

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

- ii. Even Indian Government provides several tax and non-tax benefits to business and investors investing in the country. While local jurisdictions, such as states, may also provide tax incentives for businesses, country-wide incentives are most widely applicable, and are broadly organized into four categories: location-based, industry-specific, export-linked, and activity-based.
- iii. Levy of anti-subsidy/countervailing duty will be contrary to public interest and would lead to the monopoly of the Domestic Industry.
- iv. The petition does not meet the adequacy and accuracy criteria and no initiation should have been contemplated based on such an incomplete petition.
- v. The petition contains data separately for Coated and Uncoated Glass at places and at TTG level at some other places. Though the bifurcation is welcome, data combined for the PUC as a whole which is total of coated and uncoated glass also should be given in the Format H. Else the injury cannot be fairly understood for the subject goods as defined.
- vi. The petitioner by way of the present petition is apparently attempting to implicate the Malaysian producer of subsidy as they failed to prove the contention of dumping against the said party in the past. We request the Authority to consider this background while evaluating the claims of the petitioners
- vii. Imports of PUC were necessitated due to the extraordinary level of demand-supply gap and no CVD should be imposed in such a circumstance.
- viii. Apart from capacity constraints, the subject goods produced by the petitioner suffer seriously from quality issues which also make the users dependent on imports.
- ix. An important feature of the subject goods is that the same is used by large number of units in the SEZ area. The imports made by such units do not attract ADD/CVD and it is very essential that the imports made in SEZ area should not be considered along with non-SEZ imports for the purpose of injury examination. Imports by the SEZ units are not of any consequence to the petitioner in view of the SEZ Act and the units in the non-SEZ area cannot be penalized for any imports made by the SEZ units. Thus, the Authority should use only imports in the non-SEZ area to examine injury on account of alleged subsidized imports.
- x. The finding in the anti-dumping investigation shows that about 84% of the total imports of PUC were made by SEZ units and the remaining 16% were in the non SEZ area. It is submitted that a similar pattern is apparent in the POI of the present investigation also which necessitates segregation of imports by SEZ units and non SEZ units. The units in the non SEZ area should not be made liable to pay CVD based on the imports made by the SEZ units and the segregation of imports is very essential.

F.3. Examination by the Authority

20. As regards the issue raised by the interested parties regarding inconsistencies in the data and certificates provided in the petition, the Authority notes that it has relied upon verified information and data for the purpose of the present disclosure statement. The Authority has also called for additional information wherever required and verified the information furnished by the domestic industry.
21. Regarding the submission that there are subsidies available to the Domestic Industry too, the Authority notes that the subsidies available to the Domestic Industry are not the subject matter of the present investigation.
22. With regard to the submission that levy of anti-subsidy/countervailing duty will be contrary to public interest, the Authority notes that the purpose of the of anti-subsidy/countervailing duty investigation is to address the situation created by subsidizing of the product under consideration. The objective of such investigation is not to block the imports but to provide a level playing field to the domestic industry against the subsidized imports.
23. As regards the submission that the present investigation is an attempt by the Domestic Industry to implicate the Malaysian imports since no contention of dumping against the said party was established in the Anti-Dumping investigation concerning import of subject goods from subject country, the Authority notes that the scope of present investigation is distinct from the Anti-Dumping investigation conducted earlier. It is further noted that the purpose of the present investigation is to investigate as to whether or not the article under investigation is being subsidized and whether imports of such articles in India cause or threaten material injury to the domestic industry.
24. As regards the submission of the interested parties relating to demand-supply gap, the Authority notes that the Domestic Industry has continuously increased its capacities to meet the demand of the subject goods in the country. Moreover, the purpose of the present investigation is not to block imports but to provide a level playing field to the Domestic Industry.
25. Regarding the issue of the quality of the goods manufactured by the Domestic Industry, the Authority notes that the interested parties have not provided any reliable evidence to support their claims in this regard. Also, quality, per-se is not an issue in a countervailing duty investigation.
26. With respect to the submission of the interested parties that most of the imports of the subject goods are happening in SEZ, the Authority notes that more than 75% of the imports from subject country were in DTA. Also, it is important to appreciate that any sales of PUC by SEZ units to DTA would also attract applicable CVD on PUC as per section 30 of the SEZ Act. Therefore, the concerns related to SEZ units both from the perspective of users and domestic industry is appropriately addressed through provisions of relevant rules.

F. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

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

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

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

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

General overview of the alleged Subsidy Programs

F.1. Submissions made by domestic industry

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

- i. Response of Xinyi Solar cannot be accepted, as they have not provided the information of their related company situated in Malaysia namely Xinyi Smart. Domestic Industry has further submitted that unless the data of Xinyi Smart is examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Xinyi Solar.
- ii. Exporters have stated "not applicable" on most of the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe it would not have benefited under program. Thus, either the company should show absence of eligibility or must demonstrate why it has not availed benefit that is available under the program.
- iii. Exporters from Malaysia have only responded with respect to three programs and haven't provided even a single submission for the rest of the 15+ programs alleged by the petitioners.
- iv. The response filed by the Government of Malaysia is contradictory to the response filed by Exporters. The Government of Malaysia has stated that they are providing subsidy on gas. However, exporters denied of having any knowledge of any such subsidy.

F.2. Submissions made by other interested parties

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

- v. Article 11.3 of the SCM Agreement requires an investigating authority to review the accuracy and adequacy of the evidence provided in a petition in order to determine whether it is "sufficient" to justify the initiation of an investigation.
- vi. It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable. Further, the petitioner could

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

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

F.3. Calculation Methodology

31. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology of determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.
32. Further, the Authority has determined countervailability of any admissible subsidy only once under a countervailable programme and not to undertake a double countervailability

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

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

a. Submission of the Domestic Industry

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

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

b. Submission by Government of Malaysia/ other interested parties

35. Prior to the Asian Financial Crisis of 1997-98, the gas price to downstream consumers in Malaysia was based on market value. Contractually, gas prices were linked to a substitute petroleum product. As part of the overall stimulus and recovery package implemented by the Government in response to the crisis, domestic gas prices were subsequently regulated. In October 2002, the Government began regulating the gas pricing for industrial sector where the gas prices for industrial sector were lower than the market price.
36. The price adjustments for industrial sector experienced eleven cycles of price revisions since 2014, with an increase of RM 1.50/million British thermal unit (MMBtu) every six months. As of March 2019, the average gas tariff for industrial sector was RM 32.92/MMBtu. The regulated gas price was expected to reach market price in 2020. In that note, the current regulated gas price is slightly lower than the market price.
37. Currently, there are two categories of gas prices in Malaysia that are collectively referred to as the two-tiered pricing mechanism, namely regulated gas price and market-based LNG-indexed price. Under the regulated gas price regime, which only applies to customers with pre-existing contracts, the Government regulates the price of the gas supplied by PETRONAS and Gas Malaysia Berhad (GMB). On the other hand, LNG indexed pricing is applicable for all new volumes, including additional volumes from customers with pre-existing contracts.
38. In addition, the government has also prescribed the Incentive Based Regulation (IBR) framework which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge.
39. The gas price charged to industrial customers is based on tariff category. All the customers in the same tariff category will be imposed the same price.
40. Since this program is not available for industrial customers, no application process is applicable.

c. Examination by the Authority

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