country including Thailand	SEI Thai Electric Conductor Co. Ltd	NIL
2.	-do-	-do-	Thailand	Any country including Thailand	Any producer other than producer mentioned in S. No. 1	3.46%
3.	-do-	-do-	Any country other than Thailand, Indonesia, Malaysia and Vietnam	Thailand	Any	3.46%
4.	-do-	-do-	Indonesia	Any country including Indonesia	PT. Tembaga Mulia Semanan, Tbk	3.75%
5.	-do-	-do-	Indonesia	Any country including Indonesia	PT. Karya Sumiden Indonesia	4.98%
6.			Indonesia	Any country including Indonesia	Any producer other than producer mentioned in S. Nos. 4 & 5	7.94%
7.			Any country	Indonesia	Any	7.94%

			other than Thailand, Indonesia, Malaysia and Vietnam			
8.	-do-	-do-	Malaysia	Any country including Malaysia	Metrod Malaysia Sdn Bhd	2.47%
9.			Malaysia	Any country including Malaysia	Any producer other than producer mentioned in S. No. 8	10.27%
10.			Any country other than Thailand, Indonesia, Malaysia and Vietnam	Malaysia	Any	10.27%
11.			Vietnam	Any country including Vietnam	Any	7.13%
12.			Any country other than Thailand, Indonesia, Malaysia and Vietnam	Vietnam	Any	7.13%

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

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

(Sunil Kumar)
Special Secretary & Designated Authority