



C-523-802
Investigation
POI: 1/1/10 - 12/31/10
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DATE: October 15, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

THROUGH: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Circular Welded Carbon-
Quality Steel Pipe from the Sultanate of Oman (Oman)

I. Summary

The mandatory respondent in this investigation is Al Jazeera Steel Products Co. SAOG (Al Jazeera). The petitioners are Wheatland Tube Corporation (Wheatland Tube), Allied Tube and Conduit, JMC Steel Group, and United States Steel Corporation.

On April 2, 2012, we published the *Preliminary Determination*.¹ We conducted verification of the questionnaire responses submitted by the Government of the Sultanate of Oman (GSO) and Al Jazeera between June 11, and June 15, 2012, and released verification reports on August 21, for Al Jazeera and on August 23, 2012, for the GSO. The GSO and Al Jazeera, and Wheatland Tube submitted case and rebuttal briefs on September 5, and September 10, 2012, respectively.²

The “Analysis of Programs” and “Subsidy Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs for our final determination. We have also analyzed the comments submitted by the GSO/Al Jazeera and Wheatland Tube in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in the briefs. For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued

¹ See *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 FR 19635 (April 2, 2012).

² The GSO and Al Jazeera jointly submitted case and rebuttal briefs.



during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.

We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

Tariff Exemptions on Imported Equipment, Machinery, Materials and Packaging Materials

- Comment 1 Whether the program is specific because it provides prohibited export subsidies
- Comment 2 Whether the program is *de jure* specific because its use is limited to non-oil industrial activity
- Comment 3 Whether the Department should find the tariff exemptions specific on the basis of adverse facts available (AFA)

Sohar Industrial Estates

- Comment 4 Whether the GSO's subsidization of the Sohar Industrial Estate (SIE) is regionally specific
- Comment 5 Whether the GSO failed to provide its economic plans thus warranting the application of AFA for the GSO's subsidization of the SIE
- Comment 6 Whether the GSO's provision of natural gas in the SIE is specific
- Comment 7 Whether the GSO impeded the investigation and did not act to the best of its ability with respect to its provision of water in Sohar
- Comment 8 Whether the GSO's provision of land confers a benefit
- Comment 9 Whether the GSO's provision of electricity confers a benefit

Soft Loans for Industrial Projects under RD 17/97

- Comment 10 Whether the loans provided under the RD 17/97 are specific

II. Subsidy Valuation Information

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the IRS publication *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³

Al Jazeera reported no affiliates in Oman and, consequently, has responded on behalf of itself.⁴ Consistent with the *Preliminary Determination*, we find no record evidence of any cross-owned entities. Because the approvals for the subsidies received by Al Jazeera are tied to its pipe and tube mill,⁵ we have attributed these subsidies to the Al Jazeera's sales of pipe and tube (and not to total sales). See 19 CFR 351.525(b)(5).

Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii). According to 19 CFR 351.505(a)(2)(i), a "comparable" loan is similar in structure (fixed v. variable interest rate), maturity and currency denomination.

In allocating benefits over time, the Department normally uses as the discount rate the company's cost of long-term fixed rate debt at the time the government approves the subsidy. If such rates are not available, the Department will use the average cost of long-term fixed rate

³ See *Fabrique*, 166 F. Supp. 2d at 600-604.

⁴ See AQR at 2-3.

⁵ See AVR at 4; Al Jazeera's industrial license (#4753) for the production of "steel pipes" at Appendix A.1.G-9 of GQR; approval of tariff exemptions for Al Jazeera (industrial license # 4753) at Appendix A.1.G-10 of GQR; and GSO approvals of soft loans included at Appendix B.1.G-1 of GQR.

loans in the country in question. *See* 19 CFR 351.524(d)(3).

Al Jazeera had countervailable loans outstanding during the POI and tariff exemptions on capital equipment for which benchmarks and discount rates are needed. For years in which Al Jazeera took out comparable commercial loans, we used the interest rates on those loans as the basis for our benchmark/discount rate.⁶ For years in which Al Jazeera did not take out comparable commercial loans, we are relying on the national average cost of long-term fixed-rate loans as reported by the World Bank.⁷ We have added to these interest rates the fees that would be incurred in obtaining loans from commercial banks, as reported by the GSO.⁸ *See* Al Jazeera Final Calculation Memorandum.

ANALYSIS OF PROGRAMS

Based upon our analysis of the petition, the responses to our questionnaires, and all other evidence on the record, we determine the following:

III. Programs Determined To Be Countervailable

A. Soft Loans for Industrial Projects under Royal Decree 17/97

RD 17/97 made soft loans available to the private sector with the goals of diversifying the economy of Oman and developing industry, agriculture, fisheries, tourism, education, health services, and traditional crafts in Oman. Under this program, applicants approved by MOCI received loans at three percent interest from commercial banks in Oman, with the difference between the three percent rate and the commercial interest rate covered by the GSO.⁹ The soft loan program under RD 17/97 originated in 1997 and terminated in 2006.¹⁰ Beginning in 2007, soft loans were made by the Oman Development Bank.¹¹

Al Jazeera had soft loans under the earlier RD 17/97 program outstanding during the POI, but has not received any loans from the Oman Development Bank.

We determine that the soft loans received by Al Jazeera under RD 17/97 confer a countervailable subsidy. The loans are a financial contribution in the form of a direct transfer of funds and they confer a benefit in the amount of the difference between the interest Al Jazeera paid on the loans and the amount the company would have paid on a comparable commercial loan. *See* sections 771(5)(d)(i) and (e)(ii) of the Act. Additionally, we determine that the subsidy is specific, under section 771(5A)(D)(iii)(II) of the Act, because Al Jazeera was a predominant user of the program. *See* Comment 10 below for further discussion of our specificity finding.

To calculate the benefit, we computed the difference between the amounts Al Jazeera would

⁶ *See* ASQR1 at Exhibit 2.

⁷ *See* GSQR1 at Appendix SQ-2.

⁸ *See* GSQR1 at 25.

⁹ *See* GQR at 15.

¹⁰ *See* GQR at 16.

¹¹ *Id.*

have paid under the benchmark rates described above and the amounts it actually paid during the POI. Because the loans were given to finance Al Jazeera's pipe and tube mill, we divided the subsidy during the POI by Al Jazeera's sales of pipe.

On this basis, we determine that Al Jazeera received a countervailable subsidy of 0.10 percent *ad valorem* under this program.

B. Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials

Industrial enterprises in Oman are able to import machinery, equipment, parts, raw materials, semi-manufactured materials and packing material duty free. According to the GSO, the purpose of this program is to encourage and develop all industrial projects, to raise the contribution of the industrial sector in the GDP, and to expand the bases of economic linkage in the Arab States of the Gulf.¹² The legal basis for these tariff exemptions is the Standard Industrial Management Regulations Law of the Cooperation Council for the Arab States of the Gulf (GCC), promulgated in Oman by RD 61/2008.¹³ RD 61/2008 supersedes the similar Organization and Promotion of Industry Law (RD 1/79) and the Foreign Business Investment Law (102/94).¹⁴

In order to be eligible for the tariff exemptions, a company must have an industrial license.¹⁵ Prior to 2008, including the year in which Al Jazeera received its industrial license (1995),¹⁶ Oman's procedures for granting industrial licenses were set out in RD 1/79.¹⁷ Chapter 1, Article 1 of this law defined the types of industrial establishments that were covered by the licensing procedures: "any project *{sic.}* basic objective of which is to convert raw material into finished or semi-finished products or to convert the latter into finished products. This shall also include mixing of the products, assembling, filling and packaging, provided such work is carried out mechanically."¹⁸

To obtain the tariff exemptions, an industrial enterprise submits to MOCI its industrial license, a list of the materials and equipment it intends to import, and the annual amounts.¹⁹ Under the current procedures, the application is filed with MOCI and the Ministry of Finance, and the latter reviews the request to ensure that the applicant corresponds to the company named in the industrial license, that the capital goods included in the request relate to the applicant's activities, and that the quantity of raw materials covered by the request is in line with the applicant's activities and capacity.²⁰ If the request complies with these requirements, the tariff exemptions are granted.²¹ Previously, the application was handled by solely by MOCI.²²

¹² See GQR at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See GQR at 7-8.

¹⁶ See GQR at Appendix A.1.G-9.

¹⁷ See GSQR1 at 1.

¹⁸ This translation taken from GSQR1 at 1, differs slightly from the translation provided at GSQR1 Appendix 3.

¹⁹ See GSQR1 at 2 and Appendix SQ-4.

²⁰ See GQR at 6-7.

²¹ See GQR at 7.

²² See GSQR1 at 3.

We determine that the tariff exemptions received by Al Jazeera under RD 1/79 and RD 61/2008, which are conditioned on the company having an industrial license, confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone that confer a benefit in the amount of the duties saved by Al Jazeera. *See* section 771(5)(d)(ii) of the Act and 19 CFR 351.510(a)(1). Regarding specificity, at the time Al Jazeera obtained its industrial license, the controlling language of RD 1/79 limited the types of companies eligible to receive such licenses to “industrial establishments,” as explained above. Consequently, industrial licenses were denied to companies that mined or extracted raw materials but did not convert them into semi-finished or finished products. This reading of Chapter 1, Article 1 of RD 1/79 is supported by the administrative guidelines followed by MOCI which describe separate regimes for industrial licenses (and associated benefits) and for mining licenses.²³ Further evidence of the limited nature of this definition exists in subsequent legislation. In particular, the Rules for Implementing the Common Industrial Regulatory Law for the GCC (“GCC Industrial Rules”), which describe the current procedures for obtaining an industrial license,²⁴ expressly exclude “projects engaged in the field of oil exploration and extraction, and projects engaged in the field of extraction of metal ores without transformation of their contents or shapes.”²⁵ The GSO describes the current procedures as superseding “similar earlier schemes” under RD 1/79²⁶ and states that the industrial licensing process “did not change” when RD 1/79 was replaced in 2008.²⁷ Consequently, we determine that the tariff exemptions, which are conditioned on Al Jazeera having an industrial license, are *de jure* specific under section 771(5A)(D)(i) of the Act, because they are expressly limited to certain enterprises or industries, “industrial enterprises” and not included, for example, are enterprises that mined or extracted raw materials but did not convert them into semi-finished or finished products. *See* Comments 1 - 3 below for further discussion of our specificity finding.

To calculate the benefit, we first removed Al Jazeera’s imports from GCC countries after January 1, 2003, and from the United States after January 1, 2009.²⁸ These imports were otherwise duty free and, hence, Al Jazeera realized no duty savings as a result of the tariff exemption program. Next, we analyzed whether the duties on the remaining imports of capital equipment in prior years were allocable to the POI as non-recurring subsidies. *See* 19 CFR 351.524(c). For each year in which Al Jazeera’s duty savings on capital equipment imports exceeded 0.5 percent of Al Jazeera’s sales of pipe, we allocated the benefit to the POI using the discount rates described above. Otherwise, the benefits were expensed to the year of receipt. *See* 19 CFR 351.524(b)(2). Finally, we analyzed the duty savings on the remaining imports of raw materials during the POI as recurring subsidies. *See* 19 CFR 351.524(c). As discussed above, we allocated the duty savings received during the POI to Al Jazeera’s sales of pipe.

On this basis, we determine that Al Jazeera received a countervailable subsidy of 3.05 percent *ad valorem* under this program.

²³ *See* GSQR1 at 2 and Appendix SQ-4.

²⁴ *See* GQR at 8.

²⁵ *See* Chapter 2, Article 2 of GCC Industrial Rules at GQR Appendix A.1.G-1.

²⁶ *See* GQR at 4.

²⁷ *See* GVR at 3.

²⁸ *See* GSQR1 at 12.

C. Provision of Electricity for LTAR

Electricity in Oman is provided through the Main Interconnected System (“MIS”), which services the north of the country and accounts for 88 percent of the electricity supplied, the Rural Areas Electricity Company (“RAEC”), which services remote rural areas and accounts for three percent of electricity supplied, and the Salalah Power System (Dhofar Power Company SAOG), which services southern Oman and accounts for nine percent of electricity supplied.²⁹ In the MIS, there is a central purchaser and reseller of electricity, the Oman Power and Water Procurement Company, which is government-owned. RAEC and Dhofar Power Company SAOG are also government-owned.³⁰ In accordance Article 10 of RD 78/2004, the rates that are charged for electricity are approved by the Council of Ministers.³¹ Different rates are established for different customer categories, among them industrial, commercial and residential users. To be eligible for the industrial user rate, a company must have a letter of recommendation from MOCI and meet a stipulated power factor.³² According to the GSO, letters of recommendation are given to all companies with an industrial license.³³

We determine that the GSO’s provision of electricity to Al Jazeera at the industrial rate, which is conditioned on the company having an industrial license, confers a countervailable subsidy. The provision of electricity is a financial contribution in the form of the provision of a good or service that confers a benefit to the extent that the electricity is being provided for LTAR. *See* sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act. Additionally, we determine that the GSO’s provision of electricity at the industrial rate is *de jure* specific under section 771(5A)(D)(i) of the Act because it is expressly limited to certain enterprises or industries, “industrial enterprises” and not included, for example, are enterprises that mined or extracted raw materials but did not convert them into semi-finished or finished products.

To determine whether Al Jazeera received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices within the country. *See* 19 CFR 351.511(a)(2)(i). As explained above, suppliers of electricity are required by law to charge “permitted tariffs” approved by the Council of Ministers.³⁴ Therefore, we determine that there are no market-determined prices within Oman to serve as a benchmark. Under 19 CFR 351.511(a)(2)(ii), we next look to world market prices where we can reasonably conclude that such a price would be available to users in Oman. There is no evidence of such prices on the record. Finally, under 19 CFR 351.511(a)(2)(iii), we look to whether the government price is consistent with market principles. The *CVD Preamble* further explains that the Department may analyze such factors as the government’s price setting philosophy, cost (including rates of return sufficient to ensure future operations) or possible price discrimination.³⁵ As explained above, different electricity rates are set for different user categories in Oman (*i.e.*, industrial, commercial, Ministry of Defense, residential, government,

²⁹ *See* GQR at 36-37.

³⁰ *Id.* at 36 with respect to RAEC and Appendix C.1-3, p. 18 with respect to Dhofar Power Company SAOG.

³¹ *See* GQR at Appendix C.1-1.

³² *Id.* at 37, Appendix C.1-3.

³³ *Id.* at 39.

³⁴ *See* GQR at 36.

³⁵ *See CVD Preamble*, 63 FR at 65378.

agricultural and fisheries, and tourism).³⁶ We determine that the rate charged to commercial users provides a suitable benchmark. *See* Comment 9 below for further discussion of our benchmark.

To calculate the benefit, we compared what Al Jazeera paid for the electricity it purchased at the industrial user rate during the POI to what it would have paid at the commercial user rate. For the months in which the industrial rate was lower than the commercial rate, we found a benefit; for the months in which the industrial user rate was higher than the commercial rate, we calculated a benefit of zero.³⁷ We then summed the benefits received during the POI and divided then by AL Jazeera's POI sales of pipe.

On this basis, we determine that Al Jazeera received a countervailable subsidy of 0.06 percent *ad valorem* under this program.

D. Provision of Land and/or Buildings for LTAR

Al Jazeera leases land in the Sohar Industrial Estate. The Sohar Industrial Estate, like the other industrial estates and free trade zones in Oman, was established on government-owned land and is managed by the PEIE.³⁸ In order to secure land in an industrial estate, companies must, *inter alia*, obtain an industrial license.³⁹

We determine that the GSO's provision of land to AL Jazeera, which is conditioned on the company having an industrial license, confers a countervailable subsidy. The provision of land is a financial contribution in the form of the provision of a good or service that confers a benefit to the extent that the land is being provided for LTAR. *See* sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act. Additionally, we determine that the GSO's provision of land is *de jure* specific under section 771(5A)(D)(i) of the Act because it is expressly limited to certain enterprises or industries, "industrial enterprises" and not included, for example, are enterprises that mined or extracted raw materials but did not convert them into semi-finished or finished products.

To determine whether Al Jazeera received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices within the country. *See* 19 CFR 351.511(a)(2)(i). According to the GSO, private persons and Omani corporations are able to own land outside of industrial estates and industrial plots are available for lease.⁴⁰ Further, according to the GSO, the rent for such leases is approximately OMR 0.5 per square meter per month.⁴¹

We determine that this lease rate for industrial plots outside the industrial estates is market-determined and, hence, appropriate as a measure of adequate remuneration under 19 CFR

³⁶ *See* GQR at Appendix C1-3, p.37.

³⁷ *See* *Softwood Lumber from Canada* and accompanying IDM at Comment 43.

³⁸ *See* GSQR1 at 13.

³⁹ *See* GVR at 14.

⁴⁰ *See* GQR at 44 and GSQR1 at 14.

⁴¹ *See* GSQR1 at 14.

351.511(a)(2). We acknowledge that these industrial plots are smaller than those available in industrial estates and that the leases are of shorter duration.⁴² However, there is no information on the record of this proceeding that would allow us to adjust for these differences. *See* Comment 8 below for further discussion of our benchmark.

To calculate the benefit, we compared what Al Jazeera paid for its leased land during the POI to what it would have paid under the benchmark. We allocated the savings received by AL Jazeera to AL Jazeera's POI sales of pipe.

On this basis, we determine that Al Jazeera received a countervailable subsidy of 0.92 percent *ad valorem* under this program.

IV. Programs Determined To Be Not Countervailable

A. Provision of Water for LTAR

MD 11/2000 establishes a uniform water tariff for all commercial users in Oman.⁴³ Accordingly, we determine that any potential subsidy related to the GSO's provision of water is not specific within the meaning of section 771(5A) of the Act. *See* Comments 4, 5, and 7 below for further discussion of our specificity finding.

B. Provision of Natural Gas for LTAR

According to the GSO, the natural gas network in Oman delivers gas for industrial purposes only.⁴⁴ Natural gas is provided to power plants, LNG producers, and industrial estates for use by the enterprises located there.⁴⁵ However, the GSO also states that firms located outside of, but close to, industrial estates can also purchase gas which is supplied by the industrial estates.⁴⁶ Additionally, natural gas is used in oil extraction.⁴⁷ Industrial users located in industrial estates all pay the same price for their natural gas.⁴⁸ Companies located nearby, but outside of industrial estates, normally pay the same for natural gas as companies within the industrial estates, but might pay more if the cost of providing the gas was higher due, for example, to having constructed a pipeline.⁴⁹

We determine that GSO's provision of natural gas is not specific within the meaning of section 771(5A) of the Act. *See* Comments 4, 5, and 6 below for further discussion of our specificity finding.

⁴² *Id.*

⁴³ *See* GQR at Appendix C.2-1.

⁴⁴ *See* GQR at 43.

⁴⁵ *Id.*

⁴⁶ *See* GSQR1 at 12-13.

⁴⁷ *See* GQR at Appendix 1.A-2, page 39.

⁴⁸ *See* GQR at 42.

⁴⁹ *See* GSQR1 at 13.

V. Programs Determined To Be Not Used By Al Jazeera During the POI or To Not Provide Benefits During the POI

A. Export Credit Discounting Subsidy (“Post-Shipment Financing Loans”)

The ECGA is the national export credit agency of the Sultanate. Exporters whose sales are insured by ECGA can discount their export bills with commercial banks and ECGA provides a one percent subsidy on the export sales it has insured.⁵⁰ Al Jazeera received an interest subsidy for a loan outstanding during the POI but we confirmed at verification that the disbursal occurred after the POI.⁵¹

B. Exemption from Corporate Income Tax

We confirmed at verification that Al Jazeera had a tax loss in 2009 (relating to the return filed during the POI) and, thus, did not benefit from a corporate income tax exemption during the POI.⁵²

C. Pre-Shipment Export Credit Guarantees

VI. Analysis of Comments

A. Tariff Exemptions on Imported Equipment, Machinery, Materials and Packaging Materials

Comment 1 Whether the program is countervailable because it provides prohibited export subsidies

In the *Preliminary Determination*, the Department focused its analysis on the process for obtaining tariff exemptions as distinct from the process for industrial licenses, and found that export information was not requested by the GSO for the tariff exemptions.

Affirmative Arguments⁵³

Wheatland Tube claims that the Department departed from its regulations and past practice in preliminarily finding that the tariff exemptions were not prohibited export subsidies. Wheatland Tube further disagrees with the distinction drawn by the Department in the *Preliminary Determination* between the application processes for the licenses and the tariff exemptions contending that the application for an industrial license is “integrally linked” with the receipt of customs duty exemptions, as that term is explained in 19 CFR 351.502(c). According to Wheatland Tube, without applying for an industrial license and being an “industrial enterprise” a company does not receive tariff exemptions. Thus, in Wheatland Tube’s view, the industrial license application process is clearly relevant to the tariff exemption application process.

⁵⁰ See GQR at 26.

⁵¹ See AVR at 8-9.

⁵² See AVR at 8.

⁵³ See PCB at 17-23 and RCB at 4-6.

Wheatland Tube points out that the Department verified that the industrial license applications continue to solicit information about Omani firms' exports.⁵⁴ Even if this is disputed, Wheatland Tube argues that the Department's practice is to look at the procedures in place at the time the company applies for benefits and not the current administration of the program. In support, Wheatland Tube cites *Stainless Steel Plate in Coils from South Africa*, *Drill Pipe from the PRC*, and *Coated Paper from Korea*.

Citing *Salmon from Chile*, Wheatland Tube argues that the Department should analyze the tariff exemption program in the context of the program's overarching purpose which, according to Wheatland Tube, is to promote exports by a small sector of the Oman economy.

Finally, Wheatland Tube is critical of the verification, claiming that GSO and Department officials discussed a "theoretical" application for tariff exemption, but no application was included among the verification exhibits. Wheatland Tube also asserts that the GSO "provided no access" to Al Jazeera's application.

The GSO and Al Jazeera support the Department's preliminary findings that the industrial license application is distinct from the tariff exemption application and that the application for the tariff exemptions does not seek information about the applicant's exports. Moreover, according to the GSO and Al Jazeera, the industrial license itself (which must be submitted with the tariff exemptions application to receive the exemptions) does not contain information regarding exports. The GSO and Al Jazeera add that the cases relied upon by Wheatland Tube to support its argument that the Department will find an export subsidy when an application requests export information can be distinguished from the situation here because in those cases the applications were for the programs being investigated. The GSO and Al Jazeera also argue that the Department verified that the One-Stop-Shop (the on-line system the GSO uses to process industrial license applications) does not contain information about the applicants' exports and the current paper application does not seek export-related information.

Rebuttal Arguments⁵⁵

The GSO and Al Jazeera restate their position regarding the distinction between the industrial license application and the process of applying for tariff exemptions. The GSO and Al Jazeera add that all Omani manufacturers are entitled to an industrial license regardless of whether they export.

With respect to Wheatland Tube's "overarching purpose" argument, the GSO and Al Jazeera dispute that *Salmon from Chile* is relevant in this investigation. They argue that in *Salmon from Chile*, the Department was addressing multiple programs arising from a single law and looked to the overarching purpose of that law to determine whether to consider the programs singly or together.⁵⁶ According to the GSO and Al Jazeera, the tariff exemption program is a single, clearly-defined program so there is no need to consider its overarching purpose.

⁵⁴ *Id.*

⁵⁵ See RRB at 13-15 and PRB at 6-8.

⁵⁶ *Id.* at 15.

Finally, the GSO and Al Jazeera also dispute Wheatland's Tube's claim that the GSO failed to provide Al Jazeera's tariff exemption applications at verification stating that the Department did not seek this information from the GSO.

Wheatland Tube restates its arguments that the application for industrial licenses and the license itself are integral to the operation of the tariff exemption program, and that the Department must look at the process in place when Al Jazeera applied for its license. In addition, according to Wheatland Tube, the Department can only continue the distinction between the licenses and tariff exemptions by deciding that Parts V (dealing with industrial licenses) and VII (dealing with promotion and development of industrial projects) of Royal Decree 61/2008 are distinct and unrelated, a position which Wheatland Tube finds absurd.

Department's Position

In a change from the *Preliminary Determination*, we are finding that industrial licenses are limited to certain enterprises or industries as a matter of law and, thus, that benefits whose receipt is conditioned upon having an industrial license are specific. Consequently, we have determined that the tariff exemptions, as well as the GSO's provision of electricity at the industrial rate and land, provide countervailable subsidies.

We agree with the GSO's and Al Jazeera's claims that the applications for industrial licenses are separate from the applications for tariff exemptions, and that the latter do not seek or rely upon export-related information. However, because receipt of the tariff exemptions is conditioned on having an industrial license, we find that limitations on the granting of industrial licenses necessarily amount to limitations on the tariff exemptions. Thus, given that only those industries which are eligible as a matter of law for industrial licenses may apply for tariff exemptions, we do not view the distinctions between the license application process and the tariff exemption application process as meaningful.

Similarly, because receipt of these subsidies is conditioned on a company's having an industrial license, there is no need to adopt Wheatland Tube's arguments about integral linkage or the "inseparability" of industrial license and tariff exemptions in RD 61/2008. The cited provision regarding integral linkage, 19 CFR 351.502(c), addresses situations in which subsidies are given under two different programs, *e.g.*, if tariff exemptions were given under two different programs. In this case, 19 CFR 351.502(c) does not apply because the tariff exemptions are not being provided by two programs and because Oman's industrial licensing procedures are not in themselves a program for purposes of section 771(5) of the Act.

Having found that Al Jazeera's receipt of various subsidies is conditioned on having an industrial license, it is necessary to revisit the question of whether the GSO's granting of industrial licenses is contingent on export performance. *See* section 771(5A)(B) of the Act and 19 CFR 351.514. In this regard, Wheatland Tube has pointed to the *CVD Preamble* and to Department practice to argue that because the application for an industrial license asks (or at the time Al Jazeera applied, asked) about the applicant's exports, the granting of the industrial license is export specific.⁵⁷

⁵⁷ *See, e.g.*, Wheatland's Pre-preliminary Comments at 3-7.

We disagree.

The *CVD Preamble* to our regulations discusses a situation in which a government considers multiple criteria in deciding whether to award a subsidy. The *CVD Preamble* states, in relevant part:

if exportation or anticipated exportation was either the sole condition or one of several conditions for granting {a subsidy} to a firm, we would consider any benefits provided under the program to the firm to be export subsidies unless the firm in question can *clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria*. In such situations, we would not treat the subsidy to that firm as an export subsidy.⁵⁸

In the instant investigation, there is no evidence indicating that Al Jazeera was approved for its industrial license because it intended to make or had made sales to export markets. The approval letters for Al Jazeera's initial industrial license, renewals of the license, and amendments of the license for the company's expansion make no mention of exportation or in any manner indicate that the GSO considered the company's exports or export potential in granting its approval.⁵⁹ Further, the GSO provided applications for industrial licenses that were approved despite the applicants having indicated no exports or intended exports⁶⁰ and applications that were not approved for reasons that had nothing to do with the applicants' export activities.⁶¹ Finally, we verified that other applications were approved where export information was not even requested.⁶² Thus, we find that the GSO has clearly demonstrated that neither exportation nor anticipated exportation was a condition for Al Jazeera's receipt of an industrial license.

Wheatland Tube further cites to several cases in which it claims the Department found export contingency merely because the applications for assistance requested information on exports. However, a close reading of these determinations shows that the parties either failed to demonstrate that the subsidy was given solely on the basis of non-export criteria or that the Department found that the granting government did rely on export-related criteria in making its decision. In one of these cases, *Drill Pipe from the PRC*, the government stated that the export-related activities of the applicant were not taken into account in its decision to award assistance, but there is no indication in the determination that the parties made any attempt to substantiate this claim.⁶³ In *Aluminum Extrusions from the PRC*, none of the parties appears to have disputed the export contingency of the program.⁶⁴ Regarding *Steel Wheels from the PRC*, Wheatland Tube cites to the preliminary determination, but for the final determination, the Department clearly found that the respondents did not meet the burden of demonstrating that they received

⁵⁸ See *CVD Preamble*, 63 FR at 65381 (emphasis added).

⁵⁹ These approval letters are included in GSQR4 at Appendices 4SQ-1 through 4SQ-8.

⁶⁰ See GSQR2 at Appendices 2SQ-4 and 2SQ-5.

⁶¹ See GQR at Appendix A.1.G-5 and GVR at 2.

⁶² See GVR at 5.

⁶³ See *Drill Pipe from the PRC* and accompanying IDM at "Outstanding Growth Private Enterprise and Small- and Medium-sized Enterprises Development in Jianyin Fund" and Comment 13.

⁶⁴ See *Aluminum Extrusions from the PRC* and accompanying IDM at "GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands."

the assistance under non-export-related criteria.⁶⁵ Finally, in *Coated Paper from Korea*, the Department found at verification that the applicants' export activities were among the several factors considered in awarding assistance and that the respondent did not meet the burden of showing that the benefit was received under non-export-criteria.⁶⁶ Thus, none of these cases is analogous to the instant case in which the parties have clearly demonstrated that neither exportation nor anticipated exportation was a condition for Al Jazeera's receipt of an industrial license.

We further disagree with Wheatland Tube that we need to examine the "overarching purpose" of the law as we did in *Salmon from Chile*. In that case, certain programs under Law 18,643 were clearly export contingent while others were not, and the Department looked to the law as a whole in finding that the latter programs were export subsidies.⁶⁷ Here, the record demonstrates that neither the industrial licenses nor the duty exemptions are export contingent.

Finally, we disagree with Wheatland Tube's comments about the verification. Wheatland Tube implies that the verification should have failed because a tariff exemption application was not collected as an exhibit. However, Al Jazeera's applications were already on the record.⁶⁸ Further, Wheatland Tube mischaracterizes the verification report when it states that the GSO denied access to Al Jazeera's application. Although the Department included Al Jazeera's participation in the tariff exemption program in the verification outline so that the GSO would be prepared to discuss this, the Department elected not to verify Al Jazeera's application during the government portion of the verification. Rather, the Department used the government portion of the verification to understand and document the administration of the program and the company verification to document the particulars of Al Jazeera's use of the program.⁶⁹

Comment 2 Whether the program is *de jure* specific because its use is limited to non-oil industrial activities

Affirmative Arguments⁷⁰

Wheatland Tube argues that the tariff exemption program is limited to certain industries not involved in oil extraction and exploration, and extraction of metal ores and that the program is, therefore, *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Thus, according to Wheatland Tube, several of Oman's most important industrial sectors are not eligible for the exemptions. In support, Wheatland Tube cites record evidence indicating that Oman's hydrocarbon sector accounted for approximately 46.4 of Oman's nominal GDP in 2010, while the manufacturing sector's share was less than 10 percent. Thus, Wheatland Tube argues, nearly half of Oman's economy was excluded from the program during the POI while less than

⁶⁵ See *Steel Wheels from the PRC* and accompanying IDM at "State Special Fund for Promoting Key Industries and Innovation Technologies."

⁶⁶ See *Coated Paper from Korea* and accompanying IDM at "Loans Under the Industrial Base Fund (IBF)" and Comment 24.

⁶⁷ See *Salmon from Chile* and accompanying IDM at Comment 5.

⁶⁸ See GSQR4 at Appendices 4SQ 9-18.

⁶⁹ See GVR at 11

⁷⁰ See PCB at 14-17.

10 percent benefited.⁷¹ Wheatland Tube urges the Department to find a benefit in the amount of the exempted duties, *i.e.*, five percent of the value of Al Jazeera's imports.

Rebuttal Arguments⁷²

The GSO and Al Jazeera argue that the program is not limited "to an enterprise or industry" within the meaning of section 771(5A)(D)(i) of the Act because the exemptions apply to a large number of industries across the manufacturing spectrum. In support, they point to the GVR at 11 which, in their view, shows a variety of industries receiving the exemptions. Further, the GSO and Al Jazeera argue that the record is not definitive as to whether the "hydrocarbon sector" cited by Wheatland Tube is coterminous with oil and gas extraction. In any event, according to the GSO and Al Jazeera, exclusion of hydrocarbon sector is irrelevant because the statute does not consider the proportion of the economy excluded from a given program, but rather whether the program only applies to a particular enterprises or industry or group of enterprises or industries. The GSO and Al Jazeera cite the SAA at 930 for the proposition that *de jure* specificity is to be determined on a "head-count basis" rather than an analysis of the proportion of an economy benefiting from the program.

Department's Position

The SAA makes clear that section 771(5A)(D)(i) of the Act provides that "specificity exists where a government expressly limits eligibility for a subsidy to an enterprise, industry, or group thereof."⁷³ As explained above under "Tariff Exemptions on Imported Equipment, Machinery, Materials and Packaging Materials," RD 1/79 and succeeding laws limit access to industrial licenses to "industrial establishments" (RD 1/79) and "industrial enterprises(s) (industrial establishments)" (RD 61/2008), which are enterprises that transform or convert raw materials into semi-finished or finished goods, not industries that produce raw materials. The GCC Industrial Rules specifically exclude certain enterprises or industries from the industrial licensing and registration regimen such as those enterprises or industries that mined or extracted raw materials but did not convert them into semi-finished or finished products including. Thus, these laws expressly limit access to industrial licenses to certain enterprises or industries. As such, we have determined that industrial licenses are limited to certain enterprises or industries as a matter of law and, thus, that benefits whose receipt is conditioned upon having an industrial license are specific. Further, we have determined that the oil and metal ore extraction industries are ineligible to receive the tariff exemptions and other benefits conditioned on having an industrial license.

We disagree with the GSO's and Al Jazeera's argument that *de jure* specificity is to be determined solely on a "head-count basis." The SAA explains that "the *de jure* prong of the specificity test recognizes that where a foreign government expressly limits access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof, further inquiry into the actual use of the subsidy is unnecessary."⁷⁴ However, section 771(5A)(D)(i) of the Act does not

⁷¹ *Id* at 16.

⁷² *See* RRB at 11-13.

⁷³ *See* SAA at 930.

⁷⁴ *Id.*

prescribe the manner in which the Department must make this determination, and the SAA recognizes both that the Department “can only make {a determination as to whether the number of enterprises or industries eligible for a subsidy is sufficiently small} on a case-by-case basis.”⁷⁵ Accordingly, we find that the Department is not required to determine the specific number of enterprises or industries (*i.e.*, conduct a “head count”) in order to determine that a program is specific as a matter of law.

As explained above, these laws limit access to industrial licenses and, thus, tariff exemptions to certain enterprises or industries in Oman. Wheatland Tube argues that these industries account for only a small portion of the Omani economy.⁷⁶ Our determination relies, however, on the fact that other industries in Oman are denied the exemptions as a matter of law to find that the tariff exemptions are *de jure* specific.

With respect to Wheatland Tube’s suggested calculation of the benefit, we agree in part. Because imports into Oman from GCC countries since January 1, 2003, and from the United States since January 1, 2009, are otherwise duty free, we find no benefit for imports from these countries. Otherwise, we have calculated the tariff savings using a duty rate of five percent.

Comment 3 Whether the Department should find the tariff exemptions specific on the basis of adverse facts available (AFA)

Affirmative Arguments⁷⁷

Wheatland Tube argues that the GSO did not act to the best of its ability as it failed to provide usage data for the tariff exemption program by industrial classification and that the Determent should, therefore, apply AFA consistent with section 776(b) of the Act. Wheatland Tube further argues that the GSO failed to arrange meetings with Omani agencies involved in administering the tariff exemptions and, therefore, the Department could not verify claims about the program’s usage data. Finally, Wheatland Tube claims that late-proffered translations prevented the Department from verifying Al Jazeera’s tariff exemptions. Thus, Wheatland Tube urges the Department to find the program specific based on AFA.

Rebuttal Arguments⁷⁸

The GSO and Al Jazeera argue that the GSO has thoroughly explained in its responses that the usage data the Department requested does not exist and, therefore, the GSO did not fail to act to the best of its ability. With respect to the Wheatland Tube’s argument that the GSO failed arrange for the proper meetings, the GSO and Al Jazeera argue that the GSO provided the Department with its intended verification itinerary and offered to make any GSO official available at any location. According to the GSO and Al Jazeera, the Department verifiers did not make any such request. Finally, the GSO and Al Jazeera claim that all translation issues were resolved prior to the start of verification.

⁷⁵ *Id.*

⁷⁶ See PCB at 16.

⁷⁷ See PCB at 3–14.

⁷⁸ See RRB at 4-11.

Department's Position

We have determined that the program is *de jure* specific. Consequently, a second finding that the program is specific is unnecessary and we do not need to reach the issue of whether we should also find the program specific as a matter of AFA.

B. Sohar Industrial Estates

Comment 4 Whether the GSO's subsidization of the Sohar Industrial Estate (SIE) is regionally specific

Affirmative Arguments⁷⁹

Wheatland Tube argues that the Department failed to apply the correct legal standard regarding the GSO's subsidization of firms in the SIE by conflating the benefit element with specificity. According to Wheatland Tube, the record evidence demonstrates that the GSO provides gas, electricity, water and land to the SIE, a designated geographical region, that it does not provide elsewhere in Oman. Furthermore, citing *Royal Thai Gov't.*, Wheatland Tube argues that the Department has found government-provided goods and services to be regionally specific even when the rates charged in the two regions are the same.

Wheatland Tube additionally cites record evidence which, in its view, support a finding of regional specificity. In particular: the establishment of industrial estates is a priority in Oman's long-term economic plan; SIE is the "linchpin" because under Oman's sixth five-year plan, the region in which Sohar is located, Al Batinah, received more than 48.5 percent of all GSO regionally allocated investment; under Oman's eighth five-year plan Al Batinah received 16.3 percent of GSO investment, second only to Muscat; and under that same plan, the Sohar Development Office received OMR 26.8 million more than the PEIE (the office in charge of all other industrial estates combined). Thus, according to Wheatland Tube, the record indicates that SIE has received the predominate amount of the GSO's regional investment including during the POI.

Rebuttal Arguments⁸⁰

The GSO and Al Jazeera claim that all industrial users of electricity, water, and natural gas pay the same rates notwithstanding their location and, thus, there can be no regional specificity. The GSO and Al Jazeera argue that Wheatland Tube's reliance on *Royal Thai Gov't.* is misplaced as in that proceeding, electricity users outside Bangkok purchasing from one regional authority paid the same rate as users in Bangkok purchasing from the Bangkok regional authority. The analogous situation here, according to the GSO and Al Jazeera, would be if Al Jazeera paid Muscat rates, but that is not the case because all companies pay the same rate.

Department's Position

As explained above, we have determined that the GSO's provision of electricity at the industrial

⁷⁹ See PCB at 28-34.

⁸⁰ See RRB at 15-16 and 18-19.

rate and land are conditioned on Al Jazeera's having an industrial license and, hence, *de jure* specific as a result of industrial licenses being limited, as a matter of law, to certain enterprises or industries. Therefore, our position on regional specificity relates only to the GSO's provision of water and natural gas.

We agree with Wheatland Tube that the issue is whether the GSO provides subsidized goods and services in a designated area in a manner that is different from other parts of Oman. Water is provided inside and outside of SIE at rates set by the Minister of Electricity and Water and the rates are not differentiated between SIE and the rest of Oman.⁸¹ Nor is there any evidence that the terms of access vary by location. Natural gas is distributed by the GSO to industrial users inside industrial estates, industrial users nearby industrial estates, electricity plants, the military, and universities.⁸² While we recognize that the distribution of natural gas is only possible where there is the infrastructure to deliver it, *i.e.*, a pipeline, we do not find that this is evidence of the GSO treating parties that are not near a pipeline differently from those that are.

Regarding *Royal Thai Gov't.*, we acknowledge that there will be circumstances in which a government provides a good or service to all users at the same price and the Department will find specificity. In the program at issue in *Royal Thai Gov't.* we found electricity to be specific because the government provided relatively more costly electricity to users in one region while providing relatively less costly electricity to users in another region, while charging the same price in both regions.⁸³ The record does not demonstrate that a similar situation exists in Oman with either water or natural gas.

Wheatland Tube's additional arguments are similarly without merit. We acknowledge that in its fifth five-year plan the GSO set a priority on projects that were not completed under the fourth five-year plan including industrial estates. However, the same priority was given to ports, roads and water, as well as projects undertaken according to royal directives and, separately, projects to achieve Oman's Vision 2020. "Special importance" was given to projects related to human resources and "efforts were to be concentrated on projects providing and upgrading services extended to citizens."⁸⁴ Given the breadth of the "priority," "special importance," and "concentrated effort" projects, we find that this evidence alone does not serve to set apart assistance to industrial zones in general or SIE in particular as regionally specific. Regarding the allegedly disproportionate investment directed to Al Batinah and to the Sohar Development Office, while the SIE may be located in Sohar in the Al Batinah region, the investment is going to Al Batinah and the Sohar Development Office, not SIE.⁸⁵

⁸¹ See GQR at 41.

⁸² See GVR at 13.

⁸³ See *Royal Thai Gov't.*, 441 F. Supp. 2nd at 1356.

⁸⁴ See paragraph 1-5-5 of "The Methodology for Formulation of the Vision for Oman's Economy, Oman 2020" provided at Exhibit 1 of Pre-preliminary Comments.

⁸⁵ As Wheatland Tube acknowledges, there are separate line items in the cited budget for the Sohar Development Office and PEIE (see FIS at Exhibit 1, page 14), and SIE is under the administration of the latter (see GSQR1 at 13).

Comment 5 Whether the GSO failed to provide its economic plans thus warranting the application of AFA for the GSO's subsidization of the SIE

Affirmative Arguments⁸⁶

Citing *Drawn Stainless Steel Sinks from the PRC*, *Citric Acid from the PRC*, *Pistachios from Iran*, and *Carbon Steel Wire Rod from Czechoslovakia*, Wheatland Tube contends that the Department has analyzed government policies and directives, such as Oman's five-year plans, in determining whether incentives are being provided to particular regions and industries. Because the GSO did not submit its five-year plans and other statements of its economic goals, Wheatland Tube claims that the GSO impeded the Department's investigation and that the Department should find all subsidies provided to the SIE to be specific.

Rebuttal Arguments⁸⁷

The GSO and Al Jazeera contend that the GSO provided economic/financial government documentation that exceeded the Department's request in the questionnaire. Moreover, according to the GSO and Al Jazeera, the Department's questionnaire did not request the long-term government documentation Wheatland Tube alleges the GSO failed to provide. Thus, the GSO and Al Jazeera claim, AFA is not warranted. Finally, the GSO and Al Jazeera argue that the precedent cited by Wheatland Tube is misplaced as those cases involved NME countries, while in *Pistachios from Iran*, neither the government nor the respondents participated in the proceeding.

Department's Position

We agree with the GSO and Al Jazeera that the information Wheatland Tube has identified as relevant to the investigation was not requested. Specifically, the CVD Questionnaire asked the GSO for, *inter alia*, economic planning documents "*published during the POI*" (emphasis added) and none of the documents identified by Wheatland Tube was published during the POI.⁸⁸ Thus, we determine that the GSO did not fail to provide requested information and has not impeded the investigation.

Comment 6 Whether the GSO's provision of natural gas in the SIE is specific

Affirmative Arguments⁸⁹

Wheatland Tube argues that in addition to its earlier arguments that the provision of natural gas

⁸⁶ See PCB at 25-28.

⁸⁷ See RRB at 16-18.

⁸⁸ The particular documents identified by Wheatland Tube are the five year plans for 1976, 1981, 1986, 1991, 1996, 2001, 2006, and 2011, and Oman's Vision 2020. Clearly, the five-year plans for 1976- 2006 were not published during the POI, and Oman's Vision 2020 was published in 1996 (see PCB at 27). Regarding the 2011 five-year plan, there is no publication date apparent on the document submitted by Wheatland Tube at FIS at Exhibit 1. However, even if this document, identified by Wheatland Tube as RD 1/2011, was published in the POI (2010), it would not be relevant to our investigation as it applies to the 2011-2015 period.

⁸⁹ See PCB at 34-39.

is regionally specific (*see* Comment 4, above), additional evidence indicates that the provision of natural gas is specific to the SIE. According to Wheatland Tube, record evidence documents that the SIE was initially developed by the GSO to fulfill Oman's first long-term LNG export contract. Eventually this export contract led to a country-wide gas shortage which, according to Wheatland Tube, caused Oman to import natural gas. Further, Wheatland Tube claims, the GSO prioritized supply to the industrial estates as part of its policy to support manufacturing for exports as evidenced by the fact that nearly 60 percent of Oman's gas production is put to industrial use. Wheatland further argues that natural gas is supplied predominately to industrial estates as evidenced by the GSO's statements that companies using natural gas must be located in or nearby industrial estates. Thus, according to Wheatland Tube, the limited supply of natural gas outside industrial estates is due to the GSO prioritizing the supply of natural gas to industrial estates (at prices below market value) rather than a function of infrastructure restraints or limited availability of industrial land.

To measure the benefit, Wheatland Tube suggests using a short-term price at which Qatar Petroleum sold natural gas to the United Arab Emirates in 2007, \$4.00/Mmbtu.

Rebuttal Arguments

The GSO and Al Jazeera did not address these arguments.

Department's Position

We disagree that the record demonstrates that the limited supply of natural gas outside industrial estates is due to the GSO prioritizing the supply of natural gas to industrial estates in a manner that is regionally specific. Instead, we find that the natural gas distributions is a function of infrastructure restraints or limited availability of industrial land. We acknowledge that the availability of natural gas in Oman (or anywhere) depends on the infrastructure (pipeline) available to deliver it. Wheatland Tube's characterization, however, makes it seem as though users in certain areas of Oman are being denied natural gas at the expense of users in other areas and as though there is a regional subsidy because Oman imports natural gas to meet its supply obligations. As we stated above, natural gas is distributed by the GSO to industrial users inside industrial estates, industrial users near industrial estates, electricity plants, the military, and universities.⁹⁰ It is also used in petroleum production.⁹¹ Further, Wheatland Tube's claim that 60 percent of natural gas produced in Oman is put to industrial use overlooks and does not account for the large amount of natural gas that is converted to LNG.⁹² Thus, we find that the provision of natural gas in Oman is not limited to enterprises or industries located within a designated geographical region.

Because we have determined that the GSO's provision of gas is not specific, we do not need a benchmark to determine the benefit.

⁹⁰ *See* GVR at 13.

⁹¹ *See* GQR at Appendix 1.A-2, page 39.

⁹² *Id.* at 38-39.

Comment 7 Whether the GSO impeded the investigation and did not act to the best of its ability with respect to its provision of water in Sohar.

Affirmative Arguments⁹³

Wheatland Tube argues that record evidence indicates that the Sohar Development Office, and not the PAEW as reported by the GSO, is responsible for the provision of water in Sohar. Because the GSO did not make this clear and permitted the Department to conduct a meaningless verification at the PAEW, the GSO impeded the investigation and did not act to the best of its ability thus warranting the application of AFA. Wheatland Tube asserts that the Department should rely on the highest water tariff among those it submitted to the Department. Alternatively, if the Department does not apply AFA, Wheatland Tube argues that an average of the water tariffs it submitted would be an appropriate benchmark.

Rebuttal Arguments

The GSO and Al Jazeera did not address these arguments.

Department's Position

We disagree that the GSO has impeded this investigation by not making clear that water is supplied by local authorities in the Wilayat of Sohar. In fact, Wheatland Tube cites to the GQR at 41 as its source for this information, thereby demonstrating that this information was supplied by the GSO. Moreover, as evidenced by the Department's verification outline, the Department sought to (and did) meet with the PAEW,⁹⁴ as the PAEW was in the best position to provide an overview of the GSO's provision of water and, in particular, is responsible for proposing water tariffs to the Council of Ministers for their approval.⁹⁵ Thus, there is no basis for applying AFA. Moreover, because we have determined that the GSO's provision of water is not specific, we do not need a benchmark to determine the benefit.

Comment 8 Whether the GSO's provision of land confers a benefit

Affirmative Arguments⁹⁶

Wheatland Tube contends that the GSO's provision of land in the SIE is regionally specific. In support, Wheatland Tube cites *Cylinders from the PRC*, *Laminated Woven Sacks from the PRC*, and *Standard Pipe from Turkey*, as cases in which the Department has determined the provision of land to be regionally specific when the land is within a designated geographical region.

Wheatland Tube further cites *Standard Pipe from Turkey* with regard to the benefit conferred through the GSO's provision of land. In that case, the Department analyzed the benefit by

⁹³ See PCB at 45-47.

⁹⁴ See GVR at 12.

⁹⁵ See GQR at Appendix C.1-4 (Article 5-10 of RD 58/2009 "Issuing the Law of the Public Authority for Electricity & Water").

⁹⁶ See PCB at 39-43.

comparing the rates within the designated geographic region to the commercial rates elsewhere in Turkey. Wheatland Tube argues that it would be meaningless to compare the lease rate paid by Al Jazeera in the SIE with the “subsidized” rates paid in other industrial estates or free trade zones in Oman, and that there are no market-determined lease rates in Oman on the record of this investigation. Consequently, Wheatland Tube urges the Department to use a lease rate for land in the United Arab Emirates as a “tier 3” benchmark (*see* 19 CFR 351.511(a)(2)(iii)).

Further, Wheatland Tube argues that because the lease information submitted by Al Jazeera pertained only to its pipe and tube mill, the subsidy should be attributed to Al Jazeera’s sales of subject merchandise.

Rebuttal Arguments⁹⁷

The GSO and Al Jazeera argue that *Standard Pipe from Turkey* is not instructive as the respondent in that proceeding could establish itself inside or outside the targeted zone whereas in the instant proceeding, all Omani industrial enterprises face infrastructure restraints and, therefore, must establish themselves in an industrial estate. The GSO and Al Jazeera add that all companies located in Omani industrial estates pay the same lease rates (after a start-up period). The GSO and Al Jazeera cite section 771(5)(E)(iv) of the Act to argue that the “prevailing market conditions” in Oman restrict available industrial land to industrial estates, and to argue against use of an out-of-country benchmark.

The GSO and Al Jazeera further argue that Wheatland’s suggested denominator for the subsidy calculation is in error because Al Jazeera’s tube mill also produces non-subject pipe.

Department’s Position

As explained above under “Provision of Land and/or Buildings for LTAR,” we have determined that the GSO’s provision of land to Al Jazeera is *de jure* specific. Therefore, we do not reach Wheatland Tube’s arguments regarding the regional specificity of land.

Regarding benefit, we disagree with Wheatland Tube that there is no information on market-determined prices in Oman for land. As explained under “Provision of Land and/or Buildings for LTAR,” the GSO reported a lease rate for industrial land outside of industrial estates in Oman and Wheatland Tube has not pointed to nor is there any evidence to suggest that these rates are not market-determined. Thus, there is no need to adopt Wheatland Tube’s suggestion to use a lease rate from a free zone in the United Arab Emirates as the benchmark.⁹⁸

The GSO and Al Jazeera argue that the “prevailing market conditions” in Oman dictate that all Omani industrial enterprises be located in industrial estates. We acknowledge that the industrial land available for leasing outside of the industrial estates is not strictly comparable to the land in the estates, but we have used the out-of-estate rates as our benchmark because they are the best information we have about the market-determined rates that would be paid in Oman by

⁹⁷ See RRB at 19-21.

⁹⁸ See FIS at Exhibit 11.

enterprises ineligible for industrial licenses and, hence, not able to locate in Oman's industrial estates. We disagree with the GSO and Al Jazeera that resort to an out-of-country benchmark is precluded by the statute, but consistent with our benchmark hierarchy, we have used an Omani benchmark to measure the benefit.

With respect to the denominator used to calculate the benefit, we have used Al Jazeera's sales of subject and non-subject pipe because the land in question is for Al Jazeera's tube mill, which also produces non-subject pipe.

Comment 9 Whether the GSO's provision of electricity confers a benefit

Affirmative Arguments⁹⁹

Wheatland Tube argues that the Department should measure the benefit received as a result of the GSO's provision of electricity using external benchmarks under 19 CFR 351.511(a)(iii). Wheatland Tube claims that prices in Oman are distorted due to highly subsidized natural gas being used to produce electricity and to direct subsidies to the Omani electricity suppliers.

Rebuttal Arguments

The GSO and Al Jazeera did not address these arguments.

Department's Position

As explained above under "Provision of Electricity for LTAR," we have determined that the electricity rate in Oman for commercial users is an appropriate benchmark to measure the benefit conferred by the GSO's provision of electricity at the industrial rate. The *CVD Preamble* recognizes that adequate remuneration for such inputs as electricity may be based on price discrimination.¹⁰⁰

Wheatland Tube argues that electricity prices in Oman should not be used as benchmarks because of possible distortion. With respect to the allegation that electricity is produced using "highly subsidized" natural gas, the evidence Wheatland Tube relies on states that the price of gas in Oman is "kept artificially below international market rates,"¹⁰¹ a conclusion that is based on a comparison of Omani prices to a short-term price offered by Qatar to the United Arab Emirates in 2007 in what appears to be a distress purchase ("during a delay in commencement of gas shipments").¹⁰² Thus, Wheatland Tube's allegation that gas in Oman is highly subsidized is outdated and relies on short-term, distress prices between two other countries. Moreover, we have determined in this investigation that the GSO's provision of natural gas does not result in a countervailable subsidy. With respect to the GSO's direct transfer to the suppliers of electricity in Oman, record evidence shows that this transfer chiefly supports the rates charged to residential

⁹⁹ See PCB at 43-45.

¹⁰⁰ See *CVD Preamble*, 63 FR at 65378.

¹⁰¹ See FIS at Exhibit 3, page 10.

¹⁰² *Id.* at 42.

and rural customers,¹⁰³ and not the rate charged to commercial customers which we have used as our benchmark. Thus, we disagree with Wheatland Tube that domestic prices in Oman for electricity are so distorted that they cannot serve as a benchmark for measuring the adequacy of remuneration of the industrial rate in Oman.

C. Soft Loans for Industrial Projects under RD 17/97

Comment 10 Whether the loans provided under the RD 17/97 are specific

Affirmative Arguments¹⁰⁴

The GSO and Al Jazeera argue that the Department should have analyzed whether the benefit Al Jazeera received was disproportionate when compared to the steel sector's share of the economy as a whole. In support, the GSO and Al Jazeera cite *Bethlehem Steel*.

Rebuttal Arguments¹⁰⁵

Wheatland Tube argues that the Department is not required to measure whether an industry is a predominate user of a program by reference to that industry's share of the overall economy. In support, Wheatland Tube cites *Alloy Magnesium from Canada*.¹⁰⁶ With respect to *Bethlehem Steel*, Wheatland Tube contends that the court did not direct the outcome sought by the GSO and Al Jazeera, but merely deferred to the Department's interpretation.

Department's Position

The Department is not required to assess, as part of our specificity analysis under section 771(5A)(D)(iii)(II) of the Act, the respondent's or the respondent's industry's share in the overall economy. We agree with Wheatland Tube that the court in *Bethlehem Steel* deferred to the agency's interpretation because the terms "dominant" and "disproportionately large" are not defined in the statute.¹⁰⁷ The information in this investigation shows that Al Jazeera was a predominant user of the program because the amount it borrowed was large relative to other users of the program.¹⁰⁸

¹⁰³ See GQR at Appendix C.1-3 ("2010 Annual Report of the Authority for Electricity Regulation, Oman" at page 29 ("Applying a more realistic estimate of the economic cost of Supply to Residential customers, reflecting consumption patterns, levels of voltage connection, and so on, suggests MIS residential customers accounted for over 90% of MIS subsidy in 2010." (Per page 9 of the same report, Sohar is within the MIS region of service.) Also, at page 36, "RAEC subsidy per kWh supplied and per account is significantly higher than other companies ... confirming the significant support provided by electricity subsidy to customers in rural areas."))

¹⁰⁴ See RCB at 2-3.

¹⁰⁵ See PRB at 1-3.

¹⁰⁶ See *Alloy Magnesium from Canada* and accompanying IDM at Comment 2.

¹⁰⁷ See *Bethlehem Steel Corp.*, 140 F. Supp. 2d at 1369.

¹⁰⁸ See Al Jazeera Final Calculation Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department Positions are accepted, we will publish the final determination in the *Federal Register*.

AGREE

DISAGREE



Paul Piquado
Assistant Secretary
for Import Administration

15 OCTOBER 2012

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
AUL	Average useful life
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
ECGA	Export Credit Guarantee Agency of Oman
GDP	Gross Domestic Product
IDM	Issues and Decision Memorandum
LNG	Liquefied natural gas
LTAR	Less than adequate remuneration
MD	Ministerial Decision
MOCI	Ministry of Commerce and Industry
NME	Non-market economy
OMR	Omani Rial
PAEW	Public Authority for Electricity and Water
POI	Period of Investigation
PEIE	Public Establishment for Industrial Estates
RD	Royal Decree
SIE	Sohar Industrial Estate

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	Al Jazeera
GQR	GSO Initial CVD Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Al Jazeera Questionnaire Response,” dated February 17, 2012.
GSQR1	GSO Supplemental Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Government of Sultanate of Oman Response to Supplemental Questionnaire and New Subsidies-Allegation Questionnaire,” dated March 16, 2012.
GSQR2	GSO’s Second Supplemental Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Government of Sultanate of Oman Response to Second Supplemental Questionnaire,” date April 12, 2012.
GSQR4	GSO’s Fourth Supplemental Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Government of Sultanate of Oman Response to Fourth Supplemental Questionnaire,” date May 17, 2012.
	GSO
AQR	Al Jazeera’s Initial Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Al Jazeera Questionnaire Response,” dated February 17, 2012.
ASQR1	Al Jazeera’s First Supplemental Questionnaire Response: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman; Al Jazeera Supplemental Questionnaire Response (SQR),” dated March 7, 2012.
	GSO and Al Jazeera
RCB	GSO and Al Jazeera Case Brief: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Case Brief on behalf of Government of Sultanate of Oman and Al Jazeera Steel Products Co. SAOG,” dated September 5, 2012.
RRB	GSO and Al Jazeera Rebuttal Brief: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman; Rebuttal Brief on behalf of Government of the Sultanate of Oman and Al Jazeera Steel Products Co. SAOG,” dated September 10, 2012.
	Wheatland Tube
FIS	Wheatland Factual Information Submission:

	“Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the Government of the Sultanate of Oman: Factual Information Submission,” dated June 1, 2012.
PCB	Wheatland Case Brief: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman/ Case Brief Of Wheatland Tube,” dated September 5, 2012.
PRB	Wheatland Case Brief: “Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman/ Rebuttal Brief Of Wheatland Tube,” dated September 10, 2012.
Pre-preliminary Comments	Wheatland Pre-Verification Comments: “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From Sultanate of Oman: Resubmission of Pre-Verification Comments,” dated June 14, 2012.
	Department
AVR	Memorandum regarding, “Verification Report of Al Jazeera Steel Products Co. SAOG in the Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman,” dated August 21, 2012.
GVR	Memorandum regarding, “Verification Report of the Government of the Sultanate of Oman in the Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman,” dated August 23, 2012.
CVD Questionnaire	Department’s Original questionnaire: “Countervailing Duty Investigation: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman,” dated December 22, 2011.
Al Jazeera Final Calculation Memorandum	Memorandum regarding “Final Affirmative Countervailing Duty Determination: Calculation Memorandum for Al Jazeera Steel Products Co. SAOG,” dated October 15, 2012.

LITIGATION TABLE

Short Cite	Cases
<i>Bethlehem Steel</i>	<i>Bethlehem Steel Corp. v. United States</i> , 140 F. Supp. 2d 1354 (2001).
<i>Fabrique</i>	<i>Fabrique de Fer de Charleroi, S.A. v. United States</i> , 166 F. Supp. 2d 593 (CIT 2001).
<i>Royal Thai Gov't.</i>	<i>Royal Thai Government v. United States</i> , 441 F. Supp. 2d 1350 (CIT 2006).

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if “certain” is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	<i>Alloy Magnesium from Canada</i>
<i>Alloy Magnesium from Canada</i>	<i>Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review, 68 FR 22359 (April 28, 2003).</i>
	<i>Aluminum Extrusions from the PRC</i>
<i>Aluminum Extrusions from the PRC</i>	<i>Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011).</i>
	<i>Carbon Steel Wire Rod from Czechoslovakia</i>
<i>Carbon Steel Wire Rod from Czechoslovakia</i>	<i>Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984).</i>
	<i>Circular Welded Carbon Quality Steel Pipe from the Sultanate of Oman</i>
<i>Preliminary Determination</i>	<i>Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 FR 19635 (April 2, 2012).</i>
	<i>Citric Acid and Certain Citrate Salts from the PRC</i>
<i>Citric Acid from the PRC</i>	<i>Citric Acid and Certain Citrate Salts From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, 77 FR 33167 (June 5, 2012).</i>
	<i>Coated Paper from Korea</i>
<i>Coated Paper from Korea</i>	<i>Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007).</i>
	<i>Cylinders from the PRC</i>
<i>Cylinders from the PRC</i>	<i>High Pressure Steel Cylinders From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738, (May 7, 2012).</i>
	<i>Drawn Stainless Steel Sinks From the PRC</i>
<i>Drawn Stainless Steel Sinks from the PRC</i>	<i>Drawn Stainless Steel Sinks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 46717 (August 6, 2012)</i>
	<i>Drill Pipe from the PRC</i>
<i>Drill Pipe from the PRC</i>	<i>Drill Pipe from the People’s Republic of China; Final</i>

	<i>Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011).</i>
	<i>Laminated Woven Sacks from the PRC</i>
<i>Laminated Woven Sacks from the PRC</i>	<i>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008).</i>
	<i>Pistachios from Iran</i>
<i>Pistachios from Iran</i>	<i>Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 71 FR 37056 (June 29, 2006).</i>
	<i>Salmon from Chile</i>
<i>Salmon from Chile</i>	<i>Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437 (June 9, 1998).</i>
	<i>Softwood Lumber from Canada</i>
<i>Softwood Lumber from Canada</i>	<i>Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005).</i>
	<i>Stainless Steel Plate in Coils from South Africa</i>
<i>Stainless Steel Plate in Coils from South Africa</i>	<i>Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa, 64 FR 15553 (March 31, 1999).</i>
	<i>Standard Pipe from Turkey</i>
<i>Standard Pipe from Turkey</i>	<i>Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 77 FR 19623 (April 2, 2012).</i>
	<i>Steel Wheels From the PRC</i>
<i>Steel Wheels From the PRC</i>	<i>Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR17017 (March 23, 2012).</i>

MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
<i>CVD Preamble</i>	<i>Countervailing Duties; Final Rule</i> , 63 FR 65348 (November 25, 1998).
<i>How to Depreciate Property</i>	U.S. Internal Revenue Service Publication 946 (2008), <i>How to Depreciate Property</i> , at Table B-2: Table of Class Lives and Recovery Periods.
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)