

**c. Examination by Authority**

67. Authority notes that the program provides for capital allowance to write off the total capital expenditure within two years, i.e., an initial allowance of 20 per cent in the first year and an annual allowance of 40 per cent.
68. 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 a promoted activity that qualifies for using this allowance and does not qualify for re-investment allowance on account of expiry of 15 years period of eligibility. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

**(vi) Program No. 6: Double deduction for promotion of Malaysian brand**

**a. Submission by Petitioners**

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

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

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

70. 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.
71. No changes are anticipated to the program.

**c. Examination by the Authority**

72. 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.
73. 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 an enterprise that incurs expenses on advertising Malaysian brand. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

**(vii) Program No. 7: Drawback on Import duty, Sales tax and Excise duty**

**a. Submission by petitioners**

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

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

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

75. 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 the Authority**

76. 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. It is however, noted that the Government of Malaysia has not indicated the mechanism of providing duty drawback.
77. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

**(viii) Program No. 8: Sales Tax Exemption**

**a. Submission by the Domestic Industry**



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

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

79. The program provides exemption from payment of sales tax on importation and purchase of locally manufactured goods under Sales Tax (Person Exempted from Payment of Tax) Order 2018. Exemptions are classified into three (3) schedules.

**c. Examination by Authority**

80. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, to persons or manufacturers who meet the eligibility criteria and conditions. This exemption is on import of plant and machinery and also on sales of subject goods in the domestic market. The benefit is in the form of exemption of Sales tax to the exporters which is otherwise due. The program is also specific because it is available to certain enterprise who meet the eligibility criteria. Therefore, this program is noted to be countervailable.

**(ix) Program No. 9: Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities**

**a. Submission by Domestic Industry**

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

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

82. 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.

83. 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).

84. 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 the Authority**

85. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by the Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semifinished products for outsourcing manufacturing activities. Raw materials which are used in the production of the exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption.

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

**(x) Program No. 10: Exemption from Import Duty and Sales Tax on Spares and Consumables**

**a. Submission by the Domestic Industry**

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

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

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

**c. Examination by the Authority**

89. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on spares and consumables. The program is



administered by Malaysian Investment Development Authority (MIDA). The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is subject to fulfilment of certain criteria.

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

**(xi) Program No. 11: Exemption from Import Duty and Sales Tax on Machinery and Equipment**

**a. Submission by the Domestic Industry**

91. The Domestic Industry has 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**

92. 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.

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

**c. Examination by the Authority**

94. 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 the Malaysian Investment Development Authority.

95. The program provides a financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity.

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

**(xii) Program No. 12: Exemption from Import Duty on Raw Materials/Components**

**a. Submission by the Domestic Industry**

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

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

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

**c. Examination by Authority**

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

100. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to an enterprise that uses raw material that are not locally available.

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

**(xiii) Program No. 13: Double Deduction for Promotion of Exports**

**a. Views of the Domestic Industry**

102. The Domestic Industry has submitted that under this program tax deduction is given to exporters for expenses which are aimed at promoting exports and supply of goods overseas, cost of maintaining office overseas for purpose of promotion of services, publicity and advertisements in any media outside Malaysia for promotion of export of services and Page 59 of 139 export market research. As evidence of existence of the program, Petitioners have relied on



- Section 41 of Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- WT/TPR/S/292
- WTO-Notification-G/SCM/N/3/MYS-1995
- US carbon steel wire rod from Malaysia

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

103. 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. There are no anticipated changes to the program. The deduction can be carried forward.
104. 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.
105. In the case of participation in an international trade fair, companies are required to get a letter of approval from MATRADE.

**c. Examination by the Authority**

106. 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.
107. The Authority notes that the program provides for financial contributions 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 an enterprise engaged in export promotion activity.
108. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

**(xiv) Program No. 14: Double Deduction for Promotion of Export Cargo**

**a. Submission by the Domestic Industry**

109. The Domestic Industry has submitted that under this program an exporter may make a deduction from taxable income for premium insurance on export cargo and regional tax deduction for tax insurance. As evidence of existence of the program, Petitioners have relied on

- Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- Tax incentives for Companies
- Other Authority findings

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

110. 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.

111. 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 the Authority**

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

**(xv) Program No. 15: Allowance for Increased Export**

**a. Submission by the Domestic Industry**

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

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

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

114. A resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The



assistance is an exemption from taxable income. The allowance can be carried forward. There are no anticipated changes to the program. Income Tax (Allowance for Increased Exports) Rules 1999 is given in evidence. The Rules contain the following definitions:

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

115. 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.

116. 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**

117. 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.

118. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

**(xi) Program No. 16: Tariff Related Incentive**

**a. Submission by the Domestic Industry**

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

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

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

**c. Examination by the Authority**

121. 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).

122. 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.

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

**(xvii) Program No. 17: Allowance for plants and Machinery**

**a. Submission by petitioners**

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

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

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

126. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment