



C-523-811  
Investigation  
**Public Document**  
E&C/OIV: TEM

**DATE:** March 4, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Countervailing Duty Investigation of Certain Polyethylene  
Terephthalate Resin from the Sultanate of Oman: Issues and Decision  
Memorandum for the Final Negative Determination

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## I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are not being provided above the *de minimis* level to producers and exporters of certain polyethylene terephthalate resin (PET Resin) from the Sultanate of Oman (Oman), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are OCTAL SAOC - FZC and OCTAL Holding SAOC (collectively, OCTAL), and the Government of the Sultanate of Oman (GSO). Petitioners are DAK Americas, LLC, M&G Chemicals, and Nan Ya Plastics Corporation, America, (collectively, Petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties:

### Tariff Liability Issues

- Comment 1: Whether the Absence of Duty Liability Based on OCTAL's Location in the SFZ Is a Countervailable Subsidy
- Comment 2: Whether Petitioners' Subsidy Allegations Regarding OCTAL's Tariff Exemptions Were Properly Alleged

### Provision of Land for Less than Adequate Remuneration (LTAR) Issues

- Comment 3: Whether the Department Should Recalculate the Land for LTAR Rate with a Revised Benchmark
- Comment 4: Whether the Provision of Land for LTAR to OCTAL Is an Export Subsidy
- Comment 5: Whether The Department Should Recalculate the Land for LTAR Rate to Adjust for OCTAL's Expenses to Develop the Land

### Provision of Infrastructure for LTAR Issues

Comment 6: Whether the Department Should Continue to Find that OCTAL Benefited from GSO Non-General Infrastructure Funding in The Salalah Free Zone (SFZ)

Comment 7: Whether GSO Non-General Infrastructure Funding in the SFZ Is An Export Subsidy

Comment 8: Whether the Department Miscalculated the GSO Non-General Infrastructure Funding Subsidy

### Provision of Electricity for LTAR Issues

Comment 9: Whether the Department Should Revise Its Electricity for LTAR Benchmark

Comment 10: Whether the Provision of Electricity for LTAR Is Specific

### Miscellaneous Issues

Comment 11: Whether the Department Should Countervail OCTAL's Lease with Salalah Port Services Company SAOG (SPSC).

Comment 12: Whether The Department Should Have Investigated Other Potential Countervailable Subsidies

## **II. BACKGROUND**

### A. Case History

On August 14, 2015, we published the *Preliminary Determination* for this investigation.<sup>1</sup> On October 13, 2015, we issued a post-preliminary analysis memorandum.<sup>2</sup> We conducted verifications of the questionnaire responses submitted by OCTAL and the GSO, between October 25 and 29, 2015.<sup>3</sup> We received case briefs from Petitioners and a joint brief by the GSO and OCTAL on December 24, 2015.<sup>4</sup> We received rebuttal briefs from Petitioners and a joint rebuttal brief by the GSO and OCTAL on December 31, 2015.<sup>5</sup>

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<sup>1</sup> See *Certain Polyethylene Terephthalate Resin From the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 80 FR 48808 (August 14, 2015) (*Preliminary Determination*).

<sup>2</sup> See Memorandum from Abdelali Elouaradia to Christian Marsh, "Post-Preliminary Determination Decision Memorandum in the Countervailing Duty Investigation; Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated October 13, 2015.

<sup>3</sup> See Memoranda from Robert Bolling and Thomas Martin to File, "Countervailing Duty Investigation: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman: Verification Report: the Government of the Sultanate of Oman," (GSO Verification Report) and "Countervailing Duty Investigation: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman: Verification of the Questionnaire Responses of OCTAL SAOC - FZC," (OCTAL Verification Report) dated December 16, 2015.

<sup>4</sup> See Letter to The Honorable Penny Pritzker, "Case Brief of the Government of the Sultanate of Oman and OCTAL SAOC FZC: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated December 24, 2015; "Before the International Trade Administration of the U.S. Department of Commerce, Certain Polyethylene Terephthalate Resin from the Sultanate of Oman, Petitioners Case Brief," dated December 24, 2015.

<sup>5</sup> See Letter to The Honorable Penny Pritzker, "Rebuttal Brief of the Government of the Sultanate of Oman and OCTAL SAOC FZC: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated December 31, 2015;

## B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

## III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

## I. SUBSIDIES VALUATION

### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Table of Class Lives and Recovery Periods, the AUL for production assets in the chemical industry, the category applicable to PET resin, is 9.5 years, which is rounded to establish an AUL of 10 years in this investigation.<sup>6</sup>

### B. 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 the Department to 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

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"Before the International Trade Administration of the U.S. Department of Commerce, Certain Polyethylene Terephthalate Resin from the Sultanate of Oman, Petitioners Rebuttal Brief," dated December 31, 2015.

<sup>6</sup> See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B - Table of Class Lives and Recovery Periods," submitted in the Petition at Petition Vol. III-C at 6-1 and CVD Exhibit O-4.

met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (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.<sup>7</sup>

OCTAL identified its parent holding company, OCTAL Holding SAOC as a cross-owned company.<sup>8</sup> For purposes of this investigation, we examined subsidies provided to OCTAL and OCTAL Holding SAOC.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in each relevant section below.<sup>9</sup>

## **II. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we determine the following.

### **A. Programs Determined To Be Countervailable**

#### *1. Provision of Electricity for LTAR:*

The provision of electricity is regulated, owned, and controlled completely by the GSO, which sets out standard rates for different categories of users (*e.g.*, industrial, commercial, residential) applicable to all consumers in Oman.<sup>10</sup> These rates to final customers are determined and approved by the Council of Ministers.<sup>11</sup> The Commercial Permitted Tariff is a flat rate charge for all hours, while the Industrial Tariff varies by season (higher in summer than in winter months).<sup>12</sup> OCTAL reported that seven of the 10 electric meters at its production facilities are designated to be billed at the industrial rate, and were billed at that rate during the POI.<sup>13</sup> Its other meters are designed to be billed at the Commercial Permitted Tariff.

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<sup>7</sup> See *Fabrique de Fer de Charleroi SA v. United States*, 66 F. Supp. 2d 593, 603 (CIT 2001).

<sup>8</sup> See Letter from OCTAL, "Affiliation Response of OCTAL SAOC - FZC: Polyethylene Terephthalate (PET) Resin from Oman," dated April 30, 2015 (OQR1) at 4.

<sup>9</sup> See Memorandum from Thomas Martin to the File, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from Oman: OCTAL's Final Determination Analysis Memorandum," dated concurrently with this memorandum (Final Determination Analysis Memorandum).

<sup>10</sup> See Letter from GSO, "GSO's CVD Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated June 5, 2015 (GQR1) at 38.

<sup>11</sup> *Id.* at 40.

<sup>12</sup> *Id.*

<sup>13</sup> See Letter from OCTAL, "OCTAL's CVD Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated June 5, 2015 (OQR3) at 21 and Exhibits 18 and 20.

The Department has previously found the GSO's provision of electricity at the industrial rate, which is conditioned on possessing an industrial license, to confer a countervailable subsidy.<sup>14</sup> Consistent with our determination in *CWP from Oman*, we determine that this program constitutes a financial contribution in the form of a provision of a good or service by the GSO, pursuant to section 771(5)(D)(iii) of the Act.<sup>15</sup> 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 industrial enterprises (defined by law as enterprises whose basic objective must be to convert raw material into fully-manufactured or semi-manufactured products or to convert semi-manufactured products to fully-manufactured products<sup>16</sup>), and excludes commercial enterprises, the military, the government, residences, the agriculture and fishing industries, and the tourism industry.<sup>17</sup> To be eligible for the industrial rate, a company must have an industrial license, a letter of recommendation from the Ministry of Commerce and Industry, and meet a stipulated power factor.<sup>18</sup> OCTAL met these requirements.<sup>19</sup>

Because OCTAL pays less under the industrial rate than it would under other rates, it receives a benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). Section 351.511(a)(2) of the Department's regulations sets forth the regulatory structure for identifying comparative benchmarks for determining the extent of a benefit flowing from the provision of a government good or service provided for LTAR. Under 19 CFR 351.511(a)(2)(i), the Department's preference is to use market prices from actual transactions within the country under investigation. As explained above, however, the provision of electricity in Oman is regulated, owned, and controlled completely by the GSO (*i.e.*, market prices are not available). 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. While Petitioners placed electricity prices on the record that are available in Jordan and Iraq,<sup>20</sup> there is no evidence on the record that these prices are available to users in Oman. When there is no world market price available to purchasers in the country in question, we assess whether the government price is consistent with market principles, in accordance with 19 CFR 351.511(a)(2)(iii). Here, we determine that the rate charged to commercial users is sufficiently consistent with market principles to provide a benchmark for measuring the benefit under this program, pursuant to 19 CFR 351.511(a)(2)(iii).<sup>21</sup> However, given that the evidence shows that certain distortions are caused by the GSO's practice of not adjusting the rates for long periods of time, we have inflated the commercial user rate using consumer price indices to adjust for those

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<sup>14</sup> See *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 77 FR 64473 (October 22, 2012) (*CWP from Oman*), and accompanying Issues and Decision Memorandum (IDM) at 5-6.

<sup>15</sup> See 19 CFR 351.511(a)(1) and (2).

<sup>16</sup> See GQR1 at 9.

<sup>17</sup> *Id.* at 38-40.

<sup>18</sup> See OQR3 at 24.

<sup>19</sup> See also Letter from OCTAL, "OCTAL's Second Supplemental CVD Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated July 6, 2015 (OQR4) at 16-17.

<sup>20</sup> See Letter from Petitioners, "Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman - Petitioners' Submission of Factual Information Regarding Adequacy of Remuneration," dated July 10, 2015 at 6.

<sup>21</sup> See *CWP from Oman*, and accompanying IDM at 7-8.

distortions.<sup>22</sup> We have applied the calculated benefit as a ratio of OCTAL's total sales in the POI as a recurring benefit, as OCTAL pays electricity bills for its production facilities monthly.<sup>23</sup> We used OCTAL's total sales rather than export sales since the industrial license is not issued with respect to a company's exporting status. On this basis, we determine that OCTAL received a countervailable subsidy of 0.42 percent *ad valorem* under this program.<sup>24</sup>

## 2. Provision of Land or Leases for Land for LTAR

The GSO reported that most industries in Oman are located in either industrial estates or free trade zones installed on land which is GSO property.<sup>25</sup> OCTAL is located in the SFZ, which is one such property.<sup>26</sup> Free zones such as the SFZ are designated geographic areas within Oman aimed at economic development.<sup>27</sup> OCTAL rents the land via a usufruct agreement from the Salalah Free Zone Company SAOC (SFZC), a state-owned company established by Royal Decree, which operates the SFZ.<sup>28</sup> Given that the SFZC was established by, and is owned by, the government to pursue the objective of economic development, we determine that the SFZC is an "authority" as defined by section 771(5)(B) of the Act. Further, we determine that OCTAL's lease of land from the SFZC constitutes the provision of a good, and is therefore a financial contribution as defined by section 771(5)(D)(iii) the Act. Finally, we find that the program is contingent upon export performance, and, thus, constitutes an export subsidy within the meaning of section 771(5A)(B) of the Act. *See* Comment 4 below for additional details.

As described above, section 351.511(a)(2) of the Department's regulations sets forth the regulatory structure for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. The Department's preference is to use market prices from actual transactions within the country under investigation. In this instance, we used a simple average of two private lease agreements for industrial areas in Salalah, which the GSO obtained from public records.<sup>29</sup> We find that these rates are market prices from actual transactions within the country under investigation, and thus usable as benchmarks under 19 CFR 351.511(a)(2)(i). The rates are also contemporaneous with the POI. We have applied the calculated benefit as a ratio of OCTAL's total export sales in the POI as a recurring benefit, as OCTAL pays rent for its production facilities on an annual basis.<sup>30</sup> We used OCTAL's total export sales because we found the program to be an

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<sup>22</sup> *See* Letter from GSO, "GSO's CVD Supplemental Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated July 6, 2015 (GQR2) at Exhibit 10 at 16; Memorandum from Thomas Martin to The File, "Preliminary Determination Calculation Memorandum for OCTAL SAOC - FZC and OCTAL Holding SAOC," dated August 7, 2015, at Attachment 3.

<sup>23</sup> *See* OCTAL Verification Report at 9.

<sup>24</sup> *See* Final Determination Analysis Memorandum.

<sup>25</sup> *See* GQR1 at 16.

<sup>26</sup> *Id.* at Exhibit 5.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *See* GQR1 at Exhibits 5 and 6.

<sup>29</sup> *See* Letter from GSO to The Honorable Penny Pritzker, "Re: GSO's New Subsidy Allegation (NSA) Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated August 24, 2015, (First NSA Questionnaire Response) at 15, Exhibit NSA-7 and NSA-8.

<sup>30</sup> *See* OQR3 at 17.

export subsidy, as noted above. On this basis, we determine that OCTAL received a countervailable subsidy of 0.07 percent *ad valorem* under this program.<sup>31</sup>

### 3. Provision of GSO-funded Non-General Infrastructure

The GSO reported that the SFZ is a free trade zone established by Royal Decree, which has the purpose of attracting foreign investment and helping to diversify the Omani economy.<sup>32</sup> SFZC manages the development of the zone to: (1) provide an attractive business environment; (2) attract investment; and (3) perform certain administrative functions within the zone that normally will be handled by other GSO agencies for companies operating outside the zone.<sup>33</sup>

At the SFZ's inception in 2006, the SFZ site, and OCTAL's site specifically, was nothing more than virgin, undeveloped land.<sup>34</sup> The GSO's Ministry of Finance (MOF) approved Omani Rial (OMR) 11 million in 2006, and another OMR 51 million in 2010 "to develop and prepare the infrastructure and service facilities."<sup>35</sup> These funds were to provide the necessary capital for the SFZC to meet payroll and overhead costs, acquire vehicles and equipment, and commission business and technical studies that were required to meet the planning objective of the zone.<sup>36</sup> The GSO submitted details of these expenditures.<sup>37</sup> The GSO stated that neither OCTAL, nor its cross-owned affiliate Octal Holding SAOC, applied for, accrued, or received these funds.<sup>38</sup> The GSO claims further that OCTAL was the first investor in the SFZ, and performed its own site development in the zone to set up its operations.<sup>39</sup> On July 6, 2015, OCTAL submitted details of these expenditures.<sup>40</sup>

In 2013, the SFZC issued an executive report, which was the first report issued by the company.<sup>41</sup> In the section entitled Business Action Plan, the SFZC stated that, due to reasons of location, competitive costs, and world-class port facilities, the company has targeted three export-oriented industry sectors to achieve objectives in line with Oman's policy to achieve sustainable development: chemicals and material processing, manufacturing and assembling, and logistics and distribution.<sup>42</sup> The company described the chemical and materials processing sector to encompass certain building materials, certain metal and non-metal mineral resources, and plastics.<sup>43</sup> Regarding plastics, the

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<sup>31</sup> See Final Determination Analysis Memorandum.

<sup>32</sup> See First NSA Questionnaire Response at 1.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> See also Letter from GSO to The Honorable Penny Pritzker, "Re: GSO's Supplemental New Subsidy Allegation (NSA) Questionnaire Response: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated September 9, 2015 (Second NSA Questionnaire Response); at 4.

<sup>35</sup> See First NSA Questionnaire Response at 2-3.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at Exhibit NSA-1.

<sup>38</sup> *Id.* at 3, 6.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> See OQR4 at Exhibits 22 and 23.

<sup>41</sup> No similar report was issued in the POI; See GQR1 at 26 and Exhibit 15.

<sup>42</sup> See GQR1 at Exhibit 15, "Salalah Free Zone Executive Report 2013," at 25, 28.

<sup>43</sup> *Id.* at Exhibit 15, "Salalah Free Zone Executive Report 2013," at 28; See also Letter from GSO to The Honorable Penny Pritzker, "Re: The GSO's Response to the Department's New Subsidy Allegation (NSA) Second Supplemental CVD Questionnaire: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated September 23, 2015 (Third NSA Questionnaire Response) at Exhibit 1, "Strategic and business plan developed by A.T. Kearney," slides 67, 76.

company stated that “(t)hrough enhancing processes of producing caustic soda, chlorine, ethylene, propylene and methanol, it is possible to produce key derivatives” such as “PVC, HDPE, LLDPE, LDPE, polyester and PET products and adhesives thereby allowing additional opportunities of petrochemical development in Oman . . .”<sup>44</sup> Regarding OCTAL’s PET production specifically, the company stated that “(t)he factory employs 657 persons including 140 Omanis. . . (which is) in line with the directives of the Government for the support of national manpower . . .”<sup>45</sup>

Although the government provision of goods and services normally constitutes a financial contribution, a financial contribution does not exist in the case of government provision of general infrastructure.<sup>46</sup> General infrastructure is infrastructure that is created for the broad societal welfare of a country, region, state, or municipality. The preamble to the Department’s regulations explains that any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable: “(t)he provision of industrial parks and ports, special purpose roads, and railroad spur lines, to name some examples..., that do not benefit society as a whole does not constitute general infrastructure and will be found countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit.”<sup>47</sup> For example, interstate highways, schools, health care facilities, sewage systems, or police protection would constitute general infrastructure if we found that they were provided for the good of the public and were available to all citizens and members of the public.<sup>48</sup>

As stated above, the GSO explained that prior to the construction of the SFZ, the area was completely undeveloped. We find that the infrastructure provided is not general in nature, because it was not provided for broad societal welfare, but rather for certain industries. Therefore, we find that the GSO-funded non-general infrastructure development by the SFZC<sup>49</sup> to prepare the SFZ site, constitutes the provision of goods or services other than general infrastructure, and thus a financial contribution, within the meaning of section 771(5)(D)(iii) of the Act. Additionally, we find that the program is contingent upon export performance and, thus, constitutes a specific export subsidy within the meaning of section 771(5A)(B) of the Act under the same reasoning that we found the provision in Land in the SFZ to be export-contingent. Finally, we determine that the provision of this infrastructure confers a benefit to the enterprises, including OCTAL, operating in the SFZ, satisfying section 771(5)(E)(iv) of the Act.<sup>50</sup> In measuring the benefit from this program, we have treated the GSO’s costs of constructing the infrastructure in the SFZ as non-recurring grants in each year in which the costs were incurred. To calculate the benefit conferred during the POI, we applied the Department’s standard grant methodology. We calculated a ratio of benefit to apply to OCTAL using the same methodology we used in the *Preliminary Determination*, i.e., by dividing the total investments of all companies in the zone until the end of the POI, by the total investments

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<sup>44</sup> See GQR1at Exhibit 15, “Salalah Free Zone Executive Report 2013,” at 30.

<sup>45</sup> *Id.* at 54.

<sup>46</sup> See section 771(5)(D)(iii) of the Act.

<sup>47</sup> See *CVD Preamble*, 63 FR at 65378.

<sup>48</sup> See *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30636 (June 8, 1999) at Comment 13.

<sup>49</sup> In the Preliminary Determination, we found that the SFZC is an “authority” within the meaning of section 771(5)(B) of the Act.

<sup>50</sup> See GQR1at Exhibit 15, “Salalah Free Zone Executive Report 2013,” at 28; See also Third NSA Questionnaire Response at Exhibit 1, “Strategic and business plan developed by A.T. Kearney,” slides 67, 76.

attributable to OCTAL, as reported by GSO. We applied this ratio to each of the GSO's yearly investments over the period 2012 through 2014. The investments in 2012 and 2013 do not pass the "0.5" test, pursuant to 19 CFR 351.524(b)(2); thus, the contributions in 2012 and 2013 are allocated to those years, and no benefit from those years is allocated to the POI.<sup>51</sup> We allocated the GSO's 2014 infrastructure investments over a 10-year allocation time period. *See* the allocation period discussion under the "Allocation Period" section, above. We used as our interest rate OCTAL's long-term rate.<sup>52</sup> We divided the total benefit attributable to 2014 by OCTAL's total 2014 export sales, concurrent with the POI. We used OCTAL's export sales rather than total sales because we have determined the program to be an export subsidy, as discussed above. On this basis, we determine that OCTAL received a countervailable subsidy of 0.10 percent *ad valorem* under this program.<sup>53</sup>

## **B. Programs Determined Not To Confer A Benefit During The POI**

### *Exemption from Corporate Income Tax for Companies Located in the Salalah Free Zone (SFZ)*

According to Article 3 of Royal Decree (RD) 56/2002 Promulgating the Free Zones Law, as well as Article 3 of Royal Decree (RD) 62/2006 Regarding the Establishment of Salalah Free Zone, and Article 24 of Ministerial Decree (MD) 15/2011 Issuing the Regulation of Salalah Free Zone as amended by Ministerial Decree (MD) 45/2011, OCTAL is entitled to a corporate tax and filing exemption as a free zone company.<sup>54</sup> However, OCTAL also reported that for the 2013 tax year it had no taxable income to which the exemption provided for in these provisions could be applied. Under 19 CFR 351.509(a), an income tax benefit is equal to the difference between the income tax actually paid and the income tax that would have paid absent the program. Because OCTAL had no profit in 2013, it had no taxable income, and did not pay income taxes. Thus, although OCTAL was eligible for the program, we determine that no benefit exists during the POI under this program.

## **C. Programs Determined To Not Be Countervailable**

### *Tariff Exemptions on Imported Equipment, Machinery, Raw Materials and Packaging Materials*

According to Article 3 of Royal Decree (RD) 56/2002 Promulgating the Free Zones Law, as well as Article 3 of Royal Decree (RD) 62/2006 Regarding the Establishment of Salalah Free Zone, and Article 24 of Ministerial Decree (MD) 15/2011 Issuing the Regulation of Salalah Free Zone, as amended by Ministerial Decree (MD) 45/2011, OCTAL's imports into the SFZ receive duty free treatment because the SFZ is "outside the customs territory of Oman" and therefore imports received in the zone are not subject to customs duties. Generally, duty exemptions constitute a financial contribution in the form of revenue foregone by the government.<sup>55</sup> However, if raw materials and equipment do not enter the customs territory of Oman, the Department considers that they are not

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<sup>51</sup> *See* Final Determination Analysis Memorandum.

<sup>52</sup> *See* OCTAL Verification Report at 9.

<sup>53</sup> *See* Final Determination Analysis Memorandum.

<sup>54</sup> *See* OQR4 at Exhibits 5-8.

<sup>55</sup> *See* section 771(5)(d)(ii) of the Act and 19 CFR 351.510(a)(1).

dutiable and thus no revenue is foregone.<sup>56</sup> Consistent with this policy, we determine that this program does not provide a financial contribution because there is no revenue foregone within the meaning of section 771(5)(D)(ii) of Act.

#### **D. Programs Determined Not To Be Used**

1. *Development Loans for Industrial Projects by the Oman Development Bank*
2. *Export Credit Discounting Subsidy*
3. *Pre-Shipment Export Credit Guarantees*

### **III. CALCULATION OF THE ALL-OTHERS RATE**

Consistent with section 705(c) of the Act, the Department did not calculate an all-others rate because it did not reach an affirmative final determination.

### **IV. ANALYSIS OF COMMENTS**

#### **Tariff Liability Issues**

#### **Comment 1: Whether the Absence of Duty Liability Based on OCTAL's Location in the SFZ is a Countervailable Subsidy**

##### **Petitioners' Arguments**

- In finding the GSO did not forgo any revenue, the Department erred as a matter of law because OCTAL did avoid duty liability ordinarily attached to the goods that it imported into the SFZ. The provision of the SFZ program is a financial incentive to companies in the SFZ amounting to a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.
- Although the Department determined that the SFZ is outside of Omani customs territory, the record supports that the SFZ is governed by Omani customs law, and laws governing which companies may operate in the zone, and what they may import into the zone.
- While the Department stated that it was following the rule in *Welded Steel Pipe from Vietnam*, the present facts are more similar to *PET Film from India*, where the tariff exemption was found to be countervailable because tariff liability was contingent upon proving that an export requirement had been met. In this instance, Omani customs oversees and approves the entry process of companies operating within the SFZ, and the tariff exemption is contingent upon their compliance.

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<sup>56</sup> See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) and the accompanying IDM at Comment 3 (*Welded Pipe from Vietnam*).

### GSO/OCTAL Rebuttal

- The Customs laws of Oman state that no duty liability exists on goods brought into a free zone. It is not an exemption, but rather an absence of a revenue obligation. A potential revenue obligation is triggered by goods that leave the zone and enter the customs territory of Oman. The Department verified such entries and withdrawals.
- The laws governing the SFZ clearly place it outside the customs territory of Oman. The SFZ was established as a free zone under customs law and remains part of the sovereign territory of Oman. The fact that certain restrictions and laws apply uniformly across free zones and the rest of Oman alike does not place free zones on the same plane with the customs territory of Oman.
- The SFZC is not restricted to importing a limited number of materials into the zone, but it would raise suspicions if such materials appeared unrelated to any activity upon which OCTAL established its operations as a SFZ company. But even if this were true, it is unclear how the lack of any general right or privilege to import into the SFZ transforms the SFZ into a part of the customs territory of Oman.
- The facts of *Welded Pipe from Vietnam* are identical to the facts on the record of this proceeding, where the Department's decision rested on the free zone at issue being subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, in the latter case, appropriate duties are collected. The Department explored this at verification, and found no discrepancies and no indication that enforcement measures were not rigorous. The Department's reconciliation of OCTAL raw material imports, production, and exports showed no material discrepancies that could suggest withdrawals from the zone where duties were not paid.
- The facts of *PET Film from India* are distinguishable, in that there was no evidence that the producers in question operated outside the customs territory of India. Further, the Indian producers remained liable for the import duties contingent on an export requirement, indicating that a duty obligation was incurred when goods entered the free zone. In this case, customs enforcement relates to negligence or fraud penalties associated with the value of the entries themselves, or the value of any duties, rather than export-contingent duty liability.

### GSO/OCTAL Arguments

- Merchandise imported into the SFZ is not exempt from tariffs, because the SFZ is outside of the customs territory of Oman. Merchandise would only be dutiable at the time of entry into the customs region. Because there is no duty exemption, there can be no forgone revenue in a subsidy context, and thus, no financial contribution.
- Even if OCTAL is entitled to a duty exemption, all records show that OCTAL paid duties when owed.

### Petitioners' Rebuttals

- Royal Decree No. 56/2002 exempts imports from customs duties while the goods remain in the SFZ. This is an acknowledged financial incentive to the companies within the SFZ, and is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.
- The fact that Omani customs law continues to apply in the SFZ (such as those governing who may import and what may be imported into the SFZ, as well as the free trade agreement with

the United States) supports that there is some form of contingent liability that attaches to goods upon importation into the SFZ, supporting a finding of a financial contribution.

- OCTAL benefited from import tariff exemptions on equipment, machinery, and raw materials used in exported products - tariffs that should have been otherwise paid but for the company's location in the SFZ. The Department should countervail this, as well as the delayed payment of duties on goods sold into the customs territory of Oman, which amounts to an interest-free loan.

### **Department's Position:**

We agree with GSO/OCTAL. As stated above, according to Article 3 of Royal Decree (RD) 56/2002 Promulgating the Free Zones Law, as well as Article 3 of Royal Decree (RD) 62/2006 Regarding the Establishment of Salalah Free Zone, and Article 24 of Ministerial Decree (MD) 15/2011 Issuing the Regulation of Salalah Free Zone as amended by Ministerial Decree (MD) 45/2011, OCTAL's imports into the SFZ receive duty free treatment because the SFZ is "outside the customs territory of Oman" and therefore imports received in the zone are not subject to customs duties, and thus no revenue is foregone.<sup>57</sup> Petitioners' argument that this case is similar to facts in *PET Film from India*, where a tariff exemption was found to be countervailable because tariff liability was contingent upon proving that an export requirement had been met, is not analogous as there is no specific SFZ requirement that all imported materials must be exported. Merchandise entering and leaving the zone must be administered by Oman customs in the same manner as merchandise entering and leaving the Port of Salalah itself, as such merchandise is imported into or exported from Oman. As noted by Petitioners, the Department reviewed the procedures at the SFZ, and observed the administration of the zone by both the SFZC and Oman customs at the verification of the GSO. The Department found at verification that there were no discrepancies with the information reported by the GSO.<sup>58</sup> As such, merchandise entering the zone is not dutiable. Therefore, for the Final Determination, the Department has found that this program does not provide a financial contribution.

### **Comment 2: Whether Petitioners' Subsidy Allegations Regarding OCTAL's Tariff Exemptions Were Properly Alleged**

#### GSO/OCTAL Argument

- The Department initiated an investigation on tariff exemptions limited to enterprises that hold an industrial license pursuant to the Standard Industrial Management Regulations Law of the Cooperation Council for the Arab States of the Gulf (GCC), promulgated in Oman by Royal Decree No. 61/2008. OCTAL did not use this program because its operations are outside of the customs territory of Oman, in the SFZ. Although Petitioners later sought to place the circumstances under which OCTAL receives duty free treatment within the confines of their subsidy allegation, there is a clear distinction between the two. Petitioners could have advanced a timely new subsidy allegations after the submission of initial information by the GSO and OCTAL, but did not. The Department operated in disregard of the law and its own

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<sup>57</sup> See *Circular Welded Pipe from Vietnam* and the accompanying IDM at Comment 3.

<sup>58</sup> See GSO Verification Report at 8-10.

regulations, as well as its obligations to the World Trade Organization, by making broad inquiries beyond the scope of the tariff exemption investigation that it had initiated.

### Petitioners' Rebuttal

- The Petition clearly alleged a benefit with respect to duty-free imports into the SFZ. Moreover, the SFZ advises and assists investors in obtaining all necessary licenses, including industrial licenses.
- Whether or not the program at issue was properly alleged, the Department had not only the right, but the affirmative obligation, to investigate such a program upon the discovery of evidence indicating possible use by and benefit to OCTAL.

### **Department's Position:**

We agree with Petitioners. In the Oman CVD Initiation Checklist,<sup>59</sup> we stated “Petitioners allege that under the Standard Industrial Management Regulations Law (SIMR) of the Cooperation Council for the Arab States of the Gulf (GCC), promulgated in Oman by Royal Decree No. 61/2008 (which supersedes the previous law), the GSO provides import tariff exemptions for equipment, machinery, parts, raw materials, semi-manufactured materials and packing materials to select Omani industrial enterprises, and that duty-free imports are also one of the investment incentives provided in the SFZ.” The Department acknowledges that the sentence, which was intended to be a description of the tariff exemption program applicable to OCTAL, is somewhat ambiguous regarding whether the investigated program pertains to the industrial license program that the Department investigated in *CWP from Oman*,<sup>60</sup> or to duty-free incentives offered by the SFZ. However, that ambiguity does not render the initiation invalid. If the information is sufficient to indicate the possibility of a countervailable subsidy, it is appropriate to initiate an investigation to more fully develop the record and determine whether or not such a subsidy in fact exists. In this instance, regardless of any ambiguity with respect to the information available at initiation, OCTAL and the GSO self-reported the SFZ tariff program. In light of the information contained in the questionnaire responses and based on the guidelines established under section 775 of the Act and 19 CFR 351.311(b), the Department acted within its authority to examine the SFZ tariff program within this proceeding and sought additional information from the GSO and OCTAL. However, because the Department did not find the program to be countervailable, the arguments presented by GSO/OCTAL are moot.

### **Provision of Land for LTAR Issues**

#### **Comment 3: Whether the Department Should Recalculate the Land for LTAR Rate with a Revised Benchmark**

### Petitioners' Argument

- In the *Preliminary Determination*, the Department measured OCTAL's usufruct rental rate against six industrial land rental offers. At verification, OCTAL disclosed a previously unreported 2009 pipeline easement between the SFZC and OCTAL. This rate provides a

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<sup>59</sup> See Countervailing Duty Investigation Initiation Checklist: Certain Polyethylene Terephthalate Resin from the Sultanate of Oman, dated March 30, 2015 (Oman CVD Initiation Checklist), at 8.

<sup>60</sup> See *CWP from Oman* and the accompanying IDM at Comments 1, 2 and 3.

more accurate “Tier One” benchmark than the six industrial land rental offers because it results from an actual transaction in Oman, pursuant to 19 CFR 351.511(a)(2)(i), and is contemporaneous with OCTAL’s original lease agreement.

- If the Department does not use the pipeline easement as the benchmark, the Department should modify its preliminary calculation by excluding the land offer submitted by the GSO, because it was an offer for commercial rather than industrial land, which is not comparable to OCTAL’s land.

#### GSO/OCTAL Rebuttal

- Using the rate OCTAL pays for a pipeline easement situated in the SFZ as the benchmark for the remaining land undermines the entire premise behind investigating whether OCTAL receives land within the SFZ for LTAR.

#### GSO/OCTAL Argument

- If the Department does not revise its calculation using the usufruct rental rates obtained at verification as benchmarks, the next best alternative from a comparability standpoint would be to use the lease prices found in the private leases submitted by the GSO, which reflect industrial land (warehouses) in less developed Salalah, near OCTAL, as opposed to land in highly developed Muscat, far removed from OCTAL’s operations. The Department should adjust these rates to account for OCTAL’s investments in developing the land.
- Petitioners’ proposed land price benchmarks from the Kingdom of Saudi Arabia relate to land for purchase, specifically private industrial cities where land is “offered on a freehold basis,” not leases. The same source from Petitioners provides lease rates, but the source explicitly states that rates are subsidized. Beyond this, Petitioners offer no basis for suggesting general market conditions in the Kingdom of Saudi Arabia and in Oman are in any way comparable.

#### Petitioners’ Rebuttal

- The Department should either consider as the land for LTAR benchmark OCTAL’s rental rate for the pipeline easement, or modify the preliminary calculation to eliminate the commercial land rental offer submitted by the GSO.
- The Department cannot use as land lease rate benchmarks the usufruct lease rates obtained from the Ministry of Housing at verification because they are government land rates that are not consistent with market principles. The Department cannot use as land lease rate benchmarks the two sample private leases that the GSO submitted to the record, because the GSO itself stated that these properties are not comparable to OCTAL’s land, and they are not a sufficiently reliable representative sample to be a basis for a land benchmark, due to the lack of a land registration requirement in Oman.

#### **Department’s Position:**

We agree with GSO/OCTAL in part. To determine whether a financial contribution in the form of a good provided for LTAR confers a benefit within the meaning of section 771(5)(E)(iv) of the Act, the Department follows the benchmarking criteria described in 19 CFR 351.511(a)(2), which sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for the government-provided good or service. These potential

benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports, or competitively run government auctions) (Tier One); (2) world market prices that would be available to purchasers in the country under investigation (Tier Two); or (3) an assessment of whether the government price is consistent with market principles (Tier Three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

After the *Preliminary Determination*, at the request of the Department, the GSO submitted two private lease agreements for industrial areas in Salalah, which it obtained from public records.<sup>61</sup> Both are dated within 2014. These rates are Tier One benchmarks, and are thus superior to all other potential benchmarks on the record. We do not agree with Petitioners' claim that the rates are not comparable to OCTAL's land, as we find the fact that they apply to industrial land in Salalah, similar to OCTAL's land in the SFZ, to indicate sufficient comparability. Whether or not the two rates are a representative sample, based on these facts alone, the rates are superior to what Petitioners offer. While the Department will sometimes use offer prices when that is what is available on the record of a case, we find that completed and actual transaction prices are a preferable benchmark under the regulation. The 2009 pipeline easement between the SFZC and OCTAL does not represent a Tier One benchmark, as suggested by Petitioners, because there is nothing on the record to suggest that it is reflective of a market price. The pipeline easement transaction is a government price, specifically, a transaction between OCTAL and the same GSO authority providing the alleged land for LTAR subsidy to be compared to the benchmark. Because we are using a Tier One benchmark, the Tier Two benchmarks proposed by Petitioners are irrelevant. In any event, we note that the proposed land price benchmarks from the Kingdom of Saudi Arabia are plainly not available in Oman, under the Tier Two criteria. Thus, the two private lease agreements for industrial areas in Salalah, submitted by GSO, are the best information on the record for establishing a benchmark, and we have used them as the benchmark in our final determination.

Regarding GSO/OCTAL's contention that the Department should adjust land rental rates to account for OCTAL's investments in developing the land, we disagree. Specifically, adjustments to land rent due to OCTAL's investments in developing the land were negotiated between OCTAL and the SFZC.<sup>62</sup> Thus, these expenses did not impact OCTAL's POI expenses.<sup>63</sup> For a proprietary discussion regarding this determination, *see* Final Determination Analysis Memorandum. *See also* Comment 5, below.

#### **Comment 4: Whether the Provision of Land for LTAR to OCTAL Is An Export Subsidy**

##### Petitioners' Argument

- The Department based its determination that the SFZC's provision of land in the SFZ is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act based on Ministerial Decision No. 15/2011, dated February 16, 2011, which expressly limited the SFZ

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<sup>61</sup> *See* First NSA Questionnaire Response at 15, Exhibit NSA-7 and NSA-8.

<sup>62</sup> *See* OQR3 at 17.

<sup>63</sup> *Id.*

to enterprises which export 70 percent of their products. However, that regulation was amended later that same year to remove the 70 percent export requirement. Instead, the Department should determine specificity of this subsidy on the same basis as the Department's post-preliminary determination that the GSO's provision of non-general infrastructure to OCTAL was specific because the recipients of the infrastructure are limited to industries in the SFZ to enable those industries to build and operate.

GSO/OCTAL did not make a specific rebuttal argument to this comment.

#### GSO/OCTAL Argument

- The Department found in the *Preliminary Determination* that the provision of land in the SFZ is specific as an export subsidy based on a provision of Ministerial Decision 15/2011 that was repealed by Ministerial Decision 45/2011. There is no information on the record to support that any export contingency applied to the provision of land in the SFZ.
- There is no distinct legal regime in Oman from which to conclude that the provision of zone land use rights is regionally specific.
- Land rental rates for usufruct agreements for industrial land executed by the Ministry of Housing outside of any zone or industrial estate, which the Department found at verification, are very comparable to the prices charged to OCTAL, indicating no specificity and no benefit.

#### Petitioners' Rebuttal

- The Department has found in previous investigations that the provision of land for LTAR in specially designated zones constitutes a countervailable subsidy, and is often an incentive to encourage investment in both well-defined areas like a trade zone, or general areas.
- GSO/OCTAL's argument is moot because the Department found specificity within the meaning of section 771(5A)(D)(iii)(I) of the Act, by finding that OCTAL benefited as part of the plastics industry that the GSO targeted for investment in the SFZ.

#### **Department's Position:**

Petitioners and GSO/OCTAL are both correct that the export contingency upon which the Department found specificity pursuant to section 771(5A)(B) of the Act in the *Preliminary Determination* was subsequently repealed and not in effect during the POI.<sup>64</sup> However, there is still substantial evidence on the record to indicate that the provision of land for LTAR is an export subsidy.

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

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<sup>64</sup> See GQR1 at Exhibit 7.

solely under non-export-related criteria. In such situations, we would not treat the subsidy to that firm as an export subsidy.<sup>65</sup>

Given that the program's application form solicits information on export activity (*e.g.*, applicants' total export sales and key markets served), we find that the exportation or anticipated exportation is one of several conditions for granting this subsidy. Accordingly, this program is contingent upon export performance and, thus, constitutes a specific export subsidy within the meaning of section 771(5A)(B) of the Act.<sup>66</sup>

Additionally, in 2013, the SFZC issued an executive report, which was the first report created by the company.<sup>67</sup> In the section entitled Business Action Plan, the SFZC stated that, due to reasons of location, competitive costs, and world-class port facilities, the company has targeted three export-oriented industry sectors to achieve objectives in line with Oman's policy to achieve sustainable development: chemicals and material processing, manufacturing and assembling, and logistics and distribution.<sup>68</sup> The company described the chemical and materials processing sector to encompass certain building materials, certain metal and non-metal mineral resources, and plastics.<sup>69</sup> Regarding plastics, the company stated that "(t)hrough enhancing processes of producing caustic soda, chlorine, ethylene, propylene and methanol, it is possible to produce key derivatives" such as "PVC, HDPE, LLDPE, LDPE, polyester and PET products and adhesives thereby allowing additional opportunities of petrochemical development in Oman . . ."<sup>70</sup> This targeting of export-oriented sectors, one of which includes the production of PET products, further supports the conclusion that the provision of land at LTAR constitutes an export subsidy.

Moreover, the purpose of the free zone is to provide industrial and commercial land for companies who chiefly, if not exclusively, make export sales. As discussed in Comment 1 above, the SFZ is outside of Oman customs territory. The purpose of such zones is to provide industrial land for business enterprises that export, because companies that intend to sell product in Oman would be required to pay duties in Oman anyway on a higher value-added product; for such companies there is other industrial land in Oman. If there is, in fact, little difference in rent costs between land in industrial estates in Oman and rent costs in the SFZ as GSO/OCTAL claims, clearly a company that locates outside of customs territory chiefly intends to export. Even if rent costs between land in industrial estates in Oman and rent costs in the SFZ are similar, this only means that the benefits resulting from countervailable subsidies are marginal. This provides additional support for the conclusion that the provision of land at LTAR constitutes an export subsidy.

Thus, due to the solicitation of export information in the free zone application, and in light of the zone's business plan and the nature of the free zone, we find that the provision of land for LTAR is contingent upon export performance and, thus, constitutes an export subsidy.

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<sup>65</sup> See *CVD Preamble*, 63 FR at 65381

<sup>66</sup> See GQR3 at Exhibit 1.

<sup>67</sup> No similar report was issued in the POI; See GQR1 at 26 and Exhibit 15.

<sup>68</sup> See GQR1 at Exhibit 15, "Salalah Free Zone Executive Report 2013," at 25, 28.

<sup>69</sup> *Id.* at Exhibit 15, "Salalah Free Zone Executive Report 2013," at 28; See also Third NSA Questionnaire Response at Exhibit 1, "Strategic and business plan developed by A.T. Kearney," slides 67, 76.

<sup>70</sup> See GQR1 at Exhibit 15, "Salalah Free Zone Executive Report 2013," at 30.

## **Comment 5: Whether the Department Should Recalculate the Land for LTAR Rate to Adjust for OCTAL's Expenses to Develop the Land**

### GSO/OCTAL Argument

- OCTAL had to do its own site development simply to bring the land to a condition under which construction on the site could occur, which the Department verified. OCTAL's rent payment was for more than adequate remuneration. OCTAL's decision to locate in the SFZ was plainly driven by other considerations than rent.

### Petitioners' Rebuttal

- The Department should not adjust OCTAL's lease rate to account for OCTAL's investments developing the land, because these expenses were already accounted for through a provision in OCTAL's lease. Further, while GSO/OCTAL claim that OCTAL's infrastructure investments were verified, OCTAL provided the Department with two invoices for excavation work that OCTAL paid for. This does not amount to a verification of all of OCTAL's infrastructure expenditures.
- GSO/OCTAL offer conflicting explanations for their lease terms by arguing that OCTAL's superior lease terms were simultaneously the result of both the market reflecting the SFZ's lack of desirability (being undeveloped and far from Muscat), and special compensation for OCTAL's willingness to invest in developing its SFZ site (which OCTAL chose because of its desirability). Either way, OCTAL benefited from preferential lease terms designed to support its particular operations.

### **Department's Position:**

We agree with Petitioners. As we stated above in Comment 3, adjustments to land rent due to OCTAL's investments in developing the land were negotiated between OCTAL and the SFZC.<sup>71</sup> These expenses did not impact OCTAL's POI expenses.<sup>72</sup> For a proprietary discussion of these remaining expenses, *see* Final Determination Analysis Memorandum.<sup>73</sup> The Department accepted some documentary support at verification for OCTAL's claim that the company incurred infrastructure construction expenses while it built its facilities.<sup>74</sup> GSO/OCTAL has not made clear what connection these expenses have to their land rent, or explained why such expenses would impact POI expenses.

While we agree with OCTAL that many factors may weigh into a company's decision in selecting its site of operations other than rent, this has no bearing on whether or not a government authority provided land rental for LTAR. As stated above in our response to Comment 4, even if rent costs between land in industrial estates in Oman and rent costs in the SFZ are similar, this only means that the benefits resulting from countervailable subsidies are marginal. Therefore, for the final determination, the Department has not adjusted its provision of Land for LTAR calculation to adjust for OCTAL's expenses that relate to land development.

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<sup>71</sup> *See* GQR1, at 17.

<sup>72</sup> *Id.*

<sup>73</sup> *See* Final Determination Analysis Memorandum.

<sup>74</sup> *See* OCTAL Verification Report at Exhibit VE-7.

## Provision of Infrastructure for LTAR Issues

### **Comment 6: Whether the Department Should Continue to find that OCTAL Benefited from GSO Non-General Infrastructure Funding in the SFZ**

#### Petitioners' Argument

- OCTAL's claims that SFZC-funded infrastructure is not relevant to OCTAL's operations is not supported due to GSO's failure to provide planning documents contemporaneous with establishment of the SFZ. The failure of the GSO to provide these documents warrants the application of adverse facts available (AFA).
- OCTAL cannot assert that its own infrastructure work represents the universe of infrastructure it utilized and benefited from within the SFZ. The supporting documentation that it provided to the Department at verification demonstrates a subsidy arrangement for OCTAL's own work on its site in addition to the infrastructure development in the rest of the SFZ that the GSO financed and from which OCTAL and the plastics industry also benefited.

#### GSO/OCTAL Rebuttal

- There is no master development plan for the SFZ dating to 2006. The basic purpose and vision of the SFZ is set forth in the Free Zones Law promulgated by Royal Decree No. 56/2002, the SFZC regulations promulgated in 2011, and the strategic action plan developed between 2010 and 2012. This planning happened beyond the year in which OCTAL entered the land and began site development, which supports OCTAL's claim that it did not benefit from the GSO with respect to infrastructure development. The Department cannot conclude that OCTAL was the recipient of any benefit flowing from infrastructure funding to develop other sites in the SFZ, much of which has yet to be expended.
- Because OCTAL had to build its own infrastructure in developing its site of operations, and the Department has calculated a land for LTAR subsidy using benchmark rates for developed land, the Department is already capturing both the alleged land use rights subsidy and alleged infrastructure subsidy in the land for LTAR subsidy calculation.

#### GSO/OCTAL Argument

- The Department failed to define the infrastructure at issue, in the context of the subsidy allegation. Nonetheless, the infrastructure such as roads and electrical power generation actually used by OCTAL either preexisted the SFZ, or was actually paid for by OCTAL itself, where OCTAL required improvements to meet its needs. OCTAL built its own water and sewage treatment facilities. The infrastructure that OCTAL uses is not the infrastructure referred to in the SFZC 2013 Executive Report.
- Many of the countervailed expenditures are at the Adhan site, which is three kilometers away and thus geographically removed from OCTAL's operations at the Raysut site of the SFZ.

#### Petitioners' Rebuttal

- GSO/OCTAL confuse the issue by attempting to artificially segregate OCTAL's operations from the rest of the SFZ. For example, OCTAL's use of the one-stop-shop customs services provided by the SFZ is a benefit provided to all investors in the zone. The Department used

a ratio that reflected OCTAL's portion of the overall infrastructure expenditure, taking into account that OCTAL is not the sole beneficiary of the SFZ's infrastructure expenditures.

### **Department's Position:**

We agree with GSO/OCTAL in part. In response to the Department's questionnaires after the *Preliminary Determination*, GSO submitted: (1) a 2011 business plan created by A. T. Kearney, a management consulting firm; and (2) a 2012 Final Land Use and Utilities Master Plan.<sup>75</sup> The GSO claimed that these were the only such planning documents generated since the inception of the SFZ in 2006, and naturally such planning would only occur after the creation of the SFZ's formative regulations in 2011.<sup>76</sup> The Department did not find any additional SFZ planning documents at verification.

We also agree with GSO/OCTAL and their contention that most of the SFZ's infrastructure investments, which increased starting in 2012, occurred after OCTAL's start up, and notably, after the SFZ's strategic planning was apparently completed.<sup>77</sup> That the bulk of the funding should begin only after strategic planning is both logical and reasonable. Moreover, any benefit received by OCTAL for infrastructure investments would only accrue upon the completion of an infrastructure project.<sup>78</sup> Additionally, for the final determination, the Department has recalculated OCTAL's benefit to include only funding for completed infrastructure<sup>79</sup> (*see* Comment 8, below).

Regarding GSO/OCTAL's arguments that SFZ expenditures three kilometers away cannot impact OCTAL, the argument is moot since the Department has now excluded these projects from its calculation on another basis. The remaining expenses clearly relate to infrastructure and would pertain to OCTAL, based upon the SFZC's description of the expenses. For a proprietary discussion of these remaining expenses, *see* Final Determination Analysis Memorandum.<sup>80</sup>

Regarding GSO/OCTAL's argument that the Department is double-counting this benefit in its provision of Land for LTAR calculation, *see* Comment 8, below.

### **Comment 7: Whether GSO Non-General Infrastructure Funding in the SFZ Is *De Facto* Specific**

#### GSO/OCTAL Argument

- The infrastructure referred to in the SFZC 2013 Executive Report is not for the exclusive use of OCTAL or any specific investor in the SFZ, and thus is merely an extension of general infrastructure normally provided by government for the public good.

#### Petitioners' Rebuttal

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<sup>75</sup> *See* Third NSA Questionnaire Response at 3, Exhibits 1 and 2.

<sup>76</sup> *Id.* at 2.

<sup>77</sup> *See* OCTAL Verification Report at 9.

<sup>78</sup> *See* GSO Verification Report at 10-11.

<sup>79</sup> *See* Final Determination Analysis Memorandum.

<sup>80</sup> *Id.*

- There is no requirement that the SFZC’s infrastructure investment be directly related to OCTAL, rather the statute provides that a subsidy is specific if actual recipients of the subsidy, whether considered on an enterprise or industry basis, are “limited in number.” In this instance, the recipients of the infrastructure investments were specific industries, including the plastics industry, to meet their specific needs and not just provide for the general welfare.
- GSO/OCTAL willfully failed to submit the master development plan because GSO/OCTAL stated that it contained sensitive information. This prevented the Department from determining how OCTAL’s own site development interacted with the rest of the SFZ’s infrastructure.

### **Department’s Position:**

We disagree with GSO/OCTAL that the infrastructure in question is general. As described above, general infrastructure is infrastructure that is created for the broad societal welfare of a country, region, state, or municipality. However, the infrastructure provided here is not general in nature, because it was not provided for broad societal welfare, but rather for certain industries.

Further, we find that the provision of infrastructure by the GSO was contingent upon export performance, within the meaning of section 771(5A)(B) of the Act. 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.<sup>81</sup> The SFZC’s application form for tenant “investors” solicits information on export activity (*e.g.*, applicants’ total export sales and key markets served).<sup>82</sup> As with the provision of the land program described above, for the final determination, we find that the program is contingent upon export performance and, thus, constitutes an export subsidy within the meaning of section 771(5A)(B) of the Act.

Furthermore, in 2013, the SFZC issued an executive report, which was the first report created by the company.<sup>83</sup> In the section entitled Business Action Plan, the SFZC stated that, due to reasons of location, competitive costs, and world-class port facilities, the company has targeted three export-oriented industry sectors to achieve objectives in line with Oman’s policy to achieve sustainable development: chemicals and material processing, manufacturing and assembling, and logistics and distribution.<sup>84</sup> The company described the chemical and materials processing sector to encompass certain building materials, certain metal and non-metal mineral resources, and plastics.<sup>85</sup> Regarding

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<sup>81</sup> See *CVD Preamble*, 63 at 65381

<sup>82</sup> See GQR3 at Exhibit 1.

<sup>83</sup> No similar report was issued in the POI; See GQR1 at 26 and Exhibit 15.

<sup>84</sup> See GQR1 at Exhibit 15, “Salalah Free Zone Executive Report 2013,” at 25, 28.

<sup>85</sup> *Id.* at Exhibit 15, “Salalah Free Zone Executive Report 2013,” at 28; see also Third NSA Questionnaire Response at Exhibit 1, “Strategic and business plan developed by A.T. Kearney,” slides 67, 76.

plastics, the company stated that “(t)hrough enhancing processes of producing caustic soda, chlorine, ethylene, propylene and methanol, it is possible to produce key derivatives” such as “PVC, HDPE, LLDPE, LDPE, polyester and PET products and adhesives thereby allowing additional opportunities of petrochemical development in Oman . . .”<sup>86</sup>

Thus, the Department finds that the non-general infrastructure built in the free zone by the SFZC was built for the benefit of export-oriented zone tenants, which further supports the idea that the provision of such infrastructure constitutes an export subsidy.

### **Comment 8: Whether the Department Miscalculated the GSO Non-General Infrastructure Funding Subsidy**

#### Petitioners’ Argument

- While the Department concluded in its post-preliminary determination that the GSO provided OMR 11 million in 2006, and OMR 51 million in 2010 of funding for infrastructure in the SFZ, GSO officials confirmed at verification that the MOF made an additional disbursement of OMR 4.3 million in 2008. The Department should include this financial contribution in its benefit calculation.

#### GSO/OCTAL Rebuttal

- The MOF conveys the funds on a project-by-project basis, contingent upon the receipt by the MOF of the SFZC’s quarterly cash flow statements to demonstrate actual needs. The OMR 4.3 million alluded to by the SFZC official at verification came from the initial capitalization of OMR 10.8 million in 2006.

#### GSO/OCTAL Argument

- By calculating a provision of land for LTAR subsidy and an infrastructure provision subsidy, the Department is double-counting any alleged benefit because land values would normally incorporate the utility value associated with being near infrastructure and services. The Muscat values used in the Department’s provision of land for LTAR comparison would capture all of the intrinsic value associated with being near infrastructure and services in Muscat, which is the largest, most developed municipality in Oman.
- The Department should not be using OMR 62 million for infrastructure expenditure as the base figure from which any allocation is made to OCTAL, because this amount has not been fully expended. Any figure should be much smaller, reflecting actual expenditures.
- OCTAL submitted to the Department a table showing the funding allocated to specific infrastructure projects, and the funds actually expended. Because several investment projects were not completed as of the end of the POI, the infrastructure at issue was not yet available for use.
- Many items covered by the funding at issue cannot be construed as “infrastructure.”

#### Petitioners’ Rebuttal

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<sup>86</sup> See GQR1 at Exhibit 15, “Salalah Free Zone Executive Report 2013,” at 30.

- The GSO's allocation of OMR 51 million in 2010 was to develop and prepare the infrastructure and service facilities, and if these funds have been used or committed for that purpose, this amount should be used as the basis for the benefit calculation.
- The infrastructure subsidy is a non-recurring benefit treated in the same manner as an equity infusion or grant, separate and distinct in both form and purpose from OCTAL's preferential lease rate, which is a recurring benefit tied to OCTAL's site investment.
- The Department found at verification that the MOF made an additional disbursement of OMR 4.3 million in 2008 that the GSO failed to report. The Department should consider these funds to have been fully expended during the POI under an AFA analysis.

### **Department's Position:**

We agree with GSO/OCTAL in part. In the post-preliminary analysis,<sup>87</sup> the Department allocated the committed MOF funding to the SFZC over the AUL.<sup>88</sup> However, as GSO/OCTAL states, and as examined at verification by the Department, the MOF did not immediately transfer all of the allotted funding to the SFZC.<sup>89</sup> Moreover, the Department found the SFZC to be the authority, and OCTAL the beneficiary. Thus, any benefit received by OCTAL for infrastructure investments would accrue upon the completion of an infrastructure project. OCTAL reported to the Department which of the infrastructure construction expenses at issue either were accrued monthly and not assigned to specific projects, or were for projects completed prior to the end of the POI. The Department has recalculated OCTAL's benefit to include only these expenses. These remaining expenses clearly relate to infrastructure, based upon SFZC's own description of the expenses. For a business proprietary discussion of these expenses, *see* Final Determination Analysis Memorandum.

GSO/OCTAL's claim that land rental rates take into account the level of infrastructure already built on the land and its vicinity, is true to the extent that such factors, along with other market forces, will influence land prices.<sup>90</sup> However, the effect cannot be precisely identified or predicted, and would be open to speculation. Moreover, GSO/OCTAL's argument is purely theoretical in nature; Respondents point to no evidence in either the usufruct agreement or in the benchmarks applied by the Department in this case that the remaining infrastructure expenses that we consider to be countervailable are double-counted in the provision of land for LTAR calculation.

Regarding Petitioners' claim of an additional disbursement of OMR 4.3 million in 2008, Respondents are correct that the funding referred to in the verification report was an installment of the committed funding.<sup>91</sup> For the final determination, the Department has assigned the OMR 4.3 million funding to the extent that it applies to projects completed prior to the end of the POI, based on the SFZC cash flow information submitted by GSO.<sup>92</sup>

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<sup>87</sup> *See* Memorandum from Abdelali Elouaradia to Christian Marsh, "Post-Preliminary Determination Decision Memorandum in the Countervailing Duty Investigation; Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman," dated October 13, 2015 (Post-Preliminary Determination).

<sup>88</sup> *See* Post-Preliminary Determination.

<sup>89</sup> *See* GSO Verification Report at 10.

<sup>90</sup> In fact, the level of land rent negotiated between OCTAL and the SFZC was linked to OCTAL's excavation and soil improvements at the site completed over the term of the usufruct agreement. *See* OQR3 at 17.

<sup>91</sup> *See* GSO Verification Report at 10.

<sup>92</sup> *See* First NSA Questionnaire Response at Exhibit NSA-1.

## **Provision of Electricity for LTAR Issues**

### **Comment 9: Whether the Department Should Revise its Electricity for LTAR Benchmark**

#### **Petitioners' Argument**

- The Omani commercial electricity rate, which the Department used as the benchmark to measure the adequacy of remuneration of the industrial electricity rate, is not consistent with market principles, as the GSO has left the same rates unchanged and in effect since the 1980s. Failing to make any rate adjustments over such an extended period of time defies rational market principles. Prices are never adjusted to cover changes in electricity generation and supply costs. Rather, GSO provides annual subsidies to the electrical suppliers to cover their shortfalls. AER's 2014 Annual Report states that this subsidy amounted to OMR 291.1 million in 2014.
- Due to GSO's complete control over the Omani electricity market, the Department should look to benchmarks that are not available to consumers in the country under investigation, specifically the monthly export prices between Turkey to Iraq and Egypt to Jordan during the POI.

#### **GSO/OCTAL Rebuttal**

- Electricity average unit values of exports from Turkey to Iraq and from Egypt to Jordan are not rationally related to the market in Oman, and Petitioners have not shown that such prices would be available to purchasers in Oman. The use of the Omani commercial electricity rate as the benchmark in the preliminary results was justified in prior proceedings on the basis of record evidence that 90 percent of the subsidy provided to electricity suppliers is recovered from the prices they charge in the residential category.
- The subsidy provided to electricity suppliers in Oman permits the Department to calculate what would be a market rate. The subsidy does change from year to year, indicating what a market return would look like if the rates were adjusted and the subsidy foregone.

#### **GSO/OCTAL Argument**

- If the Department continues to calculate a countervailable benefit, it should inflate the prevailing industrial tariff rate by 2.02 Baisas and use that figure as the market benchmark because it reflects a cost recovery market benchmark from within the country in question. This is the amount of the subsidy received by the Dhofar Power Company in 2014 to make up its cost shortfall, allocated to non-residential electricity sectors on a per kilowatt hour basis.
- Alternatively, the Department could continue to employ the Oman commercial tariff as its benchmark, consistent with its past practice.
- The electricity prices in Iraq or Jordan submitted by Petitioners are flawed as benchmarks as Petitioners have not provided any information regarding the basis upon which the electricity is being exported and supplied, such as stage or level of distribution, or whether it is being provided on an emergency basis given the special circumstances within the regions in question. The preamble to the Department's CVD regulations specifically uses electricity as an example where it is not reasonable to conclude that a world market price would be available to an in-country purchaser.

### Petitioners' Rebuttal

- GSO/OCTAL's proposed benchmark based on the Dhofar Power Company's cost shortfall from which it obtains its subsidy, however, is a cost-to-government approach, not the benefit-to-recipient framework established in the statute, the Department's regulations, and *CWP from Oman*. The level of subsidization highlighted by GSO/OCTAL's analysis only supports Petitioners' argument that GSO's complete control over the Omani electricity market disqualifies the in-market commercial tariff rate from use by the Department as a benchmark.
- The Department has previously used land benchmarks from India to measure the adequacy of remuneration for land in Vietnam, and so the Department may use the external electricity benchmark data placed on the record by Petitioners.

### **Department's Position:**

For this final determination, we are continuing to use the commercial electricity rate as the benchmark rate to measure the benefit from the industrial rate, but we are adjusting that commercial rate.

At verification, the Department discussed the system of rates and subsidies in Oman with officials from the Authority for Electricity Regulation (AER).<sup>93</sup> The officials explained that the rates were set by a high level of government, and that even though AER is the regulatory body in charge of Oman's electricity sector, it does not have the ability to change any rates, regardless of their analysis of the sector.<sup>94</sup> Because the rates were already in effect and were reissued concurrently with the formation of AER in 2004, officials did not know the process involved in setting these rates.<sup>95</sup> Therefore, the Department was not able to gather any information at verification regarding the setting of these rates.

Pursuant to 19 CFR 351.511(a)(2)(ii), the Department will only use a Tier Two benchmark based on world market prices where it is reasonable to conclude that the good or service is actually available to the purchaser in the country under investigation. The Department has specifically stated that electricity prices from other countries are normally not available to purchasers in the country under investigation, due to the unique nature of electricity.<sup>96</sup> As stated above, there is no evidence on the record that rates available in Iraq or Jordan are available in Oman. Therefore, we determine that we cannot rely on any world market prices on the record as a benchmark for determining whether electricity is provided for LTAR.

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<sup>93</sup> See GSO Verification Report at 6.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> See *CVD Preamble*, 63 FR at 65377: "Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from actual transactions, we will turn to world market prices that would be available to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America."

Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. There is no hierarchy in these factors and we may rely on one or more of them in any particular case.<sup>97</sup> The regulations do not specify how the Department is to conduct such a market principles analysis. By its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis.

As noted above, AER officials did not know the process involved in setting the electricity tariffs.<sup>98</sup> Thus, the record contains no information that the Department can analyze about Oman's price-setting methods. However, we can analyze whether there is any apparent price discrimination in the rates. While our specificity finding does indicate some price discrimination among industrial users (between those with industrial licenses and those without), there is no indication on the record indicating any discrimination in the other rates. In particular, the commercial rate appears to be available to all commercial users and thus usable as a benchmark. As noted above, given the distortions caused by the GSO's practice of not adjusting electricity tariffs for long periods of time, for the final determination, we have inflated the rate using consumer price indices.<sup>99</sup>

GSO/OCTAL's suggestion that we calculate a benchmark using the distributor cost shortfall and corresponding electricity subsidy paid by the MOF does not yield an accurate estimated market rate for Oman, based on the evidence that Respondents themselves submitted. The GSO submitted a paper published by AER in 2009 which provided a detailed analysis demonstrating that static electricity rates cause greater demand, and increased costs to meet the demand, which causes ever increasing subsidies.<sup>100</sup> Thus, based on record evidence, the distributor cost shortfall is not reflective of a market rate, but rather reflects the market distortion caused by the GSO's practice of setting static electricity rates.

## **Comment 10: Whether the Provision of Electricity for LTAR Is Specific**

### GSO/OCTAL Argument

- Because the tariff charged to all industrial users across Oman is the same, and OCTAL pays this rate, it is not specific within the meaning of section 771(5A) of the Act. The difference in the subsidies received by each regional utility supplier is due to customer mix and the characteristics of their respective distribution systems.

### Petitioners' Rebuttal

- The Department previously determined in *CWP from Oman* that the GSO's provision of electricity at the industrial rate is specific in accordance with section 771(5A)(D)(i) of the Act because it is limited to a specific customer class eligible for the industrial user rate if certain conditions are met.

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<sup>97</sup> See *CVD Preamble*, 63 FR at 65378.

<sup>98</sup> See GSO Verification Report at 6.

<sup>99</sup> See Final Determination Analysis Memorandum.

<sup>100</sup> See GQR2 at Exhibit 10, at 31.

## **Department's Position:**

We agree with Petitioners. The GSO's provision of electricity at the industrial rate is conditioned on OCTAL's having an industrial license<sup>101</sup> and, hence, is *de jure* specific as a result of industrial licenses being limited, as a matter of law, to certain enterprises or industries. 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 limited, as stated above, to industrial enterprises (defined by law as enterprises whose basic objective must be to convert raw material into fully-manufactured or semi-manufactured products or to convert semi-manufactured products to fully-manufactured products<sup>102</sup>), and excludes commercial enterprises, the military, the government, residences, the agriculture and fishing industries, and the tourism industry. To be eligible for the industrial user rate, a company must have a letter of recommendation from the Ministry of Commerce and Industry and meet a stipulated power factor.<sup>103</sup> Moreover, in the case of OCTAL specifically, various ministries that have authority over specific areas of regulatory administration reviewed its industrial license application, and the approval of all of these agencies was required prior to OCTAL receiving its industrial license.<sup>104</sup>

## **Miscellaneous Issues**

### **Comment 11: Whether the Department Should Countervail OCTAL's Lease with Salalah Port Services Company SAOG (SPSC)**

#### **Petitioners' Argument**

- The GSO did not cooperate to the best of its ability in providing the information necessary for the Department to determine whether the SPSC provided OCTAL with land for LTAR. The SPSC holds usufruct rights to Salalah port land through a concession agreement with the GSO, and SPSC executed a subusufruct lease with OCTAL. The GSO refused to provide full responses to the Department's questions regarding this agreement that would allow the Department to determine whether the agreement provided a countervailable subsidy. Accordingly, the Department should apply AFA to find that OCTAL received land from the SPSC, an authority within the meaning of section 771 (5)(B) of the Act, for LTAR, and that the benefit was specific to OCTAL.

#### **GSO/OCTAL Rebuttal**

- The parameters of the Department's individual subsidy investigations must have an evidentiary foundation and conform to certain procedural formalities before engaging in further inquiries. The Department initiated an investigation into the provision of land in the SFZ for LTAR. There is no evidence that the land lease with the SPSC meets any of the elements of a countervailable subsidy, whether in terms of financial contribution, benefit, or

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<sup>101</sup> See GSO Verification Report at 6.

<sup>102</sup> See GQR1 at 9.

<sup>103</sup> See OQR3 at 24.

<sup>104</sup> These agencies were the Ministry of Environment and Climatic Affairs for environmental impact, the Directorate General of Civil Defense which administers occupational health and safety regulations, the Ministry of Manpower which administers labor regulations, and the General Directorate for Standards and Metrology, regarding the building standards for its industrial facility. See GSO Verification Report at 3.

specificity. The GSO nonetheless provided responses to the Department's standard questions appendix with respect to the SPSC lease, and thus Petitioners claims that the GSO failed to cooperate in relation to the SPSC are absolutely without merit.

- While the Department's regulations require the Department to examine a practice that appears to provide a countervailable subsidy during the course of an investigation, Petitioners point to nothing on the record, whether in their deficiency comments or in their case brief, that offers the appearance of a financial contribution, benefit, or specificity in relation to the SPSC lease.

### **Department's Position:**

We disagree with Petitioners that the GSO did not cooperate to the best of its ability in providing the information necessary for the Department to determine whether the SPSC provided OCTAL with land for LTAR. The Department requested OCTAL's lease with the SPSC, and requested from the GSO a response to the Department's questionnaire with respect to the lease.<sup>105</sup> OCTAL and the GSO responded to the Department's requests.<sup>106</sup> Petitioners claimed that the GSO's responses to the Department were deficient,<sup>107</sup> but did not file a timely subsidy allegation regarding the lease. We disagree that the responses were deficient. Rather, we found the information submitted by GSO and OCTAL to be sufficient for our analysis. The Department evaluated whether the lease at issue constituted: (1) the provision of goods or services constituting a financial contribution, within the meaning of section 771(5)(D)(iii) of the Act; (2) the provision of goods or services that is specific to a group of enterprises or industries within the meaning of section 771(5A)(D) of the Act; and (3) the provision of goods or services that confers a benefit, within the meaning of section 771(5)(E)(iv) of the Act. Based upon the information provided by the GSO and OCTAL, the Department did not have a basis for finding a countervailable subsidy with respect to OCTAL's lease with the SPSC. The Department additionally notes that Petitioners have not claimed, even in their case brief, that OCTAL's lease with the SPSC constitutes a countervailable subsidy. Finally, nothing occurred at the verification of the GSO and OCTAL that would cause the Department to change its *Preliminary Determination*.

### **Comment 12: Whether the Department Should Have Investigated Other Potential Countervailable Subsidies**

#### Petitioners' Argument

- Pursuant to 19 CFR 351.311(b), the Department has an affirmative obligation to investigate a potentially countervailable practice if sufficient time exists to do so. Petitioners raised the possibility of certain countervailable loan programs in their July 16, 2015 deficiency

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<sup>105</sup> See Letter from Robert Bolling to OCTAL, "Re: Investigation of Polyethylene Terephthalate Resin from the Sultanate of Oman: Countervailing Duty Questionnaire," dated June 22, 2015 at 4; See Letter from Robert Bolling to GSO, "Re: Investigation of Polyethylene Terephthalate Resin from the Sultanate of Oman: Countervailing Duty Questionnaire," dated June 22, 2015 at 6.

<sup>106</sup> See OQR4 at Exhibit 9; See GQR3 at 7.

<sup>107</sup> See Letter from Petitioners to the Secretary of Commerce, "Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman - Petitioners' Deficiency Comments on the Government of the Sultanate of Oman's Supplemental Questionnaire Responses," dated July 20, 2015 at 5.

comments.<sup>108</sup> The Department initiated an investigation into a new subsidy allegation and issued several questionnaires just prior to and continuing after issuance of the *Preliminary Determination* in August 2015. Thus, the Department erred by overlooking or ignoring record evidence indicating countervailable subsidies.

#### GSO/OCTAL Rebuttal

- Petitioners have not established even the appearance of a financial contribution to OCTAL, or supported a claim that any banking entities are government authorities, with respect to any of OCTAL's loans.

#### **Department's Position:**

We disagree with Petitioners that the Department overlooked or ignored record evidence indicating countervailable subsidies with respect to OCTAL's loans. The Department requested that OCTAL provide a list of all banking entities with which it has loans.<sup>109</sup> OCTAL responded to the Department's request.<sup>110</sup> The Department evaluated, based on information on the record, whether any of these loans were loans provided by a government authority for less than the amount OCTAL would pay on a comparable commercial loan that it could actually obtain on the market, under section 771(5)(E)(ii) of the Act. Based on the record evidence, the Department did not have a basis for finding that any of these loans were financial contributions from a government authority within the meaning of section 771(5)(B)(iii) of the Act. Finally, nothing occurred at the verification of OCTAL that would cause the Department to change its *Preliminary Determination*.<sup>111</sup>

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<sup>108</sup> See Letter from Petitioners to the Secretary of Commerce, "Re: Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman - Petitioners' Deficiency Comments on OCTAL's Supplemental Questionnaire Responses," dated July 16, 2015 (July 16 Deficiency Comments) at 3.

<sup>109</sup> See Letter from Robert Bolling to OCTAL, "Re: Investigation of Polyethylene Terephthalate Resin from the Sultanate of Oman: Countervailing Duty Questionnaire," dated June 22, 2015 at 5.

<sup>110</sup> See OQR2 at 16.

<sup>111</sup> See OCTAL Verification Report at 11.

**V. RECOMMENDATION**

We recommend approving 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* and will notify the U.S. International Trade Commission of our determination.

✓ Agree                      \_\_\_\_\_ Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

4 MARCH 2016  
Date