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ถึง สภาอุตสาหกรรมแห่งประเทศไทย

กรมการค้าต่างประเทศ ขอแจ้งประกาศของหน่วยงาน Directorate General of Trade Remedies (DGTR) กระทรวงพาณิชย์และอุตสาหกรรมสาธารณรัฐอินเดีย ลงวันที่ ๗ กุมภาพันธ์ ๒๕๖๖ เรื่อง ผลการไต่สวนขั้นที่สุด (Final Findings) กรณีสาธารณรัฐอินเดียไต่สวนการอุดหนุนสินค้า Saturated Fatty Alcohols ที่มีแหล่งกำเนิดจากสาธารณรัฐอินโดนีเซีย สหพันธรัฐมาเลเซีย และประเทศไทย โดยกำหนดอากรตอบโต้การอุดหนุน (Countervailing Duty: CVD) สำหรับผู้ผลิต/ผู้ส่งออกจากไทยในอัตราร้อยละ ๓ – ๕ ของราคา ซี ไอ เอฟ เป็นระยะเวลา ๕ ปี ซึ่ง DGTR จะเสนอผลการไต่สวนให้รัฐบาลกลาง (Central Government) พิจารณาการใช้บังคับมาตรการ CVD ต่อไป ทั้งนี้ สามารถดาวน์โหลดประกาศดังกล่าวได้ตาม QR Code ที่แนบ มาเพื่อทราบและแจ้งสมาชิกที่เกี่ยวข้องให้ทราบโดยทั่วกัน

กรมการค้าต่างประเทศ
กระทรวงพาณิชย์
๑๗ กุมภาพันธ์ ๒๕๖๖

กองปกป้องและตอบโต้ทางการค้า
โทร ๐๒ ๕๔๗ ๔๗๓๘
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MINISTRY OF COMMERCE AND NDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION

New Delhi, the 7th February, 2023

FINAL FINDINGS

Sub: Final Findings in Anti-subsidy investigation concerning imports of "Saturated Fatty Alcohol" from Indonesia, Malaysia, and Thailand.

A. BACKGROUND OF THE CASE

F. No.6/18/2021-DGTR.—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:

1. Whereas, M/s. VVF India Ltd. (hereinafter referred as "petitioner" or "applicant"), has filed an application on behalf of the 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 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 "Saturated Fatty Alcohol" with a carbon chain length of C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and their blends (hereinafter also referred to as the "subject goods" or "PUC" or "SFA") from Indonesia, Malaysia and Thailand (hereinafter also referred to as the "subject countries").

2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the petitioner, issued a public notice vide Notification No. 6/18/2021 – DGTR dated 8th February, 2022 published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine the 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, and Thailand 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 consultations were held on 21.01.2022 with the Government of Thailand and on 28.01.2022 with the Government of Indonesia and the Government of Malaysia, through video conferencing on account of Covid-19 pandemic. The consultations were attended by the representatives of the Governments of Indonesia, Malaysia, and Thailand. The concerned Governments denied existence of subsidy programs, however, no evidence for the same was provided.

   c) The Authority issued a public notice dated 8th February, 2022 published in the Gazette of India Extraordinary, initiating countervailing duty/anti-subsidy investigation concerning imports of the subject goods from the subject countries.

   d) The Authority sent a copy of the initiation notification dated 8th February, 2022 to the Embassies of the subject countries, known producers/exporters from the subject countries, known importers/users and the domestic industry as well as other domestic producer as per the addresses made available by the petitioner and requested them to make their views known in writing within the prescribed time limit.

   e) In the initiation notification, the Authority had called for comments on the proposed PCN methodology from the interested parties in order to have fair comparison. The comments of the interested parties were considered and thereafter, vide letter dated 10th March,2022, the interested parties were requested to file their questionnaire response in accordance with the PCN methodology.

   f) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 7(3) of the Rules.

g) The Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries 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.

h) The Authority sent questionnaires to the Governments of the 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.

i) The Authority sent questionnaires to the following known producers/exporters in the subject countries, in accordance with Rule 7(4) of the Rules:

i. PT. Musim Mas, Indonesia

ii. PT. Ecogreen Oleochemicals, Indonesia

iii. PT. Energi Sejatera Mas, Indonesia

iv. PT. Wilmar Nabati, Indonesia

v. Emery Oleochemicals Sdn. Bhd., Malaysia

vi. KLK Oleo, Malaysia

vii. FPG Oleochemicals Sdn Bhd, Malaysia

viii. Thai Fatty Alcohols Co. Ltd., Thailand

j) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response in the prescribed format:

i. PT. Musim Mas, Indonesia

Inter-Continental Oils & Fats Pte Ltd. Singapore

ii. PT. Ecogreen Oleochemicals, Indonesia

Ecogreen Oleochemicals (Singapore) Pte Ltd

iii. PT. Energi Sejatera Mas, Indonesia

Sinarmas Cepsa Pte. Ltd. Singaporea

iv. PT. Wilmar Nabati, Indonesia

Natural Oleochemicals Sdn Bhd, Malaysia

Wilmar Trading Pte Ltd Singapore

v. Emery Oleochemicals (M) Sdn. Bhd., Malaysia

Emery Oleochemicals Rika (M) Sdn Bhd

vi. KLK Oleo, Malaysia

vii. FPG Oleochemicals Sdn Bhd, Malaysia

Procter and Gamble International Operations SA Singapore

viii. Thai Fatty Alcohols Co. Ltd., Thailand

Global Green Chemicals Public Co., Ltd. Thailand

ix. Unilever Asia Private Limited Singapore

k) Pursuant to the initiation notification, apart from the above producers/ exporters from the subject countries, Government of Indonesia, Malaysia, and Thailand have also filed the questionnaire response.

l) 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 Galaxy Surfactants Limited

ii. Viswaat Chemicals Limited

iii. Rhodia Speciality Chemicals India Ltd

iv. Indian Glycols Limited

v. Sterling Auxiliaries Pvt. Ltd

vi. Matangi Industries

vii. Venus Ethoxylates Pvt. Ltd

viii. Gujarat Chemicals

ix. Aarti Surfactants Limited

x. Kusa Chemicals Pvt Ltd

xi. Krishna Antioxidants Pvt. Ltd.

xii. BASF India

m) In response, the following importers/users have responded and filed importer's questionnaire response.

i. Godrej Industries Limited

ii. Galaxy Surfactants Limited

iii. Viswaat Chemicals Limited

iv. Indian Glycols Limited

v. Clariant IGL Specialty Chemicals Pvt. Ltd.,

vi. Hindustan Unilever Ltd.

vii. Aarti Surfactants Limited

n) 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) Indian Surfactant Association

o) Further information was sought from the applicant and the other interested parties to the extent deemed necessary.

p) Due to the ongoing global pandemic of COVID-I9, all interested parties were asked to share the non-confidential versions of all their submissions with the other interested parties via emails. Submissions made by all the interested parties to the extent considered relevant have been taken into account in this final findings.

q) The petition was filed based on the import data obtained from Directorate General of Commercial Intelligence and Statistics (DGCI&S) for the period 2018-19 to May' 2021. The petitioner had submitted that the data for the period June' 2021 to September' 2021 was not provided to them despite repeated requests. Accordingly, the petitioner had extrapolated the data for the period October' 2020 – May' 2021 for submitting data for the Period of investigation, i.e., October' 2020- September' 2021.

r) Request was made by the Authority to the Directorate General of Systems (DGS) 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 considered data obtained from DGCI&S for the period April' 2018 to May' 2021 (corroborated with the DGS data) and DGS data for the period June' 21 to September' 21, for computation of the volume of imports and required analysis after due examination of the transactions.

s) The Non-Injurious Price (NIP) has been worked out based on the cost of production and cost to make & sell the subject goods in India 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.

t) 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 the present final findings.

u) Verification of the information provided by the producers/exporters and Government of 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.

v) The Period of Investigation for the purpose of the present anti-subsidy investigation is from October' 2020 to September, 2021 (12 Months). The injury investigation period has however, been considered as the period

2018-19, 2019-20, 2020-21 and the POI. The overlap of six months between 2020-21 and the POI has been kept in consideration, while conducting the injury analysis.

w) In accordance with Rule 7(6) of the CVD Rules and Trade Notice No. 01/2020 dated, 10th April 2020, the Authority conducted an oral hearing through video conferencing on 7th July, 2022, to provide opportunity to the interested parties to present relevant information orally before the Authority. All the parties attending the oral hearing were advised to file written submissions of the views expressed orally. Non confidential versions of the written submissions were circulated to the interested parties by email, and opportunity was given to them for submitting rejoinder submissions, if any.

x) The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present final findings.

y) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in these final findings.

z) Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

aa) 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.

bb) In accordance with Rule 18 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 22nd September, 2022 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.

cc) The exchange rate adopted by the Authority for the subject investigation is US$1 = ₹74.6

dd) In these 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 "Saturated Fatty Alcohol" a carbon chain length of C 10, Cl2, Cl4, C l6 or C 18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and their blends.

C.1. Submissions made by the other interested parties

5. The submissions made by the exporters, importers, users and other interested parties with regard to the product under consideration and like article, and considered relevant by the Authority, are as follows:

a) The petitioner does not produce pure cuts i.e. C10, C12 and C14, and therefore, the same should be excluded from the scope of the PUC.

b) C12 and its blends are not commercially substitutable with higher cuts (C1618) being manufactured by the petitioner. They have distinct raw materials, production process and end uses.

c) The petitioner is manufacturing C12-14 alcohol from imported distilled fatty acid, which does not involve substantial value addition. The petitioner therefore, cannot be considered as a producer of C1214, and the same should be excluded from the scope of the PUC.

d) C12 and its blends are not commercially substitutable with higher cuts (C1618) being manufactured by the petitioner. They have distinct raw materials, production process and end uses.

e) The petitioner is manufacturing C12-14 alcohol from imported distilled fatty acid, which does not involve substantial value addition. The petitioner therefore, cannot be considered as a producer of C1214, and the same should be excluded from the scope of the PUC.

f) It has also been claimed that C1214 produced by blending pure C12 and C14 has different chemical specification and therefore is not like article to C1214 being imported.

g) Reliance has been placed on the Anti-dumping Final Findings F. No. 14/51/2016-DGAD dated 23.04.2018, wherein C10 (pure) was held to be not a "like article" to the goods produced by the petitioner, for seeking exclusion of pure C10. It has been submitted that since the petitioner does not manufacture C10 in commercial quantity, it should not be included in the scope of the PUC.

h) The petitioner is importing penultimate input i.e., C8-10 Fatty Acid from the subject countries and other countries to produce pure C10. Since they are importing penultimate input, they cannot be considered as domestic industry for that product as per the practice of the DGTR followed in recent investigation

C.2. Submissions made by the Domestic Industry

6. The submissions made by the domestic industry with regard to the 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 "Saturated Fatty Alcohol" (SFA) of Carbon Chain Length C10 to C18 and their blends. The PUC is used mainly as an intermediary product, for further processing into fatty alcohol sulphates, fatty alcohol ethoxylates and fatty alcohol ether sulphates, also called Surfactants.

b) The fatty alcohols are primarily used for the manufacture of surfactants, for personal care, home care, and pharmaceutical and agriculture-related end applications. They are also used in relation to processing of articles of leather, textile, fur, pulp, paper, petroleum products, fine chemicals, rubber products, plastics and fabricated metal products. Other applications include mining, offshore operations, construction work, and as a solvent for degreasing purposes. The PUC is also used as a synthetic intermediate or as anti-freeze and as an emulsifying agent. It also finds use in the production of paints, lubricants, cosmetics, food preparations, etc. The various grades of fatty alcohols can be used inter-changeably. The customer selects the fatty alcohol of a particular carbon chain length, based on its requirement, with regard to viscosity, solubility, foaming properties, etc.

c) That the production of various grades (carbon chain length) of SFA is through fractional distillation of CPKO. CPKO inherently consists of various carbon chain length, which are fractionated depending on the desired grade (carbon chain length) that the producer wants to extract.

d) The petitioner produces high quality natural saturated fatty alcohols under the registered trade name Vegarol. It has the capacity to manufacture entire range of fatty alcohols from short chain Vegarol C10 (Decyl alcohol) to Vegarol C22 (Behenyl Alcohol), and the decision as to which grade is to be manufactured is taken based on the customer preferences and the demand.

e) The majority of imports into India are of C1214/C1216 grade, as the said grade has the highest demand in India. In contrast, presently there is a very limited demand for pure cut C12 and C14 grades. The pure cuts C12 and C14 are interchangeable with the blend C1214.

f) In one of the production routes opted by the petitioner, C1214 grade is manufactured using split fatty acid. Split fatty acid (SCPKO) is produced by splitting palm kernel oil. The petitioner carries out fractional distillation of SCPKO to produce distilled fatty acid of the desired composition (i.e., C1214 fatty acid, in the instant case). The C1214 fatty acid is then converted to get C1214 fatty alcohol by using wax ester hydrogenolysis technology. As an alternative, C1214 blend can also be produced by producing pure C12 and C14 grades first and then blending them subsequently through simple process of mixing, without incurring any further cost.

g) The choice of manufacturing pure C12 and C14 fatty alcohols and then blending them or directly manufacturing the C1214 grade is dynamic and is decided based on the prevailing factors of market demand and margins. Moreover, in terms of end use, the grades C12, C14 pure cuts and their blend are interchangeable. Further, it is both technically and commercially feasible to simply blend the two pure cuts in a tank, with no additional cost. As such, exclusion of pure C12 and C14 from the product under consideration would defeat the entire purpose of levy of the duty on the PUC. The Petitioner, in this regard, also relies upon the Final Findings F. No. 14/51/2016-DGAD dated 23.04.2018, in the previous anti dumping investigation concerning imports of the subject goods, where the claim for exclusion of pure grade C12 and C14 was rejected by the Authority.

h) The petitioner had also submitted that it had produced and sold grade C10 in commercial quantities, therefore, the same cannot be excluded.

C.3. <u>Examination by the Authority</u>

7. The Authority has noted submissions made by the interested parties with regard to the 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 the submissions made by the various interested parties and the examination of import data, the Authority holds that the product under consideration in the present investigation is "**Saturated Fatty Alcohol of carbon chain length C10 to C18 and blends thereof"**. The product under consideration includes pure C10, C12, C14, C16 and C18, and their blends. The product under consideration is classifiable under CTH 2905 17 (pure cuts) and 3823 70 (blends). Tariff classification is indicative only and not binding on the scope of the product under consideration.

b) As regards the claim for exclusion of pure C12 and C14 on the ground that same was same was not manufactured by the domestic industry, it is noted that this issue has been examined in depth in the Anti-dumping Final Findings F. No. 14/51/2016-DGAD dated 23.04.2018 conducted in respect of the subject goods, wherein it was held as under:

> *"As regards exclusion of pure form of C12 and C14 alcohols, the Authority finds force in the argument of the domestic industry that it has produced and sold C12C14 alcohol. In fact, C12C14 has the most demand in India. When the domestic industry has sold the blended form of these alcohols, the pure forms cannot be excluded, as such exclusion would defeat the very purpose of the duty……".*

The above findings of the Authority have been confirmed by the Hon'ble CESTAT, New Delhi *vide* Final Order No. 50010-50013/2023 dated 06.01.2023, wherein it was observed as under:

> *"34. There is, therefore, no error in the finding recorded by the designated authority in including pure cuts C12 and C14 in the product under consideration."*

c) The petitioner had, during on-site verification, demonstrated that C1214 can be produced by a simple process of mixing pure C12 and C14, without incurring any additional cost. It is noted that the decision whether to manufacture C12-14 blend directly or by blending pure C12 and C14, is decided depending on the market demand and customer preferences. If duty is imposed on imports of C1214 blend only and not on pure C12 and C14, it would be possible to circumvent the duty by importing pure cuts C12 and C14 instead of C1214 blend, thereby defeating the very purpose of the imposition of duty. The Authority accordingly notes that pure C12, C14 and their blends are interchangeable and, therefore, cannot be excluded from the scope of the PUC.

d) Further, the Authority notes that the claim of the interested parties that C1214 produced by blending pure C12 and C14 has a different chemical specification and therefore, is not a like product to C1214 being imported, is devoid of any merit. The interested party has submitted that the technical specification of imported C1214 which shows that it has pure C12 in the range of 70-77%, and pure C14 in the range of 21-30%, and has traces of other pure cuts (upto maximum of 2%) of other carbon chain length C8 & lower, C10 or C16 or above, cumulatively. In this regard, the Authority, at the outset, notes that the claim of the interested parties so far has only been that blending of C12 and C14 (pure cuts) to manufacture C1214 blend is not technically or commercially feasible. However, no evidence has been placed on record to support such a claim. It is only at this belated penultimate stage that a new argument is being made that C1214 produced by blending C12 and C14 (pure cuts) would have a different chemical specification as compared to the C1214 being imported into India. Though a chemical specification of C1214 (purportedly as being imported) has been provided, no such specification has been provided for C1214 (produced by blending C12 and C14). As such, the bald submissions made without any supporting evidence cannot be accepted.

e) Notwithstanding the above, the Authority notes that the claim of the interested party is that the C1214 being imported into India has traces of SFA of other carbon chain length, which would not be there in C1214 produced by blending pure C12 and C14. In this regard, the Authority notes that, as is the case with most refinery products, any pure grade would inherently have certain residual components. The investigation has shown that even the pure grades manufactured by the domestic industry, such as C1698 or C1898, there is upto 2% trace of SFA of other carbon chain lengths present and hence same was being qualified by the domestic industry as C1698, i.e. C16 – of 98% purity. It is noted that the presence of these traces of SFA of different carbon chain length does not have any significant impact on the quality of the product. Moreover, it is noted that even C1214 produced by blending pure C12 and pure C14 would inherently have traces of other carbon chain length present in the said pure grades.

f) Further, as regards the claim that the petitioner only does toll manufacturing of C10 and C1214 alcohol, wherein it imports C810 and C1214 fatty acid and then merely carries out the conversion of such fatty acids into C10 and C1214 alcohol respectively, the Authority notes that the said averment is not factually correct. The petitioner has provided evidence of manufacture of C1214 from base raw materials i.e., Palm Kernel Oil sources as well. It is noted that C10 is also generated during the production of C1214. As such, the claim that the petitioner is producing C10 or C1214 only from imported fatty acid is rejected. In any case, as the

petitioner has produced and sold C10 as well as C1214 in commercial quantities, their exclusion is not warranted.

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 the scope of domestic industry & standing are as follows:

   a) There are only two producers of the subject goods in India, viz. VVF (India) Ltd. (the petitioner herein) and Godrej Industries Ltd. ("Godrej").

   b) The petitioner accounts for more than 65% of the total Indian production and therefore has the requisite standing to file the present application as "domestic industry", in terms of Rule 2(b) of the CVD Rules.

   c) In any case, Godrej has been importing the PUC from the subject countries since the past few years. As such, in terms of Rule 2(b) it ought to be excluded from the determination of the petitioner's standing as domestic industry. Once Godrej is excluded, the petitioner would represent the entire eligible domestic production of the PUC in India, and therefore, has standing as a domestic industry.

   d) The petitioner has neither imported the subject goods nor is related to any of the importer or exporter of the subject goods

D.2. Submission of other interested parties

9. The standing of the petitioner as "domestic industry" has not been objected to by the interested parties.

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 is filed by M/s. VVF India Ltd. There are two producers of the subject goods in India, namely, M/s. VVF India Ltd. and M/s Godrej Industries Ltd. The Authority notes that Godrej has imported the subject goods from the subject countries in significant quantities during the period of investigation and thus becomes ineligible to be a part of the domestic Industry. Therefore, being the sole eligible Indian producer, VVF India Ltd. has the standing of the domestic industry. In any case, the petitioner accounts for approximately 65% of the total Indian production. Therefore, even after the inclusion of the production of the subject goods by Godrej Industries Ltd, the petitioner M/s VVF India Ltd. accounts for major share of the Indian production and therefore, for the purpose of this investigation, it satisfies the standing requirement and constitutes the domestic industry in terms of Rule 2(b) and Rule 5(3) of the Rules, and the Authority holds that M/s VVF India Ltd. constitutes the domestic industry.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by the Domestic Industry

12. The following submissions have been made by the domestic industry with regard to confidentiality issues:

   a) Excessive confidentiality has been claimed by the exporters and governments of the subject countries.

   b) The producers/exporters and the governments have not followed the instructions issued by the Authority while filing the questionnaires.

   c) The exporters have not provided relevant data in even indexed form.

   d) 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 the other interested parties

13. The following submissions have been made by the 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 the 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 streamlining the investigation process.

c) The petitioner has claimed excessive confidentiality and filed an incomplete petition.

d) The petitioner has failed to provide sufficient evidence to substantiate the claims of injuries suffered in terms of sales volume and value, captive consumption and trend of costing data has not been provided.

e) The petitioner has 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 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.

g) The petition does not contain necessary information, and therefore, the initiation of the present investigation is not valid.

E.3. <u>Examination by the Authority</u>

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

"Rule 8: 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.

15. A list of all the interested parties was uploaded on the DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to the ongoing COVID19 global pandemic

16. Submissions made by the domestic industry and the other opposing interested parties with regard to confidentiality to the extent considered relevant were examined by the Authority and addressed accordingly. 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 the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

Calculation Methodology

17. 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. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

18. The petition filed by the domestic industry provided *prima facie* evidence of the existence of countervailable subsidies in the subject countries to initiate the instant investigation. Government of Indonesia, Malaysia, and Thailand were invited 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 consultations were held on 21.01.2022 with Government of Thailand and on 28.01.2022 with Government of Indonesia and Government of Malaysia. The producers and exporters from Indonesia, Malaysia 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. Further information, as deemed relevant, was called from the interested parties. The verification of information submitted by the governments of subject countries was conducted on 07.09.2022.

19. The following producers/exporters from Indonesia, Malaysia, and Thailand in addition to the Governments of Indonesia, Malaysia, and Thailand have filed questionnaire responses.

i. PT Wilmar Nabati Indonesia

Natural Oleochemicals Sdn Bhd, Malaysia

Wilmar Trading Pte Ltd Singapore

ii. PT Musim Mas Indonesia

Inter-Continental Oils & Fats Pte Ltd. Singapore

iii. PT. Ecogreen Oleochemicals, Indonesia

Ecogreen Oleochemicals (Singapore) Pte Ltd

iv. Pt. Energi Sejahtera Mas Indonesia

Sinarmas Cepsa Pte. Ltd. Singapore

v. KL-Kepong Oleomas Sdn Bhd

vi. Emery Oleochemicals (M) Sdn Bhd

Emery Oleochemicals Rika (M) Sdn. Bhd. Exporter Questionnaire

vii. FPG Oleochemicals Sdn Bhd.

Procter & Gamble International Operations SA Singapore

viii. Thai Fatty Alcohols Co. Ltd.

Global Green Chemicals Public Co., Ltd. Thailand

ix. Unilever Asia Private Limited Singapore

General overview of the alleged Subsidy Programs

F.1. Submissions made by the Domestic Industry

20. 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 the 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.

ii. Apropos the subsidy given by the provision of raw material at Less than Adequate remuneration (LTAR), the subject countries as well as their exporters have merely contended that the imposition of export duties is WTO compliant and therefore, not a subsidy. The interested parties have failed to appreciate that the petitioner's allegation is not that the export duties imposed on the raw material is a subsidy, but that the provision of "raw material", such as CPKO at less than world market price is a subsidy. The object of imposition of export duties by the Government of Indonesia and Malaysia is admittedly to ensure supply of raw material to their domestic producers at below world market prices. Moreover, the said governments directly participate in the market and determine the price of raw material. As such, the subject governments have entrusted or directed the raw material suppliers to provide raw material to the local manufacturers at LTAR.

iii. In respect of schemes granting exemption from import duties and taxes, the governments of subject countries and their exporters have merely contended that the said exemption was for manufacturing goods for exports, and therefore, not countervailable as per the footnote 1 to Article 1 of Agreement on Subsidy and Countervailing Measure ("SCM Agreement"). However, the interested parties have failed for provide any evidence of there being a verification mechanism to ensure that the exemption was not in excess of that required for the production of goods for export. In absence of such evidence being brought on record, the entire exemption availed by the interested parties is countervailable.

iv. Most of the schemes alleged in the petition, other than provision of raw material at LTAR, has been countervailed by the Authority in previous investigations. The interested parties have not brought any evidence on record to suggest that there has been any change in the said schemes. As such, in the absence of any evidence to the contrary, benefit availed under such schemes ought to be countervailed.

F.2. Submissions made by the other interested parties

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

i. Article 11.3 of the SCM Agreement requires the 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. The petitioner has failed to provide such "sufficient evidence". The present initiation therefore is not compliant with the SCM Agreement.

ii. As regards the scheme relating to provision of primary raw material (CPKO) at LTAR, the petitioner has not substantiated what is the financial contribution that has been made; which is the public or government body that is administering the said program; and what are the legal or official instruments under which the said program has been made.

iii. The subject countries have merely exercised its sovereign function of imposition of duties and taxes on the export of CPKO. Levy of an export tax or any other form of duty or charges on exports is a legitimate tool afforded to each WTO member under the GATT, 1995.

iv. There is no entrustment or direction so as to warrant finding of "financial contribution" by the concerned governments. The exporters in this regard have, *inter alia,* relied upon the decision of WTO Panel in ***United States – Measures Treating Exports Restraints as Subsidies*** **(US Export Restraint Measures),** to submit that merely because application of an export restraint measure results in, or has the 'effects of', increase in domestic supply of any goods, it cannot be inferred that the government has 'entrusted' or 'directed' a private body to supply such goods at a subsidised price in the domestic market.

v. It has also been claimed by the exporters that even if the Authority considers imposition of export restraints as a subsidy, the appropriate benchmark for computation of benefit to the local producers would be the FOB export price of raw material after excluding export tax and/or levy.

22. The response of the interested parties in respect of each subsidy scheme is summarised below and examined under their respective heads.

F.3. Examination of the Subsidy programs alleged by the Petitioner

Indonesia

23. The Authority has examined the following programs provided by the Government of Indonesia:

i. Program no. 1-Provision of Raw material for Less than Adequate remuneration ("LTAR")

ii. Program no. 2-Provision of Coal and Electricity at LTAR

iii. Program no. 3- Pioneer Industry Status

iv. Program No. 4- Schemes related to Special Economic Zones

v. Program No. 5- Export financing and guarantees on preferential terms by the Indonesian Eximbank and Asuransi Asei

vi. Program No. 6(a)- Bonded Zone

vii. Program No. 6 (d) & (e)- Import duty exemption and drawback (KITE)

viii. Program No. 7 - Free Trade Zone

ix. Program No. 8 - Income tax benefit for listed Investments

x. Program No. 9- Covid-19 relief packages

xi. Program No. 10- Provision of Natural Gas at LTAR

xii. Program No. 11 - Preferential lending rates

(i) Program 1: Provision of Raw material for Less than Adequate remuneration ("LTAR")

a. Submission by the Petitioner

24. The petitioner has submitted that Crude Palm Kernel Oil (including its derivatives such as Refined Bleached Deodorized Palm Kernel Oil (RBDPKO), Split CPKO etc., hereinafter collectively referred as "CPKO"), is the primary raw material used for manufacture of the subject goods and accounts for more than 70% of the total cost of production. The local price at which CPKO is made available in Indonesia is distorted because of direct intervention by the Government of Indonesia ("GOI") in the market. In particular, the petitioner has indicated that the GOI has implemented a policy of imposing high export tax and levy on CPKO, to ensure that the raw material is available to the Indonesian domestic producers at below market price. It has been claimed by the petitioner that the Government of Indonesia, through provision of principal raw material at LTAR has provided subsidy in the form of "financial contribution". In alternate, the petitioner has claimed that provision of raw material at LTAR also falls under the purview of "price or income support" as the very purpose of the imposition of export restraints is to ensure supply of raw material at LTAR, and therefore is a subsidy as defined under Section 9 of the Customs Tariff Act, 1975.

25. Indonesia along with Malaysia is the biggest supplier of CPKO, catering to more than 90% of the world's demand of CPKO. Indonesia alone accounts for more than 65% of world's CPKO production, and therefore, its policies have a major impact on global market price of CPKO.

26. The petitioner had submitted that the GOI has imposed export tax and export levy on export of CPKO and its derivatives to ensure their availability to its domestic downstream producers (such as SFA producers) at below world market prices. It has contended that the export tax and levy have increased significantly from December' 2020 onwards. Consequently, the global price of the raw material has also increased significantly. However, the local price of raw material in Indonesia has remained significantly lower than global prices.

27. It has also been claimed by the petitioner that the GOI through a wholly owned body PT Perkebunan Nusantara ("**PTPN**"), a CPO/CPKO producer, directly participates in the market and acts as a price setter for the sale and purchases of CPKO and its derivatives in Indonesia. PTPN sets the domestic prices of the feedstock, and all local sales of CPKO in Indonesia are invariably at prices decided by PTPN or at lesser price, which is significantly lower than the world market price. It has therefore been submitted that the cost of raw material is heavily subsidised in Indonesia. The petitioner has relied upon the following documents in support of its allegations:

i. Amending Regulation No. 128/PMK.011/2011

ii. Presidential Regulation No. 61/2015

iii. WTO Trade Policy review of Indonesia, 2020

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

28. GOI has submitted that imposition of export tax/ levy is a sovereign function of the Government. Moreover, there is no evidence of oversupply of CPKO in Indonesia consequent to increase in export taxes, as it is fully absorbed in domestic and export market.

29. The application of export tax and levy on CPKO is to secure Indonesian public interest through ensuring availability of CPKO for local industries, and has nothing to do with the pricing policy of CPKO in Indonesia.

30. Export tax and levy applied by Indonesia for export of CPKO do not render any financial contribution nor does it constitute any government entrusted fund within the meaning of the WTO Agreement on Subsidy and Countervailing Measures (SCM Agreement/ASCM).

31. It is impossible for PTPN to control the CPKO's price in Indonesia as it holds only 3% of the total CPKO production in Indonesia. Moreover, CPKO in Indonesia is sold based on fair and transparent auction and that the rest of CPKO producers i.e., 97% of the total CPKO production are free to determine their price based on its commercial decision having in mind the production cost and the competition among them.

32. According to them, there is no evidence that PTPN sets the price of the raw material. The tender price of PTPN is set considering various factors. PTPN sells to the highest bidder and the prices that PTPN can get in public tenders will not only depend on the price at which PTPN would like to sell, but also the price that purchasers are willing to pay.

33. The exporters have also claimed that the benefit computation, if at all, has to be made considering the export price of CPKO after excluding export duty and levy imposed on such exports.

c. Examination by Authority

34. The Authority notes that CPKO is the primary raw material used for manufacture of subject goods being exported to India. It has been claimed by the petitioner that the price of CPKO is distorted in Indonesia on account of government intervention. In particular, the petitioner has claimed that the raw material price distortion is a direct consequence of imposition of export taxes and export levy on exports of CPKO and its derivatives. It has been claimed that by imposing high export taxes and levies on CPKO, the GOI has a depressing effect on the domestic CPKO price in Indonesia, conferring a discernible benefit to the producers of subject goods who use CPKO as their primary raw material. Further, it has been submitted that through imposition of taxes on exports of CPKO, GOI encourages private CPKO producers to sell their products to Indonesian fatty alcohol producers at below world market price. In addition, the petitioner has alleged that the GOI directly interferes in the market through a state body, PTPN, which sets the domestic market price of CPKO. By consequence, the petitioner has alleged that the GOI entrusts or directs Indonesian palm oil producers to provide CPKO to SFA producers for less than adequate remuneration.

35. The Authority notes that CPKO alone accounts for about 70% of the cost of production of the subject goods. Indonesia and Malaysia together cater to almost 90% of the global demand of CPKO, with Indonesia capturing the bigger share. As such, these countries being almost exclusive supplier of the raw material dictate the world market price of CPKO and its derivatives.

36. The Authority further notes that the GOI has implemented a systematic and structured export tariff system for imposing export tax on Palm Oil, Palm Kernel Oil and their derivatives. The export tax on these products was first implemented in 1994. Since its introduction, it has been amended a number of times and was substantially restructured in in 2011. This new tax structure provided for a wider duty difference between crude and refined oil, with a view to encourage more refining and value addition onshore. The legislation specifically stated that '*in the context of supporting the downstream efforts of the palm oil industry to increase added value downstream it is necessary to restructure export duty tariff'.*

37. The export tax on CPKO during the POI was regulated by Decree No 166/PMK.010/2020, which has amended Regulation PMK No. 13/PMK.010/2017. It is noted that in addition to the aforesaid export tax, the export of CPKO and their derivative are also subject to export levy under Regulation PMK 57/PMK.05/2020 as amended by PMK 76/PMK.05/2021. Under the amended regulation, export of CPKO is subject to export levy in the range of USD 55-USD 175 per ton, depending on the reference export price of CPKO. As per the Questionnaire response filed by GOI, the reference export price of CPKO is a weighted price computed on the (i) average CPKO price for CIF Rotterdam, (ii) average CPKO price of Malaysian Bursa and (iii) average CPKO price of Indonesia Bursa, with each accounting for 20%, 20% and 60% of weight respectively. The reference price so set, then determines the export tax and levy applicable for the month. As provided in Article 5 (1) of PMK No. 13/PMK.010/2017, the determination of which of the twelve columns in the tariff schedules applies is dependent on the reference export price of the product involved. It has been submitted by GOI that the export taxes are progressive in nature, i.e., higher export prices command higher tariff rates.

38. From the above, the Authority notes that the GOI has linked the export tax and levy clearly to a "reference price", which is based on the international price of CPKO. These export tax and levy are not related to any other concerns, such as public interest, production levels or environmental impact.

39. It is noted that though the Indonesian export tax regime has undergone several changes since 2011, however, the purpose and object of imposition of export taxes continue to be for promoting downstream industry of domestically processed products. In this context, it is noted that the WTO Trade Policy Review of Indonesia, 2020, had also concluded that the purpose for imposition of export taxes (including export levy) by the Government of Indonesia is for *fostering the development of downstream processing facilities, ensuring domestic supply of intermediate inputs at below world market prices.* Thus, evidently, the purpose and object behind imposition of export taxes by GOI is to ensure availability of raw material to its domestic industries.

40. It is also noted that the GOI in addition to imposition of export taxes, also directly participates in sale and purchase of the raw material in Indonesian market. The state-owned company PTPN, through its marketing arm "KPBN", conducts open auction to sell its CPKO at a "price idea". The tender price or the price idea set by PTPN is a public price, known to all market operators. It was found that the contracts between private companies also use the "price idea" set by PTPN. The investigation also revealed that even the contracts between related parties are broadly on the price set by PTPN. It has been observed that the price paid by the responding exporter to the CPKO supplier were lower or in the same range as PTPN price. Therefore, it has been found that the transactions concerning sale and purchase of CPKO and derivatives in Indonesia happen at or around the "price idea" set by PTPN. It is also noted that this "price idea" is substantially below the world market price of CPKO, such as export price from Indonesia or CIF Rotterdam prices (adjusted for freight and insurance). For the purpose of the

present final findings, the Authority has considered average CPKO CIF Rotterdam prices (adjusted for freight and insurance) as representative of undistorted market price of CPKO, and has been referred herein below as "world market price".

Financial contribution by GOI

41. Explanation to Section 9(1) of the Act read with Article 1.1 of the Agreement on Subsidy and Countervailing Measures ("ASCM") provides that a "subsidy" is deemed to exist if there is "financial contribution" by the government or any public body in the exporting or producing country or territory, or when such government grants or maintains any form of "income or price support", and a benefit is thereby conferred. Financial contribution by a government or public body is said to exist where:

i. Government practice involves a direct (or potential) transfer of funds,

ii. Government revenue that is otherwise due is foregone or not collected,

iii. Provision of goods or services, other than general infrastructure, or purchase of goods by Government, or

iv. Government makes a payment to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clause (i) to (iii) above.

42. "Financial contribution" by a government or public body is an essential component of a "subsidy" under the Section 9. A financial contribution, however, need not always be a direct contribution by the government but can also exist where a government indirectly, through its policy measures, entrusts or directs private parties to supply goods (raw material) at below world market prices. The Authority had in several past investigations, such as in anti-subsidy investigation concerning imports of "Continuous Cast Copper Wire Rods" *interalia* from Indonesia, Malaysia, Thailand and Vietnam, and "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" from China, held that a countervailable subsidy in the form of "financial contribution" exists where the object and intent behind imposition of export restraints on raw material is to ensure availability of such raw material to downstream industries at LTAR.

43. The Authority notes that the export tax and export levy system was devised and enacted by the GOI precisely to support the downstream industries which use CPKO, such as producers of the subject goods. Through imposition of these export restraints, the GOI puts the suppliers of CPKO in an economically irrational situation, which induces them to sell their goods domestically for a lower price than they could obtain in absence of these export restraints. GOI effectively restricts the freedom of action of CPKO suppliers by *de facto* limiting their business decision at what price to sell their product and where. Absent these measures, the CPKO suppliers acting rationally would have tried to sell at competitive rate in international market and maximize their profits.

44. Further, Indonesia being one of the two main suppliers and price setter of CPKO, these export restraints also achieve the purpose of ensuring that the price at which CPKO is made available in Indonesia is substantially below world market price. It is thus, evident that through GOI's policy measures, CPKO is being provided at less than adequate remuneration to Indonesian producers of SFA. The Authority notes that the lower raw material prices paid by the Indonesian SFA producers is not incidental but the direct and intended result of the measures designed by the GOI.

45. The GOI and also responding exporters have relied upon the decision of *WTO Panel in US – Export Restraints* to argue that mere imposition of "export restraints" is not a subsidy, as there is no "financial contribution" by the Government. In the same vein, it has been argued that even if GOI's export tax policy results in lowering of domestic price of CPKO, it is not a "financial contribution" as there is no entrustment or direction by the GOI to private CPKO suppliers to supply CPKO to its local SFA producers at less than adequate remuneration. It has been submitted that imposition of export tax is a sovereign exercise of power and therefore, cannot be considered as a subsidy. They have also relied on various other WTO case-laws to substantiate their argument that export restraints are not countervailable subsidies.

46. As regards the first leg of the said argument, the Authority notes that it does not consider imposition of export restraints *per se* to be a countervailable subsidy. However, the investigation has revealed that the imposition of export taxes and export levies are in fact a means or a tool being used by the GOI to provide CPKO for less than adequate to their domestic downstream industry. It is the provision of CPKO at less than adequate remuneration, through a systematic and targeted imposition of export tax and export levies, which has been found to be countervailable.

47. The Authority notes that the determination of whether there is a 'financial contribution' under Article 1.1(a)(1) of the ASCM should focus on the nature of the government action, rather than on the effects or the results of the government's action. In other words, a government's rights to interfere in its domestic market in regular exercise of its sovereign and regulatory powers cannot be categorised as a "subsidy", even if such interference results in conferring of a benefit to its domestic producers. In this sense, a government may legitimately impose export

taxes for the purpose of generating revenue. In contrast, there is no such legitimate imposition of export restrictions when it becomes evident that the use of such an instrument together with other mechanisms is primarily to keep commodities in the domestic market, and to force suppliers to sell below world market prices. What is relevant to be examined is whether the government's policy is engineered in such a way that it is focuses on supporting a particular industry or set of industries to boost their competitiveness in domestic and international markets. Thus, the nature of the government action, including its context, object and purpose, is relevant in assessing whether it would fall under the purview of 'financial contribution'.

48. As noted above, the scheme of export tax and levy implemented by GOI is structured in a way that it ensures availability of CPKO to the Indonesian downstream industries at LTAR, and is not a revenue generation measure. In fact, the purpose of restructuring of export taxes in 2011 itself was to enhance the competitiveness of the domestic processing industries in Indonesia. A presentation given by Dakut Dr. Choo Yuen May (the then Director General, Malaysian Palm Oil Control Board, Ministry of Plantation Industries and Commodities) on 2nd Feb, 2016[1], also records that the purpose restructuring of export taxes by Indonesia was to ensure availability of cheaper raw material to its downstream industries and to increase the competitiveness of such downstream industries. Thus, the Authority finds that the nature, context and object of the GOI's action is such that it squarely falls within the purview of "financial contribution".

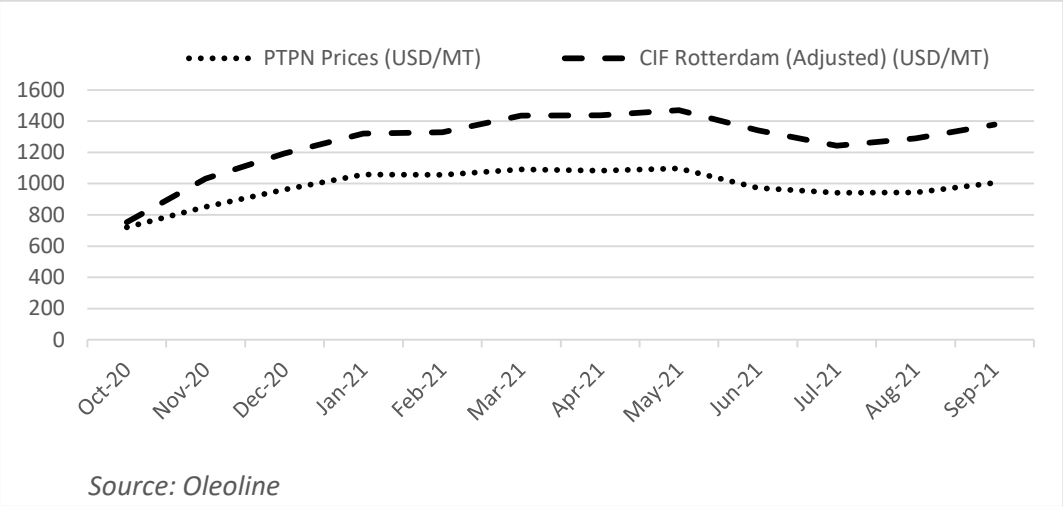
49. As regards the second leg of the argument advanced, it needs to be seen whether through the above action, the GOI has entrusted or directed the private suppliers of CPKO, to provide goods at LTAR to their SFA producers. In this context, the interested parties have relied on the WTO panel decision in *US – Export Restraints* wherein it was ruled that the ordinary meaning of the two words 'entrust' and 'direct' in Article 1.1(a)(1)(iv) of the ASCM require that the action of the government must contain a notion of delegation (in the case of entrustment) or command (in the case of direction). It rejected the US 'cause-and-effect argument' and asked for an explicit and affirmative action of delegation or command. However, it is noted that in the subsequent case of ***United States-Countervailing Duty Investigation regarding Dynamic Random Access Memory Semiconductors (DRAMS) from Korea,*** the Appellate Body disagreeing with Panel in US- Export restraints, held that the replacement of the words 'entrusts' and 'directs' by 'delegation' and 'command' is too rigid as a standard. It was held that the panel's interpretation of "entrustment" or "direction" in US- Export restraints case was unduly narrow.

50. On a perusal of the Appellate Body report, the Authority notes that for establishing "entrustment" or "direction", there must be some affirmative action or role by the government. It is noted that while ordinarily, one would expect entrustment or direction on a private body to involve some form of threat or inducement, which could, in turn, serve as evidence of such entrustment or direction, however, in the present day, such explicit tools may rarely be used, as governments have other means at their disposal to exercise authority over a private body some of which may be '*more subtle'* than a command or may not involve the same degree of compulsion. In such cases, entrustment and direction may be established by probative and compelling circumstantial evidence. There must, however, be 'a demonstrable link' between the government act and the conduct of the private body. The Appellate Body had in fact held that in some circumstances, 'guidance' by a government can also constitute a direction.

51. As per the said Appellate Body report, what needs to be examined is whether there is a demonstrable link between the measure at issue, and the conduct of the private bodies, i.e. whether there is any connection between imposition of export tax and levy by the GOI, and the price at which CPKO is being supplied locally by the private suppliers. In this regard, notwithstanding the fact that GOI directly participates in the market through its state body PTPN, which effectively acts as a CPKO price setter in the domestic market, the Authority notes that the imposition of export taxes with the objective of making raw material price cheaper in the domestic market, itself is a sufficient evidence of entrustment or direction. Further, it is noted that the low domestic price of CPKO in Indonesia is not merely a side-effect of the export restraints, but is in fact the very object and the intended consequence of imposition of these export restraints.

52. Moreover, the investigation has revealed that in practice, the export tax and levy have achieved their intended objective of depressing the domestic CPKO prices. It has been found that there is a significant price difference between the CPKO purchase price of the participating exporters and the world market price of CPKO. The Authority, therefore, notes that there is a demonstrable link between the export restraints imposed and the conduct of the private bodies. Thus, the examination of facts clearly show that imposition of export tariffs has in fact depressed the domestic prices of CPKO. This is also a clear indictor of the fact that the GOI, through its policy measures, has put the suppliers of CPKO in an economically irrational situation to sell in the domestic market at lower prices.

[1] http://www.mpoc.org.my/upload/Domestic-Measures-to-Enhance-the-Competitiveness-of-the-Palm-Oil-Industry.pdf



53. Additionally, the investigation has shown that GOI, through PTPN, directly participates in the market and sets the domestic price of the raw material. The price set by PTPN is distorted and below world market prices.

54. Given these facts, the Authority notes that the GOI through imposing of export restraints in the form of export tax and levy, has "entrusted" and "directed" private CPKO suppliers to supply raw material (CPKO and derivatives) to the downstream manufacturers at below world market price, i.e., at LTAR, resulting in a financial contribution.

55. The Authority notes that the program is also specific as it is applicable only to industries using CPKO or its derivatives as raw material. The Authority further notes that a discernible benefit is conferred by such financial contribution, as it directly results in lowering of raw material cost of the Indonesian producers. Therefore, the Authority holds this program as countervailable.

Computation of subsidy

56. The subsidy margin has been computed by comparing the purchase price of CPKO provided by the responding exporter, with the international benchmark price. In the disclosure statement, the Authority had considered CPKO export prices from Indonesia to the rest of the world as benchmark as they are set according to free market principles, reflect prevailing market conditions in Indonesia, and are not distorted by government intervention. The subsidies on this benchmark were found to be in the range of 20-50%. However, since CPKO CIF Rotterdam prices have been considered as benchmark for computing subsidy being provided by Government of Malaysia, for the purpose of present findings, the Authority finds it appropriate to use the same as a common benchmark for both Indonesia and Malaysia. It is noted that CPKO Rotterdam price is a global benchmark for trade in palm kernel oil. The Rotterdam price represents the undistorted price for CPKO, and is an index similar to London Metal Exchange for metal products. Even the GOI considers CIF Rotterdam prices for determining the "reference price" for the levy of export duty. In view thereof, and in order to adopt a uniform benchmark for both Indonesia and Malaysia, the Authority has considered the CPKO Rotterdam price, after adjusting freight and insurance, as the appropriate benchmark for both Indonesia and Malaysia, and the subsidy margin thereon has been determined accordingly.

57. Many interested parties have claimed that the export tax and export levy should be excluded from the CIF price, for determining the benchmark price. The Authority does not find any merit in the said submission, as what has been considered for comparison is the world market price of CPKO (as adjusted for freight and insurance) and the local price onshore Indonesia. The benchmark considered is reflective of the undistorted market price of CPKO. It has been noted that Government of Indonesia, by imposing export and export levy, has depressed the local price of CPKO below the world market price. It is noted that the difference in the world market price and the local Indonesian price of CPKO is primarily on account of such export tax and export levy. As such, deduction of export tax and export levy would defeat the very purpose of this comparison.

Schemes other than supply of CPKO at LTAR

58. It is noted that in case of Indonesia, the petitioner has alleged a total number of 12 subsidy schemes and accordingly the responses were received in respect thereof from the respective producers/exporters and the Government of Indonesia. However, during the examination, it is observed that the subsidy margin quantified for the Program I i.e., Provision of Raw Material at Less than Adequate Remuneration itself exceeds the injury margin worked out for the participating and non-participating producers/exporters from Indonesia. Since, India follows the principle of Lesser Duty Rule i.e., duty equal to the lesser of margin of subsidy and margin of injury is recommended, therefore, even if other schemes are examined in detail and held to be countervailable and thereby subsidy margins are quantified, it would have no impact on the quantum of duty to be recommended by

the Authority but would be merely an academic exercise in the facts and circumstances of the present investigation. In view of the above facts, the principle of judicial economy is applied and the examination is restricted to the abovesaid 1st scheme only.

Producers/exporters from Indonesia

PT. Wilmar Nabati, Indonesia, Natural Oleochemicals Sdn Bhd, Malaysia and Wilmar Trading Pte Ltd Singapore (WINA Group)

59. PT Wilmar Nabati ("Wilmar") is the producer-exporter of the subject goods. It has exported the subject goods to India through its related trader Wilmar Trading Pte Ltd Singapore. Wilmar has claimed that they have not received any subsidy. However, it is noted that Wilmar has used domestically procured CPKO at LTAR for manufacture of Methyl Ester which has been used for manufacturing PUC. The subsidy availed by Wilmar is as below:

Programs	Subsidy Margin	Range
Supply of CPKO at LTAR	***%	30-40%

PT. Musim Mas, Indonesia and Inter-Continental Oils & Fats Pte Ltd. Singapore (PTMM Group)

60. PT. Musim Mas ("PTMM") is producer of the subject goods. It has exported to India through Inter-Continental Oils & Fats Pte Ltd. Singapore. It is noted that PTMM has used domestically procured CPKO at LTAR for manufacture of subject goods. PTMM has received benefit is as below:

Programs	Subsidy Margin	Range
Supply of CPKO at LTAR	***%	25-35%

PT. Ecogreen Oleochemicals, Indonesia and Ecogreen Oleochemicals (Singapore) Pte Ltd (PTEO Group)

61. PT Ecogreen Oleochemicals ("PTEO"), is the producer of subject goods and has exported to India through its related trader Ecogreen Olechemicals (Singapore) Pte. Ltd. It is noted that PTEO has procured CPKO locally at LTAR, which it has consumed in manufacture of the subject goods. Subsidy margin determined for PTEO group is as under:

Programs	Subsidy Margin	Range
Provision of CPKO at LTAR	***%	20-30%

PT. Energi Sejatera Mas, Indonesia and Sinarmas Cepsa Pte. Ltd. Singapore (ESM)

62. Pt. Energi Sejatera Mas ("ESM") is the producer of the subject goods and has exported to India through its related trader Sinarmas Cepsa Pte.Ltd. (SCPL). It is noted that ESM has procured CPKO at LTAR, for production of the subject goods. Subsidy margin determined for ESM group is as under:

Programs	Subsidy Margin	Range
Provision of CPKO at LTAR	***%	20-30%

Summary of Subsidy Program for Indonesia

63. Countervailing duty for all other producers/exporters from Indonesia has been determined based on the highest of the subsidy margins for the cooperating parties for the subsidy availed by them:

Name of the Program	Subsidy Margin %	Range%
Provision of CPKO at LTAR	***%	30-40%

*no export subsidy considered for Indonesian producers/exporters

MALAYSIA

64. The Authority has examined the following programs provided by the Government of Malaysia:

i.	Program no. 1	Provision of CPKO at less than adequate remuneration
ii.	Program no. 2	Schemes identified as "grants a) Market Development Grant (MDG) b) Export Credit and Export Financing c) Buyer Credit Guarantee d) Techno fund e) Inno fund f) Cradle Investment Program
iii.	Program no. 3	Business/industry excellence award
iv.	Program no. 4	Schemes identified as Tax incentives a) Pioneer status b) Investment Tax Policies/ Allowance c) Re-investment Allowance d) Accelerated Capital Allowance
v.	Program no. 5	Group Relief
vi.	Program no. 7	Industrial Building Allowance
vii.	Program no. 8	Incentive for Small and Medium enterprise
viii.	Program no. 9	Tax Incentive for in house R&D
ix.	Program no. 10	Double Deduction for Research and Development
x.	Program no. 11	Double Deduction for promotion of Malaysian brand
xi.	Program no. 17	Double Deduction for promotion of exports
xii.	Program no. 18	Allowance for increased Export
xiii.	Program no. 19	Tax exemption for Free Trade Zone
xiv.	Program no. 20	Schemes identified as Loans a) Research and Development Fund b) Soft Loans to Small and Medium Enterprise
xv.	Program no. 22	Schemes for provisions of land at LTAR
xvi.	Program no. 23	Schemes for provision of electricity at LTAR
xvii.	Program no. 24	Sales Tax Exemption on Raw Materials / Packaging Material
xviii.	Program no. 25	Exemption from import duty and Sales tax on machinery, equipment and spare parts
xix.	Program no. 26	Accelerated Capital Allowance on Information and Communication Technology Equipment and qualified plant expenditure, and Special Allowance for small value assets
xx.	Program no. 27	Deduction for Audit Expenditure, Secretarial fee and filing fee
xxi.	Program no. 28	Balancing Allowance
xxii.	Program no. 29	Grant for promotion of production of Oleo derivatives
xxiii.	Program no. 30	Covid -19 relief measures
xxiv.	Program no. 31	Preferential lending

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

(i) Program No. 1 - Provision of raw material (CPKO and its derivatives) at LTAR

a. Submission by the Petitioner

65. The petitioner has submitted that the Government of Malaysia ("GOM") imposes export tax on the export of CPKO. The primary objective of these export taxes is to depress the domestic price of CPKO in Malaysia, thereby making it available to the domestic producers at less than adequate remuneration. Accordingly, it has been submitted that the raw material price in Malaysia is distorted and is below the market prices. It has been alleged by the petitioner that the object behind imposition of export tax on raw material is to subsidize the cost of production of the Malaysian SFA producers, so that they are able to match the subsidized production cost of the Indonesian manufacturers. For achieving the said object, the GOM has imposed export duty of 10% on exports of CPKO from January, 2021

b. Submission by Government of Malaysia/other interested parties

66. The GOM has submitted that the object and purpose of imposition of export duty on CPKO is to encourage palm industry players to produce high value-added downstream products as well as to boost its exports through new companies and existing industry players. It has been claimed that the export duty is a revenue collection measure and therefore, is not a countervailable subsidy.

67. The GOM as also responding exporters have relied upon the decision of WTO Panel in **US – Export Restraints** to argue that mere imposition of "export restraints" is not a subsidy, as there is no "financial contribution" by the Government.

c. Examination by the Authority

68. The Authority notes that the GOM imposes export duty on export of CPKO and its derivatives. In its Questionnaire Response, GOM has admitted that the object and purpose of imposition of export duty is to encourage manufacturing of value added downstream products. The Authority notes that Malaysia, after Indonesia, is the second largest supplier of CPKO. GOM, by imposing export tax on CPKO, distorts the raw material prices in Malaysia and thus, ensures that the same is available to the Malaysian SFA producers below market price.

69. It is noted that the export tax regime in Malaysia is structured in such a way that increases the competitiveness of the Malaysian downstream industries and provides them the same advantage as being enjoyed by the Indonesian downstream producers. In the presentation given by Tan Sri Datuk Dr. Yusof Basiron, the then Chief Executive officer, Malaysian Palm Oil Council[2], the object behind imposition of export tax by Malaysia was noted (in Slide 13) as under:

i. to help Malaysian oleochemical (which includes SFA) industry to compete better, the Indonesian advantage (on account of export taxes) must be neutralised.

ii. In an oligopolistic market, with few suppliers (only two), **if one player subsidised the three sectors, the other player must do the same to maintain market share**

70. Thus, evidently, the purpose of the export tax imposed by Malaysia on exports of CPKO is to replicate the subsidy provided by GOI to its downstream manufactures, so as to ensure that the Malaysian downstream producers have the same advantage as their Indonesian counterparts. The Authority has in depth examined the "financial contribution" being provided by GOI by supplying CPKO at LTAR. The Authority holds that the reasoning provided therein squarely applies to the present scheme and the same is not being reproduced here for the sake of brevity.

71. The Authority notes that export duty imposed on CPKO by GOM is specifically designed to promote manufacture of downstream products like SFA by making raw material available below world market prices and is not a revenue generation measure. Through imposition of export tax, the GOM has put its domestic suppliers of CPKO in an irrational situation to sell CPKO to domestic manufacturers at below world market prices. The Authority notes that, similar to Indonesia, there is a demonstrable link between the imposition of export tax and the price at which CPKO is being sold to the SFA producers by the private bodies. The comparison of the CPKO purchase price with the world market prices (CIF Rotterdam, adjusted for freight and insurance) clearly show that CPKO was being sold to the Malaysian producers at less than adequate remuneration. The act of the private CPKO supplier to supply CPKO at a price lower than world market price is in line with the GOM's policy of ensuring increased competitiveness of domestic downstream producers. It is therefore noted that the GOM, through imposition of export restraints, entrusts or directs the private suppliers of CPKO to sell CPKO at less than adequate remuneration to downstream SFA manufacturers.

72. As regards, reliance placed by the interested parties on the decision of the WTO panel in *US-Exports restraints*, the Authority has already noted above that the same was considered by the WTO Appellate Body in ***United States- Countervailing Duty Investigation regarding Dynamic Random Access Memory Semiconductors (DRAMS) from Korea***, wherein it was noted that for entrustment or direction, the action of private bodies cannot be inadvertent or a mere by-product of governmental regulation. There must be a demonstrable link between the government and the conduct of the private body. It was noted by the Appellate body that even a "guidance" by the Government may constitute entrustment. The Appellate Body had also noted that the interpretation made by the Panel in US- Export Restraints was unduly "narrow".

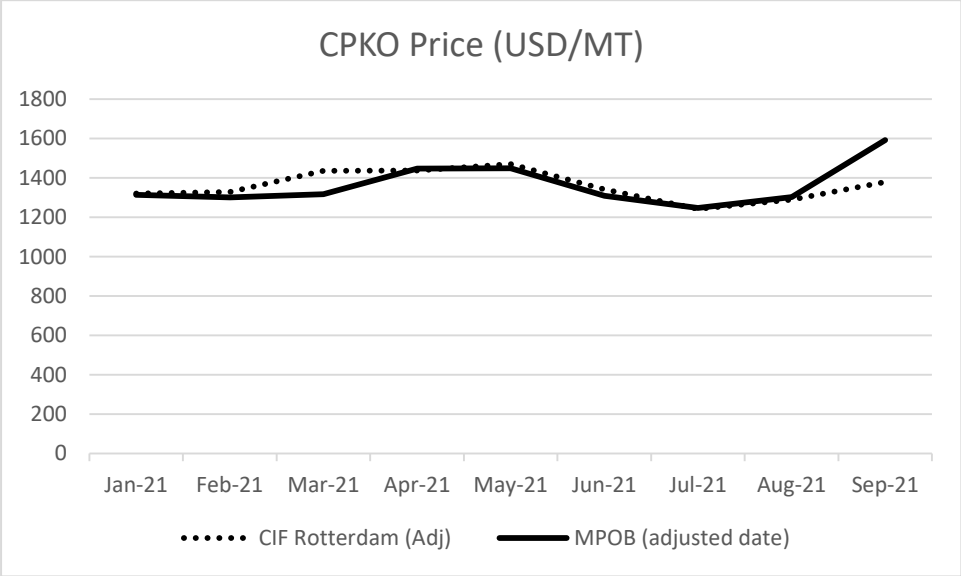
73. The Authority therefore notes that the GOM has provided financial contribution in the form of provision of CPKO at LTAR and a benefit is thereby conferred as it directly reduces the raw material cost of the Malaysian SFA producers. The Program is also specific as it is applicable to industries using CPKO as raw material. The Authority accordingly holds the program countervailable.

[2] http://www.mpoc.org.my/upload/P1%20-%20Tan%20Sri%20Yusof%20Basiron.pdf

Computation of Subsidy

74. The Authority has considered CPKO Rotterdam price as the appropriate benchmark for computation of subsidy. It is noted that export taxes were re-introduced in Malaysia from January, 2021 onwards. Accordingly, the Authority has considered CPKO purchases made by Malaysian exporters for computation of subsidy margin. It is noted that CIF Rotterdam is a global benchmark for trade in palm kernel oil. The Rotterdam price represents the undistorted price for CPKO, and is an index similar to London Metal Exchange for metal products. In fact, domestic industry as well as many exporters have stated that they use CIF Rotterdam prices for negotiating their contracts in regular course of business.

75. Moreover, the Authority notes that CIF Rotterdam prices are the contract date prices and therefore, are more appropriate benchmark, considering that the export tax on CPKO in Malaysia was Nil in the beginning period of the POI. Since the export tax was reimposed only in January, 2021, the shipments made in the beginning period would not have factored in the export tax component. On examination, it is found that there is generally a 30– 45 days' time lag between finalisation of the contract and its shipment. A comparison of CIF Rotterdam price (adjusted for freight and insurance) and MPOB export prices (adjusted by one month to arrive at contract month price, i.e. considering Feb'21 export price as the rate for Jan'21), it is noted that the said prices are moving in tandem. The adjusted MPOB export price and CIF Rotterdam prices (adjusted) for January- September' 2021 are as below:



It is also noted that the average adjusted MPOB export price and CIF Rotterdam for January- September' 2021 are USD 1361/MT and USD 1364/MT respectively. The Authority has therefore found it appropriate to compare purchase order month-wise domestic purchase price with the contract month-wise CIF Rotterdam price, for determining the subsidy amount.

Schemes other than supply of raw material at LTAR

76. The petitioner has alleged a total number of 31 subsidy schemes and accordingly the responses were received in respect thereof from the respective producers/exporters and the government of Malaysia. It is noted that the gravamen of petitioner's claim is the provision of raw material at LTAR, which has been examined in depth herein above. In addition, the petitioner has also alleged certain other subsidy schemes, primarily on the ground that these schemes were found to be countervailable in the past investigations. However, on investigation, in respect of the most of such schemes, it is found that either no benefit has been availed by the producers of the subject goods or benefit availed is negligible/not-quantifiable. Accordingly, the Authority has examined the following schemes, for the purpose of the present investigation:

Program no.	**Name of grant/program**
Program no. 17	Double deduction for promotion of exports
Program no. 23	Schemes for provision of Natural Gas and Electricity at LTAR
Program no. 24	Sales Tax Exemption on Raw Materials / Packaging Material
Program no. 25	Exemption from import duty and Sales tax on machinery, equipment and spare parts

Program no. 29	Grant for promotion of production of Oleo derivatives

(ii) Program No. 17- Double deduction for promotion of exports

a. Submission by the Petitioner

77. Section 41 of the Promotion of Investment Act and Rule 4 (2) of the Income Tax (Promotion of Exports) Rules, 1986 provides for double deduction to exporters for expenses incurred for promotion of exports such as cost of maintaining office overseas, publicity and advertisements in any medium outside Malaysia for export promotion etc. The program was held to be countervailable by the Authority in its Final Findings concerning imports of 'Continuous Cast Copper Wire Rods', 'Aluminium Wire/ Wire Roads above 7mm dia', 'Clear Float Glass' and 'Fiberboards'.

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

78. The program 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.

79. This program focuses 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. Some of the producers of subject goods have availed benefit under this program.

80. 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. Some of the producers of subject goods have availed benefit under this program.

c. Examination by the Authority

81. The 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.

82. 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. The Authority therefore holds the program countervailable. The Authority notes that KL-Kepong Olechemicals has received benefit under this program.

(iii) Program 23- Provision of Natural Gas and Electricity at LTAR

a. Submission by the Petitioner

83. The petitioner had in the petition claimed that electricity in Malaysia is provided at LTAR. Thereafter, in in its written submissions post oral hearing, the petitioner additionally submitted that GoM, through Petronas and Gas Malaysia Berhad supply gas to industrial consumers at LTAR. Gas Supply Act, 1993 directs the aforesaid companies to sell natural gas at regulated lower prices to industries, including electricity sector. The difference in market price and regulated price is recovered by the said companies from the GoM. Natural gas, which is one of the main consumables required for the production of the subject goods, is supplied to domestic manufacturers of SFA at LTAR.

84. It has been further submitted by the petitioner that electricity in Malaysia is produced from natural gas. As the natural gas is subsidised in Malaysia, such subsidy is also passed through to the SFA producers by provision of electricity at LTAR.

85. The petitioner had relied upon the Final findings dated 31st Jan, 2022 issued in investigations concerning Copper Tube and Pipes from Malaysia to submit that supply of natural gas and electricity to the industrial consumers in Malaysia is a countervailable subsidy.

b. Submission by Government of Malaysia/other interested parties

86. The Authority had issued supplementary questionnaire to GoM and participating exporters to give details of purchase and supply of natural gas and electricity. In its supplementary response, the GoM has submitted that the natural gas is provided by Petronas at "willing buyer-willing seller" rates.

c. Examination by the Authority

87. The Authority notes that this program is governed by Gas Supply Act, l993. The subsidy program allows regulated rates of natural gas prices for industrial sector including the electricity sector. It is noted that the GOM provides subsidies to the gas supplying companies namely, PETRONAS and Gas Malaysia Berhad (GMB), which in tum supplies gas to the exporter at reduced rates. The GOM during verification consultation held on 07.09.2022 had admitted that the price of natural gas in Malaysia is regulated by the GOM. The Authority notes that the producers of the subject goods in their manufacturing process use natural gas which they have purchased at the regulated rates. The Authority, therefore, holds the program countervailable as it results in financial contribution by the GoM by provision of natural gas below the market price and benefit is thereby conferred. The program is also specific as it is limited to industrial consumers using "natural gas".

88. The Authority further notes that electricity in Malaysia is produced from natural gas. The electricity distribution in Malaysia is regulated under the Electricity Supply Act, 1990. Under the Act only entities licensed by the Energy Commission shall supply electricity. Hence, such bodies are entrusted with governmental functions and act as public bodies. It has been noted that electricity is being offered by such public bodies at below market price. It has been found that the benefit on natural gas is being passed on for generation of electricity as ICPT (Imbalance Cost Pass Through) Charges. The Authority therefore holds the program countervailable.

Other Program

(iv) Program 24- Sales Tax Exemption on Raw Materials / Packaging Material

a. Submission by the Petitioner

89. No submission has been made by the petitioner in respect of this program.

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

90. No submission has been made by GOM. Other interested parties have submitted that the GOM vide Sales Tax (Goods exempted from Tax) order, 2018, has exempted sales tax on most of the raw materials used for manufacture of subject goods. It has been submitted that the said exemption is like general duty exemption which is applicable to all imports.

91. In addition, the GOM has issued Sales Tax (Persons exempted from payment of Tax) Order, 2018. Sl. No. 4 of the Schedule B of the said Order provides exemption to any manufacturer approved by the Director General from sales tax on raw materials, components and packaging materials when imported or purchased from a registered manufacturer. It prescribes the following conditions that are required be fulfilled in order to be eligible for availing the exemption—

i. that the raw materials and components are imported or purchased from a registered manufacturer;

ii. that the raw materials and components are used and the goods produced thereof are exported within twelve months from the date of import or purchase or such further period as approved by the Director General;

iii. that the raw materials and components and the goods produced thereof shall not be sold or otherwise disposed of in Malaysia except as sanctioned by the Director General and upon payment of the appropriate amount of tax;

iv. that the raw materials and components shall be used solely for the manufacture of exempted goods for export;

v. that the person approved shall pay the sales tax on any raw materials and components that cannot be accounted for;

vi. that if the raw materials and components are not used and the goods produce thereof are not exported within twelve months from the date of import or purchase or such other period as approved by the Director General, the person approved shall be liable to pay the sales tax on the raw materials and components purchased or imported.

92. Exemption from Sales tax on Capital goods is also provided to the qualifying manufacturers under Sr. 55 of the Sales Tax (Persons exempted from payment of Tax) Order, 2018.

93. The exemption is not countervailable in terms of Footnote 1 to the SCM Agreement, as it is solely for the manufacture of exempted goods which are meant for export. There is a proper mechanism in place to ensure that no additional sales tax has been exempted.

c. Examination by the Authority

94. The Authority notes that Sales Tax (Goods exempted from Tax) Order, 2018 provides exemption of Sales tax on goods itself and is a general exemption applicable to anyone. As such, the program is not specific and therefore, not countervailable.

95. Sales Tax (Persons exempted from payment of Tax) Order, 2018 on the other hand provides sales tax exemption to qualified manufacturer on raw material / component used in export goods. The Authority notes that Sales Tax (Persons exempted from payment of Tax) Order, 2018 provides financial contribution in the form of revenue foregone, which is otherwise due. The program is specific because it is limited to enterprise that purchase raw materials/packing material/ spares from registered manufacturers. The program does not qualify to be permissible duty remission program under Footnote 1 of the SCM Agreement because no evidence has been provided to show the verification mechanism adopted by GOM for determining nature and quantum of inputs, packing material etc. required for manufacturing goods for export. Moreover, exemption has also been provided on Capital goods. The Authority holds that countervailing duty should be imposed against this subsidy program.

(v) Program 25- Exemption from import duty and Sales tax on machinery, equipment and spare parts

a. Submission by the Petitioner

96. No submission has been made by the petitioner in respect of this scheme.

b. Submission by Government of Malaysia/other interested parties

97. No submission has been made by the GOM. Other interested parties have submitted that under the Customs Act, 1967, the GOM has issued the Customs Duties (Exemption) Order 2017 under which qualifying manufacturers as listed in the schedule provided in the said order are eligible for exemption from customs duty when they import certain goods.

98. Sl. No. 112 of Part I of the schedule provides exemption from customs duty to manufacturers in Principal Customs Area ("PCA") that are endorsed by Malaysian Investment Development Authority ("MDA"). Such exemption is provided on import/purchase of machinery and equipment that has been approved by the Secretary General of Treasury.

99. It has been claimed that the programs are general in nature. These are not specific to any enterprise or group of enterprises, or to any industry or group of industry or sector. Any manufacturer located in PCA which has been endorsed by MIDA and intends to import/locally purchase machinery and equipment, can avail this exemption, subject to the condition that the goods belong to a category that has been approved by the Secretary General of Treasury.

c. Examination by the Authority

100. The Authority notes that the Customs Duties (Exemption) Order 2017 provides exemption from import duty to the eligible producers on import/purchase of machinery and equipment that has been approved by the Secretary General of Treasury.

101. The Authority notes that exemption provided under Customs Duties (Exemption) Order, 2017, provides financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific as it is applicable to only certain eligible manufacturers. The program does not qualify to be permissible duty remission program as the exemption is provided on capital goods and machineries and therefore, is not covered by Footnote 1 of the SCM Agreement. The Authority holds that countervailing duty should be imposed against this subsidy program.

(vi) Program 29- Grant for promotion of production of Oleo derivatives

a. Submission by Petitioner

102. No submission has been made by the petitioner.

b. Submission by Government of Malaysia/other interested parties

103. No submission has been made by the GOM. The other interested parties have submitted that a grant has been provided by the Performance and Management Delivery unit (“PEMANDU”), Prime Minister’s Department, pursuant to Economic Transformation Programme (“ETP”), which is an economic development program of GOM. One of the objectives of ETP is to prioritise investments and support certain areas of growth. There are 12 areas of growth i.e., the National Key Economic Areas (NKEA) which have been identified. One of the

NKEAs is "Palm Oil". Under this NKEA, the ETP has identified the promotion of production of oleo derivatives as an action point.

104. Grants have been given to oleochemical producers under the ETP.

c. Examination by Authority

105. The Authority notes that the program provides for grants under the Economic Transformation Policy. Grant is available to manufacturers of subject goods as palm oil is one of the 12 identified National Key Economic Areas. The Program aims to promote production of subject goods by supporting, through financial contribution, investments into projects for capacity generation.

106. The Authority notes that the program provides "financial contribution". The program is also specific as it is applicable only to companies falling under one of the 12 identified National Key Economic Areas. The Authority therefore, hold the program countervailable. M/s KLK Oleo Sdn. Bhd. has received grants under this scheme.

107. The Authority notes that other than the schemes examined above, the Authority had computed subsidy under certain other schemes at the time of issuing disclosure statement. Considering the submissions made on the disclosure statement, and also the fact that the margins finally determined were either negative or minuscule, therefore, the Authority has not considered those schemes for subsidy margin determination.

Producer/Exporters from Malaysia

FPG Oleochemicals Sdn Bhd, Malaysia and Procter and Gamble International Operations SA Singapore (FPG Group)

108. FPG Oleochemicals Sdn. Bhd. (FPG) is a producer of the subject goods in India. It has exported to India through its related trader Procter and Gamble International Operations SA Singapore (PGIO). It is noted that FPG has mainly used domestically procured CPKO for manufacture of subject goods. In addition, it has also used locally procured RBDPKO and imported CPKO/RBDPKO for producing subject goods. The Authority notes that the benefit availed on locally procured inputs, to the extent used for manufacturing subject goods, is countervailable. Subsidy margin determined for FPG group is as under:

Programs	**Subsidy Margin**	**Range**
CPKO at LTAR	***%	10-15%
Sales tax Exemption on Raw Material	***%	0-5%
Natural Gas at LTAR	***%	0-5%
Preferential Lending Rates	***%	0-5%
Subsidy %	*****%**	**10-15%**

*no export subsidies availed by FPG

KL-Kepong Oleomas Sdn. Bhd, Malaysia (KLK Group)

109. KL-Kepong Oleomas Sdn. Bhd (KLK) is a producer-exporter of the subject goods. In addition to direct exports to India, it has also exported through unrelated trader Unilever Asia Private Limited Singapore ("UAPL"). KLK has claimed that it has received grant from GoM. It is also noted that KLK has manufactured subject goods using RBDPKO, Fatty Acid and Split Palm Kernel Fatty Acid, procured locally as well as imported. The Authority holds the benefit availed on locally procured raw material at LTAR as countervailable. The subsidy margin determined for KLK group is as under:

Programs	**Subsidy Margin (%)**	**Range**
CPKO at LTAR	***%	5-15%
Natural Gas at LTAR	***%	0-5%
Exemption from import duties on import of machinery and equipment	***%	0-5%
Sales tax exemption on raw material/packing material	***%	0-5%
Grants	***%	0-5%
Preferential Lending Rates	***%	0-5%

Export subsidy		
Double Deduction for Exports	***%	0-5%
Subsidy %	***%	**5-15%**

Edenor Oleochemicals (M) Sdn. Bhd. (formerly, Emery Oleochemicals (M) Sdn Bhd) and Edenor Oleochemicals Rika (M) Sdn. Bhd. (formerly, Emery Oleochemicals Rika (M) Sdn. Bhd)

110. Edenor Oleochemicals (M) Sdn. Bhd. ("EOM") is producer-exporter of the subject goods to India. The Authority notes that EOM manufactures subject goods using domestically produced CPKO. In addition, it is noted that it has also availed benefit under other schemes as well. Edenor Oleochemicals Rika (M) Sdn. Bhd. ("Rika") is a related entity of EOM, which also produces the subject goods. However, Rika has not directly exported the PUC to India during the POI. The Authority also notes that EOM has exported only a very small quantity of the PUC to India during the POI. Considering the insignificant exports of the Edenor Group, in the parallel sunset review investigation of the anti-dumping duty imposed on the PUC (excluding C10), the Authority vide Final Findings dated 02.02.2023 did not determine individual margins for the said group. Keeping the same view, the Authority has herein as well not determined individual subsidy and injury margins for Edenor Group.

Others

Summary of Subsidy Programs for Malaysia

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

Program no.	**Name of grant/program**	**Subsidy margin (%)**	**Range (%)**
Program no. 1	Provision of CPKO at less than adequate remuneration	***%	10-15%
Program no. 23	Schemes for provision of natural gas and electricity at LTAR	***%	0-5%
Program no. 24	Sales Tax Exemption on Raw Materials / Packaging Material	***%	0-5%
Program no. 25	Exemption from import duty and Sales tax on machinery, equipment and spare parts	***%	0-5%
Program no. 31	Preferential lending	***%	0-5%
Program no. 29	Grant for promotion of production of Oleo derivatives	***%	0-5%
Export Subsidy			
Program no. 17	Double Deduction for promotion of exports	***%	0-5%
	Total	***%	**10-20%**

Government of Thailand ("GOT")

112. **List of Schemes identified for Thailand**

i. Program 1 Schemes on regulation of raw material prices

ii. Program 2 Schemes under the Bio – Economy policy relating to palm oil downstream industries

iii. Program 3 Schemes on investment promotion

iv. Program 4 Schemes to promote product export (credit insurance)

v. Program 5 Tax Compensation or Coupons on exports

vi. Program 6 Duty drawback

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

(i) Program No. 1 & 2 –Raw material at LTAR and Export promotion of Fatty Alcohol and Bio-economy Policy

a. Submission by the Petitioner

113. The Thailand Oil Palm Board (the "TOPB") closely monitors and controls the production of 15 million tons of palm oil on an average every year. *The 2021 Palm Oil Export Boost to Reduce Excess Product Project* (the "Export Boost Project"), designed to subsidize the export of palm oil derivatives. It is managed by a "Subcommittee" which on 21.10.2019 announced that, any juristic person whose main business is to manufacture, use, sell, store, or export palm oil or palm oil products may be eligible for additional support from the government.

114. A "Second Announcement" dated 07.06.2021, further extended the benefits provided and more benefits were expected to be officially announced in December 2021. Bio-economy is only a general concept/vision which has been included in the Twelfth National Economic and Social Development Plan (2017-21) and the Biodiversity-Based Economy Development Framework (2017-36), instead of one independent scheme to promote bio-economy.

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

115. There is no regulation or law relating to this scheme. The scheme is intended to boost exports of raw material and therefore, no benefit provided to the SFA manufacturers.

c. Examination by the Authority

116. The Authority finds that the scheme is merely a policy of the GOT to encourage exports of palm oil and its derivatives. No evidence has been placed on record by any of the interested parties with regard to operation of this scheme in relation to the product under consideration. The Authority has therefore not examined it in further detail and accordingly, does not hold the scheme countervailable.

(ii) Program No. 3- Schemes on investment promotion

a. Submission by the Petitioner

117. The petitioner has submitted that the investment promotion incentives offered by GoT, vary depending on various factors, including (i) the type of promoted activity, (ii) location of the project, and (iii) eligibility for special investment promotion policies. Certain business activities may be eligible to apply for additional incentives, which are considered based on various factors such as, the merits of the project, investment in research and development ("**R&D**"), and the use of advanced technology in the project

118. Two main types of investment promotion incentives offered by the Board on Investment are **tax incentives** and **non-tax incentives**. Tax incentives include

(i) exemption of corporate income tax ("**CIT**") on profit derived from the sale of the promoted product for a period of up to 10 years;

(ii) exemption of import duty on machinery used in the promoted project; and

(iii) exemption of import duty on raw materials used in products manufactured for export;

119. The non-tax incentives include

(i) permission for foreign nationals to enter Thailand, for the purpose of studying investment opportunities;

(ii) permission for foreign skilled workers and experts to enter Thailand and work for the promoted business;

(iii) permission to own land for operation of the promoted business for foreigner; and

(iv) permission to bring out or remit money outside Thailand in foreign currency.

120. The Authority had countervailed this scheme in past investigations.

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

121. 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.

122. 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. Thai Fatty Alcohols Co. Ltd. (TFA) has applied for BOI investment promotion for production of subject goods. It has been claimed by TFA that even though it was eligible to receive the benefits under the program. However, no benefits have been received by TFA during the year.

c. Examination by the Authority

123. 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.

124. 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.

125. 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 Authority, therefore, holds the program countervailable.

(iii) Program No. 4 – Credit Insurance

a. Submission by the Petitioner

126. The petitioner has submitted that the Export-Import Bank of Thailand ("EXIM Thailand"), is a Thai state owned specialized financial institution under the Ministry of Finance's supervision, designed to promote and support Thai export, import, and investment for the purpose of national development, by providing guarantees, credit facilities, and insurance against risks.

127. EXIM Thailand offers short term as well as medium- and long-term export credit insurance (i.e. a facility protecting exporters' foreign receivables against non-payment risks.

128. EXIM Thailand provides several short-term export credit insurance policies for both SMEs and larger corporate exporters whereby, the terms of payment on the transaction must not exceed 180 days after the shipment date. The short-term export credit insurance covers against default of payment caused by both commercial and political losses, relating to overseas trade transactions such as export of goods and services. The indemnity rate for commercial losses is up to 85 to 90 percent of loss realized and the indemnity rate for political losses is up to 90 percent of loss realized. Policies include:

(i) EXIM for SMEs

(ii) EXIM Flexi

(iii) EXIM Sure

(iv) EXIM sMart Insurance.

Similar to the short term export credit insurance, the medium and long term export credit insurance covers against default of payment caused by commercial and political losses relating to overseas trade transactions.

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

129. Export credit insurance facilities protect exporter's foreign receivables against non-payment risks. In case of payment defaults caused by overseas buyers, EXIM Thailand compensate for the loss according to conditions specified in the insurance policy.

130. The Producers/exporters of the subject goods have not availed any benefit under this scheme.

c. **Examination by the Authority**

131. The Authority notes that the program provides for export credit insurance to the exporters against non-payment risk. However, as the sole producer of the subject goods has not availed benefit under this program, the Authority has not examined this scheme in further detail.

(iv) Program No. 5 - Tax compensation and coupons

a. Submission by the Petitioner

132. Tax compensation is a measure to lower the production cost of goods which are produced in Thailand for export. The compensation is subject to certain criteria and conditions and is available only to eligible industries under the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981).

133. The tax compensation is determined according to the FOB price for export and the rate applicable to each type of exported goods and is compensated in the form of a tax coupon. The export of fatty alcohol is eligible for the tax compensation under this scheme.

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

134. 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

135. 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.

136. 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.

137. The Authority notes that the 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. The Program is deemed specific as it is linked to exports.

138. The Authority finds that the sole producer/exporter M/s Thai Fatty Alcohols Co. Ltd. has availed benefit on the exports of subject goods. The Authority therefore, has imposed countervailing duty against the said scheme.

(v) Program No. 6 - Duty Drawback under Section 19 of the Customs Laws

a. Submission by the Petitioner

139. The 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 the Government of Thailand/Other interested parties

140. 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.

141. Eligible goods for duty drawback are:

i. Raw materials which are obviously seen in the exports e.g. fabrics, buttons, zippers and thread in garments, plastic sheeting in plastic products, etc.

ii. 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.

iii. 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 the Authority

142. The Authority notes that 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. The Authority has sought information as to whether GoT maintains any verification mechanism to ensure that the duty drawback provided is not in excess of those required for export production. However, no evidence has been placed before the Authority about any such 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.

143. Thus, the 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.

<u>Other Program</u>

(vi) Preferential Lending rate

a. Submission by the Petitioner

144. No submission has been made by the Petitioner

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

145. In the Supplementary Questionnaire response, the Government of Thailand has provided details of average lending rates as well as the details of loan provided by Government bank to the Global Green Chemicals

Public Co. ("GGC"), raw material supplier and the holding company of the sole SFA producer in Thailand, i.e. Thai Fatty Alcohols Co. Ltd.

c. **Examination by Authority**

146. The Authority notes that loan has been provided by one of the government banks to GGC at significantly lower rate as compared to the applicable lending rates. The program provides financial contribution in the form of revenue forgone (reduced rate of interest paid). Benefit is conferred on the recipient in the form of difference between the interest charged by bank and the applicable interest rate as provided by GOT in its response. The Program is also specific as concessional lending rate is applicable only to the specific company. The Authority therefore holds the program countervailable.

Thai Fatty Alcohols Co. Ltd., Thailand and Global Green Chemicals Public Co., Ltd. Thailand TFA

147. Thai Fatty Alcohol Co. Ltd. (TFA) is the producer-exporter of the subject goods to India. Global Green Chemicals Public Co. (GCC) is the holding company of TFA. It is noted that GCC is also the supplier of raw material to TFA. TFA has admitted to have received tax compensation as well as duty drawback. It has been claimed that the Drawback is not countervailable in terms of Footnote 1 to Article 1 of the ASCM. The Authority in the supplementary questionnaire responses had called for information from both TFA as well as the GOT to explain the verification mechanism followed by it for ensuring that there is no excess remission of import charges. The Authority, in the disclosure statement had, in absence of any evidence of a verification mechanism provided by GoT, noted the entire drawback amount as a subsidy. However, post disclosure, the participating exporter (TFA) has submitted detailed working to substantiate that they have not received any excess remission. The Authority has considered the submission made by the participating exporter, and re-determined the amount of subsidy under drawback scheme. The Authority therefore, holds the program countervailable. Subsidy margin determined for TFA group is as under:

Programs	**Subsidy Margin %**	**Range**
Preferential lending	***%	0-5%
Exemption under Investment promotion Act	***%	0-5%
Export subsidy		
Tax compensation or Coupons on exports	***%	0-5%
Duty Drawback	***%	0-10%
Subsidy %	***%	**0-10%**

Summary of Subsidy Programs for Thailand

148. Countervailing duty for all other producers/exporters from Thailand has been determined based facts available and subsidy margin of TFA

Programs	**Subsidy Margin %**	**Range**
Preferential lending	***%	0-5%
Exemption under Investment promotion Act	***%	0-5%
Export subsidy		
Tax compensation or Coupons on exports	***%	0-5%
Duty Drawback	***%	0-10%
Subsidy %	***%	**0-10%**

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submission made by the Domestic Industry

149. The submissions made by the domestic industry are as follows:

a. The Government of Indonesia has significantly increased the export tax on the principal raw material (Crude Palm Kernel Oil) from December 2020 onwards. The quantum of increase can be gauged from the fact that approximately ***USD 400 per MT*** export tax was paid on export of CPKO in September, 2021, as against ***nil*** in September, 2020. The increase in export tax is primarily with the object to ensure excess supply of raw material to the domestic manufacturers in Indonesia, and that such supply is available to them at below world

market prices. It may be noted here that CPKO forms more than 70% of the cost of production of the subject goods, as such, this subsidy alone has significantly reduced their cost of production.

b. Following Indonesia, Government of Malaysia had also increased the export tax on export of CPKO to 10% in January, 2021, as against 0% in December, 2020. The purpose of the said export tax is to ensure that the domestic manufacturers in Malaysia get assured supply of CPKO at lower prices, so as to be able to match the subsidized production cost of Indonesia.

c. Given the fact that Malaysia and Indonesia account for more than 90% of the global CPKO production, the said countries have, by imposition of export tax, limited the availability of CPKO in global market and increased its world market price, as also have ensured the availability of CPKO at cheap prices for their domestic manufacturers. Thus, the cost of production of the subject goods in the said countries is heavily subsidized, thereby causing serious injury to Indian domestic industry.

d. There has been a flood of imports from the subject countries over the injury period, which has increased by 54% compared to the base year. In contrast, the production of the petitioner has remained at the same level as compared to the base year.

e. The subject imports in relation to production have increased throughout the injury period and have reached to 154 index points in the POI as compared to the base year.

f. The share of the subject countries in total imports to India and in the Indian demand has shown a steady and steep increase throughout the injury period. The imports have increased not only in absolute terms but also in relation to production.

g. The demand for the subject goods has increased throughout the injury period. There was an increase of 22% in demand in the POI as compared to the base year. However, the entire incremental demand has been captured by the imports from the subject countries, which have increased by more than 30 indexed points in the POI as compared to the base year. In contrast, the domestic industry has lost almost 25% of its market share during the same period.

h. The subject imports have not only captured the incremental demand but have also eaten into the market share of the Indian industry.

i. The losses of the domestic industry continue to be at high levels on account of continued increase in subsidized imports from the subject countries.

j. Import prices from the subject countries are suppressing and depressing the domestic prices.

k. Imports are resulting in significant price underselling, as evidenced by the difference between non-injurious price and landed price of the imports.

l. The Indian producers have the capacity to cater to the entire domestic demand, yet, almost 75% of the domestic demand is being met by the imports from the subject countries on account of their low prices.

m. The profitability and ROI of the domestic industry has continued to remain in red, despite the petitioner's best efforts to reduce its cost and increase its sales.

H.2. Submission by the other interested parties

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

a) The petitioner has submitted import data only for the part of the POI (i.e. till May, 2021). As such, the price undercutting, price suppression, price depression and injury margin claimed by the petitioner based on such extrapolated data of imports of the PUC cannot be considered for injury analysis.

b) The injury to the petitioner is on account of its bad investment decisions. Petitioner's significant investments in Indonesia have led to an adverse impact on the petitioner in terms of high procurement costs and high-interest costs.

c) Only the interest costs from various borrowings (including for the Indonesian investment) have led to a situation of net loss. Any additional costs incurred by the petitioner as a result of unforeseen policies of the Indonesian government cannot be included while determining injury and non-injurious price.

d) The injury to the petitioner is also on account of investment made in its plant at Kutch, which has resulted in additional cost of Rs. 2200/MT. Subsequently, the fiscal benefit given by Government of India for the said investment was withdrawn. In 2020, the Hon'ble Supreme Court in its decision in Union of India vs. M/S V.V.F. Ltd [(2020) 20 SCC 57] upheld the Government of India's decision to modify the fiscal benefits that VVF was entitled to. This has created a potential liability of Rs. 304 million against the petitioner.

e) The petitioner's auditors have noted concerns over petitioner's ability to remain a "going concern".

f) The petitioner, through local presence in Indonesia, is itself benefitting from the subsidy, if any, provided on the procurement of raw material.

g) There is absence of causal link as the profitability parameters during the POI have nearly doubled from the previous year and are at the base year's level, despite increase in the subject imports.

h) Injury to the petitioner is on account of inverted duty structure, i.e. high import duty of 37.5% imposed on the imports of raw material (CPO/CPKO).

i) The petitioner does not have access to feedstock, and is dependent on imports. As such, unviability of its production is mainly on account of non-availability of raw material.

j) The petitioner does not manufacture pure grade C12 and has limited supply of C1214.

k) The petitioner has not been able to increase its production capacity and production level despite increase in demand, which clearly shows that the injury to the petitioner is on its own account.

l) Further, volume injury, if any, is on account of petitioner's own captive consumption and exports.

H.3. Examination by the Authority

151. 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.

152. Rule 13 of the Subsidy Rules deals with the principles governing the determination of injury which provide 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.

153. Article 15.1 of the SCM Agreement and Annexure I to the CVD Rules provide for objective examination of both, (a) the volume of subsidised imports and the effect of the subsidised imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. The Authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the subsidised imports, the Authority is required to examine whether there has been significant price undercutting by the subsidized imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

The Authority has taken note of the arguments of the interested parties on injury examination aspects and addressed the issues raised at appropriate places in these final findings to the extent relevant.

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

i. Assessment of Demand

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Sales of Domestic Industry	MT	***	***	***	***
2	Sales of Other Producer	MT	***	***	***	***
3	Imports from Subject Countries	MT	***	***	***	***

4	Import from Other Countries	MT	***	***	***	***
5	Total Demand	MT	***	***	***	***
	Trend		100	113	119	122

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

155. 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-

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
A	Indonesia	MT	18,085	27,169	46,907	55,273
B	Malaysia	MT	40,251	35,136	43,004	40,282
C	Thailand	MT	11,784	12,366	8,466	9,637
1	Subject Countries	MT	**70,120**	**74,671**	**98,377**	**1,05,192**
2	Other Countries	MT	10,760	12,803	3,952	395
3	Total	MT	**80,880**	**87,473**	**1,02,329**	**1,05,587**

156. It is seen that:

a. There has been a significant increase in the absolute volume of imports from the subject countries by 50% in POI from the base year.

b. The imports have increased sharply in relation to production of the domestic industry from ***% in 2018-19 to ***% in the POI.

c. During the POI, the imports from the subject countries accounted for almost 100% of total imports to India.

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

157. 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.

i. Price Undercutting

158. Price undercutting has been worked out by comparing the landed price of the 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. The weighted average undercutting computation is as under:

POI	QTY	LV Rs/ Kg	NSR Rs/Kg	Undercutting (Rs/Kg)
Indonesia	55,273	129	***	***
Malaysia	40,282	129	***	(***)
Thailand	9,637	139	***	(***)
Subject Countries	1,05,192	130	***	(***)

159. The Authority notes that the undercutting is positive for certain grades. On a weighted average basis there is nil/negligible undercutting. However, the negative/ negligible undercutting is required to be appreciated in the backdrop that the sales of domestic industry is at significantly lower prices compared to its cost of production and the domestic industry has been forced to sell at loss to match the prices of the imports from the subject countries.

ii. Price underselling / Injury Margin

160. The Authority has worked out 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. The price underselling from the subject countries is as below:

POI	QTY	LV Rs/ Kg	NIP Rs/Kg	Underselling Rs/Kg	Underselling %
Indonesia	55,273	129	***	***	20-30%
Malaysia	40,282	129	***	***	20-30%
Thailand	9,637	139	***	***	10-20%

161. It is noted from the below table that the price underselling/ injury margin is positive, indicating that the imports have entered the market at injurious prices. The injury margin for cooperative producers/exporters are evaluated as under:-

Country	Producer	NIP	Landed Price	Injury Margin	Injury Margin	Injury Margin
	Wt. Avg.	USD/MT	USD/MT	USD/MT	%	Range
Indonesia	PTEO	***	***	***	***	10-20%
	PTMM	***	***	***	***	15-25%
	WINA	***	***	***	***	20-30%
	ESM	***	***	***	***	0-10%
	Others	***	***	***	***	25-35%
Malaysia	FPG	***	***	***	***	0-10%
	KLK	***	***	***	***	20-30%
	Others	***	***	***	***	20-30%
Thailand	TFA	***	***	***	***	10-20%
	Others	***	***	***	***	10-20%

* EOM has exported insignificant quantities during the POI and therefore, separate injury margin is not computed for it.

iii. Price suppression and depression

162. In order to determine whether the effect of imports is to depress prices 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.

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI*
1	Cost of sales	Rs./Kg	***	***	***	***
2	Trend	*Indexed*	*100*	*99*	*94*	*115*
3	Selling price	Rs./Kg	***	***	***	***
4	Trend	*Indexed*	*100*	*88*	*96*	*115*
5	Landed Price	Rs./Kg	107	89	102	130
6	Trend	*Indexed*	*100*	*83*	*95*	*121*

163. It is seen that the cost of sales of the domestic industry has increased on account of significant increase in cost of raw material. However, there has not been commensurate increase in landed price of the subject imports. Landed price has remained significantly below the cost of production throughout the injury period.

III. Economic parameters relating to the domestic industry

164. The Rules require that the 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. The Authority has accordingly, herein under examined the performance of the domestic industry over the injury period.

i. Production, capacity, capacity utilization and sales

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Capacity	MT	***	***	***	***
	Trend		100	100	100	100
2	Production	MT	***	***	***	***
	Trend		100	112	103	100
3	Capacity Utilization	%	***	***	***	***
	Trend		100	112	103	100
4	Domestic Sales	MT	***	***	***	***
	Trend		100	126	98	92
5	Export Sales	MT	***	***	***	***
	Trend		100	103	111	111

166. The Authority notes that-

a. The capacity and capacity utilization of the domestic industry has remained at the same level over the injury period, as it was not able to increase its production despite increase in Indian demand. The entire incremental demand has been met by the imports from subject countries.

b. The domestic industry has significant idle capacity however, it could not increase its production on account of continued price pressure from the imports. The Authority further notes that even though the capacities of the DI were primarily set up for C1214 grade, which has the maximum demand in India. However, in the current scenario, the demand for C1214 is primarily being met by imports and the DI's capacity utilization for C1214 grade is miniscule.

ii. Market Share

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

Sl.No.	Market Share	Unit	2018-19	2019-20	2020-21	POI
1	Sales of Domestic Industry	%	***	***	***	***
	Range		20-30	20-30	10-20	10-20
2	Sale of Other Producers	%	***	***	***	***
	Range		0-10	0-10	0-10	0-10
3	Subject Countries	%	59%	55%	69%	72%
	Range		50-60	50-60	60-70	70-80
4	Other Countries	%	9%	9%	3%	0%
	Range		0-10	0-10	0-10	0-10
5	Total Demand	%	100%	100%	100%	100%

168. The market share of subject imports has increased significantly, from 59% to 72 % of demand of the country, whereas that of the petitioner has declined from ***% to ***% during the same period. It can be seen that the market share of the domestic industry has declined in the POI whereas share of subject countries' import has increased. The share of import from other countries has also declined.

169. The petitioner has not been able to benefit from increase in demand and its production has remained at the same level, despite having significant idle capacity.

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

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Cost of sales	₹/kg	***	***	***	***
2	*Trend*	*Indexed*	*100*	*98*	*94*	*116*
3	Selling price	₹/kg	***	***	***	***
4	*Trend*	*Indexed*	*100*	*89*	*96*	*115*
5	Profit/(Loss)	₹/kg	(***)	(***)	(***)	(***)
6	*Trend*	*Indexed*	*(100)*	*(138)*	*(83)*	*(118)*
7	Profit/(Loss)	Rs.Lacs	(***)	(***)	(***)	(***)
8	*Trend*	*Indexed*	*(100)*	*(173)*	*(83)*	*(106)*
9	PBIT	Rs.Lacs	(***)	(***)	(***)	(***)
10	*Trend*	*Indexed*	*(100)*	*(203)*	*(41)*	*(93)*
11	Cash Profits	Rs.Lacs	(***)	(***)	(***)	(***)
12	*Trend*	*Indexed*	*(100)*	*(219)*	*(28)*	*(91)*
13	ROCE	%	(***)	(***)	(***)	(***)
14	*Trend*	*Range*	*(10-20)*	*(20-30)*	*(0-10)*	*(20-30)*

171. The Authority notes that:

a. The losses suffered by the domestic industry has increased over the injury period. The domestic industry is consistently in loss on account of cheap imports from subject countries. The domestic industry was not able to benefit from the anti-dumping duty granted to it.

b. Cash profits, PBIT and return on capital employed of the domestic industry have followed the similar trend.

iv. Inventories

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Average Stock	MT	***	***	***	***
2	*Trend*	*Indexed*	100	112	115	113

173. It is noted that the average inventories have increased over the period.

v. Employment, wages and productivity

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Wages	Rs Lacs	***	***	***	***
2	*Trend*	*Indexed*	*100*	*127*	*121*	*124*

3	Employment	Nos	***	***	***	***
4	*Trend*	*Indexed*	*100*	*101*	*98*	*99*
5	Productivity per day	MT/Day	***	***	***	***
6	*Trend*	*Indexed*	*100*	*112*	*103*	*100*
7	Productivity per employee	*Per No*	***	***	***	***
8	*Trend*	*Indexed*	*100*	*111*	*105*	*101*

175. It is seen that the wages, employees and productivity have remained at the same level.

vi. Growth

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

Sl.No.	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Production	%	-	12%	-8%	-3%
2	Domestic sales	%	-	26%	-22%	-6%
3	Loss per unit	%	-	38%	-39%	36%

177. It is noted that there is negative growth in production and domestic sales of the domestic industry. The losses of the domestic industry have increased significantly compared to previous year and base year. 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

178. The Authority notes that the domestic industry has been forced to sell significantly below its cost in order to match the low import prices. 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

179. It is seen that the domestic industry has significant idle capacity, and it is continuously facing losses. It is noted that the domestic industry is facing both volume and price injury, and therefore, its ability to raise capital investment is significantly impacted.

180. The Authority further notes that the petitioner is suffering losses during the entire injury period due to high per unit capital and fixed cost, which is primarily on account of high interest cost. Even though the petitioner has substantial capacity to meet more than 80% of the demand, but due to subsidized imports from the subject countries at lower landed price, the petitioner is not able to compete and thereby it utilises less than 50% of its capacity. Low capacity utilization is the main cause of high interest cost. It is also observed that the domestic industry is not able to timely service its existing debts and hence it has been facing difficulties to arrange working capital for carrying out its day-to-day operations. The Authority therefore notes that the financial condition of the domestic industry is not the cause but the consequence of the injury due to the subsidized imports.

I. Conclusions on Injury

181. The Authority notes that the imports from the subject countries have increased significantly in absolute terms as well as in relation to production and consumption in India. The import price has remained significantly below the cost of production throughout the injury analysis period, and the price underselling is also positive. While the market share of subject imports has increased significantly, that of domestic producers has declined. It is seen that the domestic industry is suffering severely from underutilized capacities and has not been able to utilize even half of its installed capacity. It is also noted that the inventory with the domestic industry has increased considerably compared to base year. Further, the losses incurred by the domestic industry have increased during the POI and its cash profits, PBIT and return on investment have followed the same trend. Accordingly, the Authority provisionally concludes that the domestic industry has suffered material injury.

182. It is noted that the domestic industry is facing both volume and price injury.

J. Causal Link

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

a. Volume and prices of imports from third countries

184. The imports from other countries are not causing injury to the domestic industry as the same are negligible.

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

185. The Authority notes that there is no contraction of demand. Further, there has been no change in the consumption pattern.

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

186. There is no known trade restrictive practice.

d. Developments in technology

187. None of the interested parties has furnished any evidence to demonstrate any change in the technology.

e. Export performance of the domestic industry

188. It is noted that injury analysis is based on domestic performance of the petitioner.

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

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

g. Other Factors alleged by the interested parties

190. Some of the interested parties have alleged that the injury, if any, being faced by the domestic industry is on account of other factors such as investments made by the domestic industry in setting up a splitting facility in Indonesia, or in Kutch. It has also been submitted by the interested parties that the injury to the domestic injury is on account of its high interest cost. In response, the domestic industry has submitted that its investment in Indonesia has significantly helped it in mitigating its raw material cost. As regards the investment made in Kutch, it has been submitted that the Kutch plant has been closed since 2011 and therefore, it has practically no impact on the present cost.

191. As regards the submission that the injury to the domestic industry is on account of inverted duty structure i.e. high import tariff on CPKO (raw material), the petitioner has submitted that it does not import CPKO for manufacture of the product under consideration, as such, injury being faced by VVF is not on account of the inverted duty structure. The petitioner has submitted that it imports raw material such as Split CPKO, Fatty acid distillates etc., on which import duty of 7.5% is applicable.

192. The Authority notes that the above submissions of the interested parties mainly relate to the interest cost of the petitioner. The Authority has examined the interest being claimed by the petitioner, and only such interest cost, as found reasonable, has been taken in consideration for determination of NIP. The Authority notes that NIP is determined as per the provision of Generally Accepted Accounting Principles (GAAP), Annexure III to the Anti-Dumping Rules and consistent practice of DGTR. The principles of reasonability as provided in the said rules are followed to ensure that no abnormal expenditure on account of interest has been incurred while allowing interest amount for determining NIP. Besides reasonability aspect, the Authority looks into the details of assets deployed to manufacture the PUC and also factors optimum capacity in order to determine per unit cost of interest.

K. Post Disclosure comments

193. The Authority issued a disclosure statement on 22nd September, 2022 disclosing essential facts 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:

K.1. Submissions made by the Petitioner:

194. Determination of NIP only on cost of sales, without allowing recovery of any return/profit, is contrary to legal provisions and past practices of the directorate. The petitioner has accordingly submitted that NIP be re-determined after allowing a reasonable "return". It has also been submitted that reduction of interest cost is without any basis and therefore cannot be justified.

195. In respect of the subsidy determination on supply of CPKO at less than adequate remuneration, the petitioner has submitted that Indonesia is the world's biggest supplier of CPKO, catering to about 65% of the world's total CPKO demand. The Indonesian export price, therefore, represents the undistorted market price of CPKO, and the same should be considered as benchmark for both Indonesia and Malaysia.

196. Export price from Malaysia was not based on market conditions due to ban imposed by the USA (one the main purchasers of palm kernel oil from Malaysia) on imports of Palm Kernel Oil produced by some of the biggest plantations in Malaysia.

K.2. Views of the other interested parties

Indonesian Subsidy Programs

197. Imposition of export tax and/or export levy by the Government of Indonesia is a sovereign function for revenue collection and does not amount to subsidy.

198. Sale of CPKO and its derivatives between the private players is conducted at the market prices, without GOI's interference. There is no entrustment or direction by the GOI to the private suppliers to supply CPKO at LTAR. In absence of there being any evidence of "direct transfer of fund", "direct supply of goods by Government for LTAR", "revenue foregone which was otherwise due" or "entrustment or direction to the private players", a finding of subsidy cannot be made.

199. Alternatively, even if it is determined that subsidy has been provided by GOI by provision of CPKO at LTAR, the appropriate benchmark for computing "benefit" received would be the "export price" of CPKO after deducting export tax and export levy component, as the same are export duties collected by the government and not a consideration paid for purchase of CPKO.

200. The interest rates in Indonesia are market determined and based on the credit rating of each customer. A credit worthy customer would always get a better lending rate than the general bank lending rate. The loans taken from Government banks at the same rate as the Private banks cannot be countervailed.

201. One of the interested parties has also submitted that the landed CIF value considered for them in the disclosure statement is different from its claimed landed value.

Malaysia Subsidy Programs

202. Imposition of export duty on CPKO is not a subsidy, as it is not a 'direct transfer of funds' as there is no outflow of funds like in the case of a grant. It is also not a 'foregoing of government revenue' as no revenue is being foregone by the GOM. On the other hand, the GOM is collecting revenue by the imposition of export tax.

203. Further, there is no 'government provision of goods or services' as the GOM through the levy of export tax, is not providing CPKO. The mechanism by which export tax is imposed by the GOM does not envisage any mechanism or supply of CPKO by the GOM. Thus, the alleged measure does not confer a "financial contribution" of any form.

204. It has been submitted that even if the Authority was to hold supply of CPKO at LTAR countervailable, the appropriate benchmark for the subsidy computation would be the export price from Malaysia, as reported on MPOB website. It has been submitted that under CVD Rules, while determining whether goods have been supplied at less than adequate remuneration, the adequacy of remuneration is required to be determined in relation to the prevailing market conditions for the product or service in question in the country of provision or purchase.

205. CIF Rotterdam price of CPKO is highly unreliable as benchmark since it is not based on the actual shipments of CPKO from Malaysia. It is based on inquiries on seller's /broker's quotations on daily basis which may or may not convert to actual export shipments to Netherland (Rotterdam).

206. CIF Rotterdam price is a blend of Indonesia and Malaysia export price quotations for Rotterdam supply in forward trade for one- and two-months supplies.

207. Malaysian producers cannot be punished for high export duty and levied by Govt of Indonesia. Therefore, it does not reflect the actual price of CPKO exports from Malaysia. Indonesia ships annually around 1.5 to 1.8 million tons of palm oil (crude / refined) and Malaysia ships only 0.3 million tons yearly.

208. The Authority cannot take contrary stand for CPKO benchmark for Malaysia when it has taken FOB export prices for Indonesia and FOB export prices for RBDPKO from Malaysia.

Thailand Subsidy Programs

209. Countervailing duty cannot be imposed on the drawback provided by the GoT as the same is a permissible duty remission in terms of Footnote 1 to Article 1 of the ASCM. It has been submitted that duty drawback provided under Section 9 of the Thai Customs Act is not a subsidy as only provides duty exemption on inputs used for export production.

210. It has been claimed that the interested parties have demonstrated the existence of verification mechanism adopted by the GoT to ensure that there is no excess remission.

K.3. Examination by the Authority

211. The Authority notes that most of the submissions made by the interested parties have already been dealt with the preceding paras. As regards the claim of the petitioner that a "reasonable return" be granted to them for determination of the NIP, the Authority notes that NIP has been determined as per the Annexure III of the AD Rules and the consistent practice of the directorate.

212. As regards the submissions in respect of benchmark price adopted for Indonesia, it is noted that the Authority had considered CPKO export prices from Indonesia to the rest of the world as an appropriate benchmark as they are set according to free market principles, reflect prevailing market conditions in Indonesia, and are not distorted by government intervention. Many interested parties have claimed that the export tax and export levy applicable on such exports should be excluded from the export price, for determining the benchmark price. The Authority does not find any merit in the said submission, as what has been considered for benchmark comparison is the average "export price" of the CPKO from Indonesia since that is the price at which CPKO has been sold to foreign customer. It is the difference between this price charged from the foreign customers, vis-à-vis purchase price of the domestic consumers, that has been considered for subsidy computation. The benefit that accrues to a domestic purchaser of CPKO is the price difference between its CPKO purchase price and the undistorted export price.

213. The Authority notes that Rotterdam price is a global benchmark for trade in palm kernel oil. The Rotterdam price represents the undistorted price for CPKO, and is an index similar to London Metal Exchange for metal products. It is the common submission of both the exporters and the domestic industry that "CIF Rotterdam price" indicates the price at which contracts are being entered into on a particular date. It has been seen that many exporters as well as the domestic industry use CIF Rotterdam price as a reference for entering into contract for CPKO. Even as per GOI's submission, the CIF Rotterdam price of CPKO is taken in consideration for determining "reference price" for determining export tax and export levy on CPKO.

214. It has been claimed by the Malaysian exporters that MPOB price should be considered as the same is representative of undistorted Malaysian price. In this regard, the Authority notes that where CIF Rotterdam price indicates the price existing on a particular date, in contrast, MPOB prices are the price as on the shipment date, i.e. the date on which exports have happened. It is seen that there is usually a time difference of few months between contract date (when the price is fixed) and the shipment date. As noted earlier, the export levy was re-imposed by Malaysia from January'2021 onwards, and prior thereto there was no export tax on exports of CPKO. Consequently, the contracts entered into prior to January' 2021, which would have been shipped in subsequent months, are not likely to have factored in the export tax component. This is also evident from a comparison of MPOB export price and CIF Rotterdam price, from which it can be seen that the MPOB's CPKO export price for initial few months was lower than CIF Rotterdam prices, whereas in the subsequent months it was either higher or in the same range. Therefore, in order to make a fair comparison, CIF Rotterdam price (adjusted for freight and insurance) has been considered as the appropriate benchmark for both Indonesia and Malaysia and the subsidy margin thereon has been determined accordingly.

215. As regards the benchmark price for Refined Bleached Deodorised Palm Kernel Oil ("RBDPKO"), the petitioner had submitted RBDPKO export price from Malaysia, as reported on Oleoline. It has been submitted that there is no alternate benchmark available for the same, as it is not recorded either at Rotterdam or at Indonesia. The interested parties have also not provided any alternate benchmark for the same. The Authority has, therefore, considered export price of RBDPKO as the appropriate benchmark for subsidy computation.

216. As regards submissions made on computation of the subsidy margins, the same have been considered in these final findings and changes, as found appropriate, have been made in the subsidy margins determined above.

217. As regards the submission regarding change in the landed value, the Authority notes that the landed value has been considered by the Authority as per the information provided by the interested parties.

218. Some of the interested parties have also claimed that since the loans have been given to them by the Government banks and private banks at the same rate, therefore there is no subsidy. The Authority notes that the fact that private banks are also providing loans at a significantly lower lending rate, as compared to the applicable prime lending rate, is in itself a clear indication of "entrustment or direction" by the governments of the subject countries to the private banks, to provide financial contribution in the form of preferential lending. The same has therefore been held to be countervailable.

219. In response to the benchmark disclosure, it has been claimed by some of the participating exporters from Indonesia that while determining the benchmark price of CPKO, deduction of export tax, export levy and other port expenses is required to be made. The Authority has already noted above that the deduction of export tax and levy would defeat the very purpose of the examination. As regards claim for deduction of port expenses, it is noted that what has been considered is the price at which CPKO is being supplied to importers at Rotterdam. A standard deduction of USD 50/MT has been made to exclude all expenses relating shipment cost. No

evidence has been provided by the said exporters to support the claim that these port expenses are part of the CIF value or that they are over and above USD 50/MT being deducted. In absence thereof, the Authority does not find any merit in the claim being made by the interested parties.

220. Further, it is noted that one of the Malaysian exporter has provided one of its invoices to substantiate that the freight charges from Malaysia to Rotterdam is around USD 70/MT. It is noted that the said invoice is of a shipment of around 1500-2000 MT of SFA and not of CPKO. The Authority notes that the freight cost for SFA and CPKO are not identical as, firstly, SFA is a chemical product and therefore is imported in a very protected environment such as in Stainless steel tanks with nitrogen blanketing to ensure that the chemical properties do not get affected. On the other hand, CPKO being a crude natural oil, it is usually imported in Mild Steel tanks. Secondly, SFA is imported in smaller quantities, whereas CPKO is usually imported in bulk quantities of 15,000 to 20,000 MT. Moreover, the Authority notes that the European Chemical Agency (ECHA) as per the REACH registrations**,** considers SFA to be hazardous as being very toxic to aquatic life and is toxic to aquatic life with long lasting effects[3]. On the other hand, CPKO is not considered as a hazardous product[4]. Therefore, the shipment cost of CPKO cannot be compared with that of SFA. The Authority, accordingly, rejects the said claim of the exporter.

L. Indian industry's interests and other issues

L.1. Submission by the other interested parties

221. It has been claimed by the other interested parties that imposition of countervailing duty, if any, on the subject goods would not be in public interest due to following reasons:

i. because of its raw material dependency, high interest cost and other inefficiencies, the petitioner would not be able to meet the Indian demand for the PUC.

ii. increase in the cost of the PUC would lead to an increase in the costs of products such as soap, detergents etc., which are routinely used by the public at large.

iii. a levy of duty on the PUC would lead to an increase in imports of the downstream products of the PUC, such as ethoxylates, SLES, and SLS, which are currently subject to 0% basic customs duty under the ASEAN Free Trade Agreement. Imposition of duty would lead to an inverted duty structure for the downstream industries, thereby leading to increase in the imports of downstream goods. This will in turn lead to loss of business and employment for the downstream industries.

iv. There has been a significant increase in the production capacity of the downstream products in subject countries. It is very likely that the exporters would start exporting downstream products (SLS/SLES or Ethoxylates) if duties are imposed on SFA.

v. The capacity of the petitioner is not sufficient to meet the Indian demand and imposition of duty, if any, would lead to demand supply gap in the Indian market.

L.2. Submissions made by the Petitioner

222. Imposition of the duty would be in the interest of the downstream industries as well as the public at large.

223. The installed capacity of the petitioner alone is sufficient to meet about 80% of the Indian demand. As such, imposition of duty is not likely to cause any demand supply gap in the Indian market.

224. The purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices and restore fair competition in the Indian market.

225. There would be a negligible (0.3%) impact of duty on the cost of consumer products.

226. If the protection of duties is not granted to the domestic industry forthwith, it would not be able to survive and consequently, the entire downstream industries would become dependent on imports for their raw material (SFA) requirement.

227. The increase in capacity of downstream products (SLS/SLES) in the subject countries, significantly in excess of the local demand, clearly indicates that once the petitioner, that is the Indian domestic industry is wiped out, the subject countries would encourage exports of downstream products.

228. Moreover, if the Petitioner is wiped out, the downstream producers would become dependent solely on imports for their raw material (SFA) requirement, which would not be in their larger interest.

[3] https://echa.europa.eu/substance-information/-/substanceinfo/100.105.704
[4] https://echa.europa.eu/substance-information/-/substanceinfo/100.029.473

L.3. Examination by the Authority

229. The Authority has examined whether the imposition of the anti-subsidy duty on imports of the product under investigation would be against the larger public interest. This determination is based on consideration of information on record and interests of stakeholders, including the domestic industry, importers and consumers of the product.

230. The Authority notes that the total production capacity of the petitioner is *** MT and that of Godrej Industries is around *** MT, as against the demand of approximately 1,45,000 MT. Evidently, the Indian production capacity is sufficient to meet almost the entire Indian demand by itself. As such, the question of there being a demand supply gap does not arise in the present fact of the case. The Authority also notes that the claim of the interested parties that the petitioner has a limited capacity to produce C1214 blend is factually incorrect. The Authority notes that the petitioner had significant unutilised capacity during the POI, which is not the cause rather the consequence of the material injury being caused by the subsidized imports. As regards allegation regarding high finance cost of the Domestic industry, the same has been factored in while determining non-injurious price of the domestic industry, and interest cost has been moderated to arrive at a reasonable interest cost.

231. The Authority further finds that the PUC is an industrial raw material primarily used in manufacture of SLS, SLES or Ethoxylates etc., which are in turn used for manufacturing FMCG products such as soap, shampoos, detergents etc. Being an industrial raw material, it is noted that the duty imposed on the PUC would get passed through to the ultimate end consumer. Therefore, the impact of duty on end consumer is required to be seen. The petitioner has provided a quantified working of the impact of duty on the end consumer, which has not been controverted by the interested parties. It is seen that the impact of average duties on the price of the end product would be negligible.

232. The importers/users of the subject goods have claimed that the imposition of duty would lead to an inverted duty structure for downstream products such as SLS, SLES and Ethoxylates, as they attract nil import duty under ASEAN FTA. It has been submitted by them that the exporters of the subject countries are forwardly integrated and are expanding their downstream production capacity, significantly in excess of local demand. In these facts, the Authority notes that if the domestic industry is wiped out, the downstream industry would become completely dependent upon imports for their raw material requirement. As the exporters from subject countries are expanding their downstream capacity, it is imminent that the exports of SFA would, in absence of a domestic SFA supplier, be replaced by exports of value added downstream products, i.e. SLS, SLES and Ethoxylates. Being dependent on imports for raw material requirement might in fact put the Indian downstream industries in the same situation as that of the domestic industry, where they might have to compete with the cheap downstream products from the subject countries.

233. The uncontroverted fact that has emerged from the investigation is that the domestic industry would not survive unless adequate protection is provided to them. It is noted that if the domestic industry is wound up, in absence of any local source of raw material, the downstream manufacturers will be at the complete mercy of exporters who would then be in a position to dictate prices and can simply increase the prices of SFA. Further, given the fact that the subject countries are actively encouraging exports of value added products through provision of inadmissible subsidies, making the downstream industry completely dependent on imports for their raw material requirement would be catastrophic.

234. It is further noted that both SFA and its downstream products, Ethoxylates and SLS/SLES attract Nil customs duty under the ASEAN FTA. The imposition of CVD would merely correct the price, by removing impact of inadmissible subsidies being provided by the subject countries. In case, however, if the inadmissible subsidies are passed on to downstream manufacturers in the subject countries with a view to circumvent the duties, the Indian industries would be eligible to seek protection against the same. It may be noted that the Authority has herein above already determined that the subject countries are providing inadmissible subsidies, particularly provision of raw material (CPKO) at LTAR by the Governments of Indonesia and Malaysia. If the subsidies are continued, and the raw material for SLS, SLES and Ethoxylates is supplied at LTAR, the downstream producers would always have an option to seek appropriate remedy against the same. However, an unfair trade practice cannot be allowed to be perpetuated and the same needs to be redressed.

235. It has also been submitted by the downstream industries that protecting one company (i.e. the Petitioner) at the cost of multiple downstream companies, would not be in public interest. In this regard, it is noted that the purpose of anti-subsidy investigation is to grant protection to the domestic industry as a whole by neutralising inadmissible subsidies being provided by the subject countries. As such, whether the domestic industry currently comprises of one company or multiple companies is an irrelevant consideration. In fact, once adequate protection is granted, it is possible that it would attract further investment. India, owing to its population, is one of the key consumers of the subject goods. It is, therefore, likely that once the inadmissible subsidies are countervailed and a level playing field is established, the production of SFA would move towards the demand

market, i.e. India. Moreover, the Authority notes that value addition from CPKO (raw material) to SFA is about 70%, whereas from SFA to Ethoxylates/SLES is about 10-11%. As such, imposition of duties would encourage value addition in India and would, thus, be in the larger public interest.

236. The Authority further 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.

237. The Authority is mindful of the fact that the imposition of countervailing duty might affect the cost of the subject goods. Rather, the imposition of the countervailing measures ensures fair competition in the Indian market, particularly when 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. Imposition of countervailing measures would in fact remove the unfair advantages gained by subsidization, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

238. As regard the effect of the measures on the participating importers/user industry, the Authority has considered that their profits may be somewhat affected by the imposition of measures. It is noted that the importer industry's profitability ranges between single digit to double digits. In view of their profit margins, the effect would not be disproportionate, as, at least part of the increase in price, could be passed on to their customers. Further, given the inadequate profitability of the domestic industry and price depression on the market, it can reasonably be assumed that prices will increase after measures are imposed. Nevertheless, the impact measures may have on certain users should be balanced against the risk of a discontinuation of the domestic industry activity as the current situation is not sustainable. Not imposing measures will lead to less reliable and stable sources of supply and inevitably to price increases in the Indian market. The Authority therefore, concludes that imposition of duty would be in the larger public interest.

M. Conclusion

239. 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. It is noted that the subject imports are causing significant price and volume injury to the domestic industry.

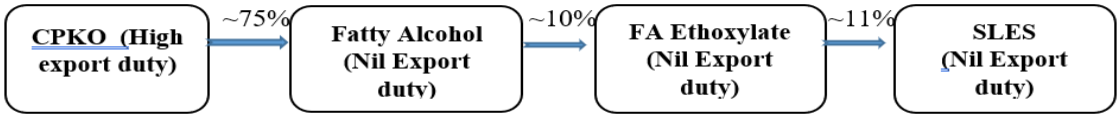
ii. The Governments of Indonesia and Malaysia have imposed export restraints in the form of export tax and export levy on the exports of crude palm kernel oil (CPKO) and its derivatives, which is the primary raw material for producing the PUC. It is an admitted position on record that the purpose and object of imposition of these export restraints is to encourage the downstream value addition onshore and to increase competitiveness of such downstream industries in the international market. The evidence on record has shown that the said export restraints have in fact compelled the domestic suppliers of CPKO to supply CPKO domestically at prices significantly below the appropriate benchmark world market price considered by the Authority. It is found that there is a demonstrable link between the export restraints imposed and the conduct of private CPKO suppliers in supplying CPKO at below world market price. The Authority, therefore, holds that price difference between domestic price of CPKO and the benchmark price as a subsidy being provided by the said countries.

iii. The Authority is simultaneously conducting a sunset review of the Anti-dumping duty imposed on the subject goods. In order to avoid overlap, any export subsidy which results in lowering of the export price and not the cost of production, is separately mentioned, and appropriate duties have been recommended accordingly.

iv. As regards the claim of the interested parties that the injury to the domestic industry is on account of its high finance cost and lack of working capital, the Authority notes that the financial condition of the domestic industry is not the cause of the injury but is in fact a consequence of the injury being faced by them. It is noted that the production of PUC is a cash intensive process, as the raw material itself accounts for approximately 70% of the cost. As such the working capital requirement of the company is comparatively higher. However, since the domestic industry has not been able to make profitable sales, it did not generate any funds, which has resulted in its high finance cost. In any case, reasonability of finance cost has been examined and only such finance cost that was found to be reasonable has been considered for NIP determination. Thus, injury attributable to any abnormal interest cost has not been considered in the injury margin determination.

v. It is noted that the petitioner is the sole Indian producer of mid-cut alcohol, which has the highest demand (about 90%) in the Indian market. It is an admitted fact that the financial condition of the petitioner is abysmal, and it would not survive unless adequate protection is granted to them. Thus, if the inadmissible subsidies being provided by the subject countries is not neutralised, the domestic industry for mid-cut alcohol would be wiped out, thereby making the downstream industries completely dependent on imports for their raw material requirement. Having a viable domestic source of raw material is in the greater interest of the Indian downstream industry.

vi. It has been submitted that the exporters of the subject countries are forwardly integrated and imposition of duty on SFA would lead to increase in imports of downstream products such as Ethoxylates and SLS/SLES. The value chain of oleochemical industry and their value addition percentage is as below:



vii. From the above, it is seen that the CPKO is primary raw material for the entire value chain. The Authority has herein above already determined that the subject countries have provided inadmissible subsidies, particularly provision of raw material (CPKO) at LTAR by the Governments of Indonesia and Malaysia. If the subsidies are continued, and the raw material for SLS, SLES and Ethoxylates is supplied at LTAR, the downstream producers would always have an option to seek appropriate remedy against the same. However, an unfair trade practice cannot be allowed to be perpetuated and the same needs to be redressed.

viii. It is further noted that the domestic industry is carrying out significant value addition in India, as such it would be in larger public interest to give them a level playing field by neutralising the subsidy being enjoyed by the producers in the subject countries.

ix. It is also noted that the PUC is an industrial raw material. As such, the downstream industries would be able to pass on at least a part of duty to the end consumers. It is noted that the impact of even a 35% duty, on the end consumer would be negligible.

N. Recommendation

240. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia, Government of Thailand , and Government of Indonesia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal link. . Having initiated and conducted the investigation into subsidization, injury and causal link in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject countries in the form and manner described hereunder. The Authority has recommended continuation of the anti-dumping duties in the parallel sunset review investigation concerning the subject goods (excluding C10) vide its Final Findings F.No. 7/01/2022-DGTR dated 02.02.2023. The adjustment of the recommended ADD, where warranted, has been provided in the duty table below. Further, since the injury on account of export subsidies are already addressed in the sunset review final findings, therefore, the export subsidies have been adjusted in the duties recommended herein.

241. 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. The Authority has noted the fact that the PUC is already attracting anti-dumping duty, accordingly, the adjustment of the same, where appropriate, has been provided in the table below. It is mentioned that for some of the producers/exporters, the duty mentioned in Col. No. 7 below is based on the injury margin as per lesser duty rule, and therefore, countervailing duty equal to the difference of duty specified in Col. No. 7 below and anti-dumping duty payable thereon, has been recommended. In other cases, where the injury margin was found higher than the total of subsidy margin and anti-dumping duty payable thereon, no adjustment of the anti-dumping duty has been provided.

242. 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

Sl. No.	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Duty amount as % of CIF value
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	2905.17, 2905.19, 3823.70	Saturated Fatty Alcohol of Carbon chain length C10 to C18 and their blends	Indonesia	Any including Indonesia	M/s PT Ecogreen Oleochemicals	14% *
2.	-do-	-do-	Indonesia	Any including Indonesia	M/s PT Musim Mas	20%*
3.	-do-	-do-	Indonesia	Any including Indonesia	M/s PT Wilmar Nabati Indonesia	27%*
4.	-do-	-do-	Indonesia	Any including Indonesia	M/s PT. ENERGI SEJAHTERA MAS	4%*
5.	-do-	-do-	Indonesia	Any country including Indonesia	Any other than 1 to 4 above	30%*
6.	-do-	-do-	Any country other than Indonesia, Malaysia & Thailand	Indonesia	Any	30%*
7.	-do-	-do-	Malaysia	Any including Malaysia	M/s FPG Oleochemicals Sdn. Bhd.	3%*
8.	-do-	-do-	Malaysia	Any including Malaysia	M/s KL - Kepong Oleomas Sdn. Bhd.	9% #
9.	-do-	-do-	Malaysia	Any country including Malaysia	Any other than 7 to 8 above	11% #
10.	-do-	-do-	Any country other than Indonesia, Malaysia & Thailand	Malaysia	Any	11% #
11.	-do-	-do-	Thailand	Any including Thailand	M/s Global Green Chemicals Public Company Limited	3%$
12.	-do-	-do-	Thailand	Any country including Thailand	Any other than 11 above	5% $
13.	-do-	-do-	Any country other than Indonesia Malaysia & Thailand	Thailand	Any	5% $

** For Serial No. 1 to 7 above, the amount of countervailing duty to be imposed is equivalent to the difference between the quantum of countervailing duty mentioned in Col No.7 and antidumping duty payable, if any.* ***(i.e. CVD= Duty in Col 7 above minus ADD, if any)***

 # For Serial No. 8 to 10, the quantum of countervailing duty to be imposed is in addition to the anti-dumping duty payable, if any, as recommended subsidy and dumping margins are less than the injury margin. ***(i.e. CVD = Duty in Col. 7 above)***

$For Serial No. 11 to 13, the quantum of CVD to be imposed would be the Countervailing duty mentioned in Col No.7 minus antidumping duty payable, if any. If the differential amount is negative, no countervailing duty shall be collected in such case. ***(i.e. CVD= Duty in Col 7 above minus ADD, if any)***

O. FURTHER PROCEDURE

243. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

ANANT SWARUP, Jt. Secy. & Designated Authority

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