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Investigation
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DATE: October 15, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Circular Welded Carbon-
Quality Steel Pipe from the United Arab Emirates

I. BACKGROUND

The mandatory respondents in this investigation are ADPICO and Alita, and Universal.¹ The petitioners are Allied Tube and Conduit, JMC Steel Group, United States Steel Corporation, and Wheatland Tube (collectively “Petitioners”).

On March 30, 2012, we published the *Preliminary Determination*.² We conducted verification of the questionnaire responses submitted by the GUAE, ADPICO, and Universal between June 19 and 28, 2012. We released our verification reports on August 22, 2012. The parties filed case and rebuttal briefs on August 30 and September 6, 2012, respectively.³ On September 20, 2012, the Department issued a Post-Preliminary Analysis Memorandum which addressed two programs subject to this investigation, Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials Under the Federal Law of 1979 and/or GCC Industrial Law as well as the Provision of Natural Gas for LTAR. The parties submitted affirmative and rebuttal comments on September 26 and October 2, 2012.⁴

¹ For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.

² *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 FR 19219 (March 30, 2012).

³ ADPICO only filed a rebuttal brief.

⁴ ADPICO was granted an extension to file its affirmative brief. Consequently its brief was received on October 1, 2012.



The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate benefits from the programs under investigation. Furthermore, we have analyzed the comments submitted by parties during both rounds of case and rebuttal briefs in the “Analysis of Comments” section below, which also contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions in this memorandum.

Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

A. Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials Under the Federal Law of 1979 and/or GCC Industrial Law

Comment 1 *De Jure* Specificity of Tariff Exemptions

Comment 2 Tariff Exemptions as Export Subsidies

Comment 3 Application of AFA Due to the GUAE’s Failure to Provide Industry Usage Data

Comment 4 Countervailability of Alita’s Tariff Exemptions

B. Subsidies Within the Jebel Ali Free Zone

Comment 5 Scope of the Tariff Exemptions Program: UAE Customs Territory and the JAFZ

Comment 6 Regional Specificity of Tariff Exemptions in the JAFZ

Comment 7 Application of Facts Available to Universal Plastic Due to Non-Cooperation Regarding Subsidies in the JAFZ

C. The GUAE’s Provision of Natural Gas for LTAR

Comment 8 Scope of the Investigation of the GUAE’s Provision of Natural Gas for LTAR

Comment 9 Whether the Department Should Delay its Finding or Apply AFA Due to Non-Cooperation for the Provision of Natural Gas for LTAR

D. Other Programs

Comment 10 Non-Existence of Alleged Programs under the Federal Law of 1979 and/or the GCC Industrial Law

II. SUBSIDIES VALUATION INFORMATION

A. Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the POI, is January 1, 2010, through December 31, 2010.

B. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according

to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods.⁵ No party in this proceeding has disputed this allocation period.

C. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other 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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁶

ADPICO

ADPICO is a UAE-registered limited liability company, with 51 percent ownership by a UAE national, and 49 percent ownership by a Swiss-registered company. ADPICO responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of subject merchandise.⁷

Subsequent to the *Preliminary Determination*, the Department discovered that ADPICO also had a cross-owned input supplier, Alita.⁸ We verified, however, that Alita received no subsidies.⁹ Thus, we are attributing subsidies received by ADPICO to its own sales,¹⁰ in accordance with 19

⁵ See U.S. IRS Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods.

⁶ See *Fabrique*, 166 F. Supp. 2d at 600-604.

⁷ See AQR at 2-5; see also A1SR, A1SRA, ANSAQR, and A2SR.

⁸ See A3SR at 3-5.

⁹ Alita does not operate under an industrial license, see A3SR at Appendix 6, hence it is not eligible to receive tariff exemptions provided under the Federal Law of 1979 and GCC Industrial Law. Also, we verified that it did not receive loans under the "Concessionary Lending from the Emirates Industrial Bank" program. See ADPICO Verification Report at 18-19.

¹⁰ See A1SR at Appendix 4 and A2SR at page 2 and Appendix 1.

CFR 351.525(b)(6)(i).¹¹

Universal

Universal Plastic, KHK, and Universal Pipe are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) of the Act by virtue of common ownership.¹² Moreover, because Universal Plastic, KHK, and Universal Pipe are all producers of subject merchandise, we have attributed subsidies received by both KHK and Universal Pipe to the combined sales of Universal Plastic, KHK, and Universal Pipe (exclusive of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(ii).¹³

D. Discount Rates for Allocating Non-Recurring Subsidies

In allocating benefits over time, the Department normally uses as the discount rate the company's cost of long-term fixed rate debt at the time the government approves the subsidy. If such rates are not available, the Department will use the average cost of long-term fixed rate loans in the country in question.¹⁴

No respondents provided long-term fixed rate loans in the years for discount rates were needed.¹⁵ Therefore, we used the average cost of long-term, fixed-rate loans within the UAE as identified by the UAE Central Bank,¹⁶ as the discount rate for the allocation calculations, in accordance with 19 CFR 351.525(d)(3)(i)(A).¹⁷

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available,” subject to section 782(d) of the Act, if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the

¹¹ Additionally, we note that ADPICO had three additional cross-owned affiliates during the AUL which were unreported *until* the A3SR, ADPICO General Trading, Digiba Internet FZ LLC, and Nord Sawa General Trading. We verified that these companies were inactive during the POI. *See* ADPICO Verification Report at 4-7. Moreover, none of these companies operated under an industrial license, and were thus ineligible to receive tariff exemptions. *See* A3SR at Appendices 7 and 8, *see also* ADPICO Verification Report at Exhibit 3A.

¹² *See Preliminary Determination*, 77 FR at 19219, 19222.

¹³ We have determined only Universal Pipe and KHK received countervailable subsidies, and Universal Plastic did not.

¹⁴ *See* 19 CFR 351.524(d)(3).

¹⁵ *See* AQR at Appendix III, A1SR at 3, UQR at 11, and U1SR at 3-4.

¹⁶ *See* G3SR at Exhibit 10.

¹⁷ *See* ADPICO Post-Preliminary Calculation Memorandum at Attachment 4.

best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁸ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁹

A. ADPICO – Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials under the Federal Law of 1979 and GCC Industrial Law

In response to our questionnaires, both the GUAE and ADPICO reported ADPICO's tariff exemptions under the Federal Law of 1979 and the GCC Industrial Law.²⁰ At verification, the GUAE was unable to support its reported amounts because, contrary to its prior claims,²¹ certain of ADPICO's duty exemptions were administered outside of the electronic duty processing system, DUTEX, reported by the GUAE. Thus, the GUAE's reporting was incomplete.²² At the ADPICO verification, we noted several errors in the amounts reported by the company.²³

Consistent with the Post-Preliminary Analysis Memorandum, because we were not able to verify the duty exemptions reported by the GUAE and found numerous errors in ADPICO's reporting, we have relied on facts available to calculate the countervailable subsidy received by ADPICO. Moreover, the parties' failure to provide the data which they had or should have had demonstrates that they failed to cooperate by not acting to the best of their ability and, hence, that an adverse inference is warranted. Thus, for each year in which tariff exemptions were received, we have relied on the higher of the amounts reported by the GUAE or ADPICO. *See* section I.1. "Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials under the Federal Law of 1979 and GCC Industrial Law" below for more information.

B. Universal – Tariff Exemptions from 1996

The AUL in this investigation covers the 15-year period, 1996-2010. For more information, see section below, "Allocation Period." Universal was unable to provide KHK's import records for 1996. As facts available, we have used the import duty exemption value from 1997 as the measure of benefit for 1996. *See* section I.1. "Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials under the Federal Law of 1979 and GCC Industrial Law" below for more information.

¹⁸ *See SRAMS From Taiwan*, 63 FR at 8909, 8932.

¹⁹ *See SAA*, accompanying the *URAA*.

²⁰ *See AQR* at Appendix V and *A1SR* at Revised Appendix V; *see also G1SR* at Exhibit 4.

²¹ *See GQR* at 9-25, *G2SR* at 5-13.

²² *See GUAE Verification Report* at 10-11.

²³ *See ADPICO Verification Report* at 10-13.

IV. ANALYSIS OF PROGRAMS

Based upon our analysis of the Petition and the responses to our questionnaires, we determine the following:

A. Programs Determined to Be Countervailable

1. Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials under the Federal Law of 1979 and GCC Industrial Law

Between 1980 and 2005, industrial firms in the UAE operated under the Federal Law of 1979. In 2005, the UAE issued a federal decree adopting the GCC Industrial Law, which replaced the Federal Law of 1979.²⁴ Both laws provide, *inter alia*, procedures for industrial establishments to obtain industrial licenses, requirements for operation, and privileges afforded to industrial enterprises, including an exemption from customs duties otherwise due on imports of production inputs.²⁵

Under both the Federal Law of 1979 and the GCC Industrial Law, a firm must be operating under a valid industrial license in order to receive the duty exemption.²⁶ These laws also expressly exclude certain producers from the industrial licensing requirements and, thus, make them ineligible for the tariff exemptions. Specifically, the Federal Law of 1979 excludes, *inter alia*, “industrial projects dealing with the extraction or refining of petroleum, extraction, refining or liquefaction of natural or petro-gases or extraction or refining of mineral raw materials and their preparation for manufacturing, or any other appropriate process they may require.”²⁷ Similarly, the GCC Industrial Law, along with its Rules of Implementation, excludes projects “engaged in the field of oil exploration and extraction” and projects “engaged in the field of extraction of metal ores without transformation of their contents or shapes.”²⁸

To receive this duty exemption, a company with a valid industrial license relies on an online electronic processing system, known as the DUTEX.²⁹ Specifically, the company creates a master list in the DUTEX system of all items it intends to import to conduct its industrial activity. Then, when goods are actually imported, users apply for duty exemptions for those imports. Each duty exemption application is automatically and immediately analyzed on the basis of the information that has previously been provided in the master list of expected imports.³⁰ So long as the imported products comport with the master list they enter duty free.

²⁴ See GQR at 4 and 9.

²⁵ See GQR at Exhibit 4 at page 13 (Article 17 of the GCC Industrial Law) and Exhibit 7 at page 15 (Article 20 of Federal Law of 1979).

²⁶ See GQR at 11-12.

²⁷ See GQR at Exhibit 7 at page 5. This law also excludes, “Industrial projects whose fixed capital does not exceed 250,000 Dirhams or those whose number of employees does not exceed ten persons or those which use a motive power not exceeding five horse powers,” “Privileged projects governed by special laws or those implemented under a pact or agreement in which the government is involved,” and “Projects included in the governmental general plan and executed by the Federal Government.”

²⁸ See GQR at Exhibit 4 at page 8 (Article 2 of the GCC Industrial Law) and Exhibit 5 at page 7 (Article 2 of the Rules of Implementation).

²⁹ *Id.* at 11-12 and 16.

³⁰ *Id.* at 12-14.

ADPICO has benefited from duty exemptions on its imports of capital equipment and raw materials under this program since 2002.³¹ Universal Plastic and the GUAE reported that Universal Plastic operates within the JAFZ and, therefore, did not benefit from any alleged subsidies under the Federal Law of 1979 or the GCC Industrial Law, including the duty exemptions, because those laws do not apply in FTZs.³² However, Universal Pipe and KHK did make use of this program.

We determine that the duty exemptions provided under the Federal Law of 1979 and the GCC Industrial Law confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone that confers a benefit in the amount of the duties saved.³³ Regarding specificity, as explained above, both of the laws that establish industrial licensing requirements and authorize tariff exemptions for industrial license holders exclude particular industries from their scopes of application. Thus, by their terms, these laws expressly limit access to the subsidy to an enterprise or industry or group of enterprises or industries. Consequently, we determine that the tariff exemptions are *de jure* specific.³⁴

ADPICO

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are relying on AFA to determine the value of the tariff exemptions received by ADPICO.

To calculate the benefit, we first analyzed whether the duties on ADPICO’s imports of capital equipment in prior years were allocable to the POI as non-recurring subsidies.³⁵ For each year in which ADPICO’s duty savings on capital equipment imports exceeded 0.5 percent of its sales, we allocated the benefit to the POI using the discount rates described above. Otherwise, the benefits were expensed to the year of receipt.³⁶ Next, we analyzed the duty savings on the imports of raw materials during the POI as recurring subsidies.³⁷ We allocated the duty savings received during the POI to ADPICO’s total sales.

On this basis, we find a countervailable subsidy of 6.17 percent *ad valorem* for ADPICO.

Universal

We followed the same methodology for Universal with the following adjustments. First, in applying the “0.5 percent test,”³⁸ it was necessary to compute calendar year sales because Universal’s fiscal year is July 1, through June 30. To do this, we summed the sales for the two fiscal years that included the calendar year and divided by two. We used the resulting figure as the sales total for the calendar year.

³¹ See AQR at Appendix V; see also AISR at Revised Appendix V.

³² See UQR at 13 and GQR at 4.

³³ See section 771(5)(d)(ii) of the Act and 19 CFR 351.510(a)(1).

³⁴ See section 771(5A)(D)(i) of the Act.

³⁵ See 19 CFR 351.524(c).

³⁶ See 19 CFR 351.524(b)(2).

³⁷ See 19 CFR 351.524(c).

³⁸ See 19 CFR 351.524(b)(2).

Second, Universal reported that it does not maintain sales figures net of sales to its cross-owned companies in its normal books and records.³⁹ However, in response to the Department's questions, Universal was able to produce these data for the POI based on its underlying records. Therefore, for years prior to the POI we calculated the ratio of total sales less sales to cross-owned companies for the POI, and applied this ratio to prior year sales to convert them to annual sales, less sales to cross-owned companies. Finally, Universal was unable to provide its import records for 1996. Therefore, as facts available, we used the import duty exemption value from 1997 as the measure of benefit for 1996, and used the sales value from 1996 in applying the 0.5 percent test.

The total import duty exemptions for capital equipment for each year of the AUL were less than 0.5 percent of that year's sales and, thus, were expensed to the year of receipt, in accordance with 19 CFR 351.524(b)(2). Similarly, the duty exemptions for capital goods imports during the POI were expensed in the POI. Thus, to calculate the benefit received by Universal under this program we summed the import duty exemptions received by Universal on its capital goods and raw material imports during the POI and divided this amount by the combined sales (net of inter-company sales) during the POI.

For Universal Plastic specifically, we have not countervailed its duty-free imports into the JAFZ. *See* Comments 5 and 6 below for further information.

On this basis, we find a countervailable subsidy of 2.06 percent *ad valorem* for Universal.

B. Programs Determined to Not Be Countervailable

1. Dubai Commodity Receipts ("DCRs")

DCRs are negotiable warehouse receipts that are issued electronically by the DMCC, a GUAE-owned facility, to facilitate the financing of goods. Petitioners alleged that, by virtue of the GUAE's role through DMCC, DCR-backed financing comes with an implicit government guarantee, which allows borrowers to obtain lower financing costs than they could otherwise obtain outside the DMCC facility.

The DCR platform consists of three types of parties: commodity owners, warehouse keepers, and financiers. The DCR platform allows commodity owners (*i.e.*, originators) to request warehouse keepers (*i.e.*, issuers) to issue DCRs, which represent goods stored at a warehouse or vault which is managed by the issuer. Originators then "pledge" the DCR to financiers to obtain inventory-backed loans from them. According to the GUAE, the program is open to financiers around the world, provided they are approved by the DMCC.⁴⁰

During the POI, ADPICO was the only respondent to participate in this program.⁴¹ In particular, ADPICO had outstanding loans as part of its trade financing arrangements with a bank in

³⁹ *See* U2SR at 11.

⁴⁰ *See* GQR at 30.

⁴¹ *Id.* at 29.

Switzerland during the POI.⁴² The GUAE asserts that at no point did the DMCC offer a guarantee, implicit or otherwise, on loan agreements between ADPICO and its financiers, or act as bank guarantor of the DCR platform.⁴³ Moreover, the DMCC's Rules clearly indicate that the DMCC assumes no liability for DCR-backed financing that may default. In relevant parts, the Rules state the following:

“5.4 Liability of DMCC

5.4.1 Each DCR Member confirms that the liability of DMCC for acting as its commission agent pursuant to the Rules (including under this Clause 5) shall be limited by Clause 13 (Limitation of Liability of DMCC).

5.4.2 Each Legal Owner and each Financier acknowledges that DMCC provides close out settlement services under these Rules, and acts as commission agent for any Legal Owner, *solely for the purposes of facilitating the smooth operation of the DCR System and the efficient settlement of the liabilities of the Legal Owners and the Financiers* following a Close Out Trigger Event. *The DCR Members confirm that DMCC shall have no liability to any Legal Owner, any Financier or any other DCR Member by virtue of its appointment as commission agent for a Legal Owner under this Clause 5 or any exercise by DMCC of its obligation to sell any DCR (or the Goods represented by that DCR) following a Close Out Trigger Event as provided for in this Clause 5.*

* * * * *

13.1 Limitation of liability

* * * * *

(b) {t}hese Rules expressly set forth all the duties of DMCC with respect to any and all matters pertinent hereto, and *shall not be interpreted so as to impose any implied duties or obligations on DMCC*. DMCC shall not be bound by the provisions of any prior agreement with any DCR Member to the extent that such prior agreement conflicts with these Rules.”⁴⁴

We confirmed at verification that DCR-backed financing obtained by DCR originators is not subject to any guarantee, implicit or otherwise, provided by the government through DMCC.⁴⁵ Consequently, we determine that there is no financial contribution within the meaning of section 771(5)(D) of the Act and that this program is not countervailable.

C. Programs Determined To Be Not Used or To Not Provide Benefits During the POI

1. Concessionary Lending from the Emirates Industrial Bank

⁴² *Id.*

⁴³ *See* GQR at Exhibit 11.

⁴⁴ *Id.* (emphases added).

⁴⁵ *See* GUAE Verification Report at 13; *see also* GQR at Exhibit 13.

D. Programs for Which More Information Is Required

1. The GUAE's Provision of Natural Gas for Less Than Adequate Remuneration

Wheatland Tube alleged that inexpensive natural gas is being provided by GUAE-owned utilities to certain preferred industries under the GCC Industrial Law.⁴⁶ Wheatland Tube further alleged that the GUAE's provision of natural gas may be regionally specific, as Abu Dhabi and Dubai (the emirates in which the respondents are located) appear to receive an uninterrupted supply of inexpensive natural gas, despite an apparent natural gas shortage in the UAE, while the more northern emirates (*e.g.*, Sharjah) have had to rely on more expensive fuels to satisfy their energy needs during peak demand.⁴⁷

According to the GUAE, there is no central or emirate-level authority that sets natural gas prices within its respective borders.⁴⁸ Rather, the natural gas market in the UAE relies almost exclusively on large volume, long-term gas sales agreements, each negotiated between the respective supplier and consumer, which reflect the unique terms between the off-taking and supplying parties during the negotiations (*i.e.*, market forces of supply and demand).⁴⁹ Additionally, the GUAE avers that the blackouts experienced by certain regions in recent years resulted from mechanical failures of generation capacity and inadequate infrastructure, and not from preferential delivery to specific regions.⁵⁰

Since the *Preliminary Determination*, we have continued our investigation of the program and verified that only one of the respondents, ADPICO, purchased natural gas during the POI.⁵¹ Moreover, the record does not support Wheatland Tube's claim that certain industries or certain emirates are favored through a national gas program; nor is there information indicating preferences towards Abu Dhabi. Nonetheless, the information provided raises questions about the provision of natural gas within Abu Dhabi, and within the ICAD, in which ADPICO is located.

In accordance with 19 CFR 351.311(c)(2), we determine that additional time is needed to examine this program. Accordingly, we intend to seek further information in a future administrative review should this investigation result in a CVD order.

E. Programs Determined Not to Exist

- 1. Profit Tax Exemptions under Federal Law of 1979**
- 2. Provision of Electricity for LTAR under Federal Law of 1979 and/or GCC Industrial Law**
- 3. Provision of Land and/or Buildings for LTAR under Federal Law of 1979 and/or GCC**

⁴⁶ See NSA Letter at 3-4.

⁴⁷ *Id.* at 2-3, 6-7, 13-14, Exhibits 3 and 8.

⁴⁸ See G3SRA at 1-6.

⁴⁹ *Id.*

⁵⁰ *Id.* at 7-9 and Exhibits 7-9.

⁵¹ See ANSAQR.

Industrial Law

4. Provision of Water for LTAR under Federal Law of 1979 and/or GCC Industrial Law
5. Preferential Export Lending under Federal Law of 1979

According to the GUAE, the provisions of the Federal Law of 1979 and the GCC Industrial Law that provide for, 1) profit tax exemptions, 2) the provision of electricity at incentivized rates, 3) the provision of land and/or buildings at incentivized rates, 4) the provision of water at incentivized rates, and 5) preferential export lending, were never implemented.⁵² Furthermore, the GUAE has stated that the only entities in the UAE subject to income tax are foreign-owned banks and foreign-owned energy companies.⁵³ Information verified by the Department confirms this.⁵⁴ Therefore, we determine that these programs do not exist.

V. ANALYSIS OF COMMENTS

A. Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials Under the Federal Law of 1979 and/or GCC Industrial Law

Comment 1 *De Jure* Specificity of Tariff Exemptions

Wheatland Tube argues that the Federal Law of 1979 and the GCC Industrial Law limit benefits granted under the tariff exemption program to certain industries, with the Federal Law of 1979 excluding petroleum and mineral extraction, as well as petroleum, mineral, and natural gas refining, while the GCC Industrial Law excludes firms involved with oil exploration and extraction, as well as metals mining.⁵⁵ As such, Wheatland Tube avers that the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.⁵⁶

In support of its argument, Wheatland Tube cites record evidence indicating that the UAE's oil sector contributed 35.9 percent and 37.9 percent of the UAE's GDP in 2007 and 2008, respectively.⁵⁷ Thus, Wheatland Tube contends that over a third of the UAE's economic output is accounted for by industrial activities not eligible for the benefit, while in 2007, non-oil manufacturing contributed only 12.4 percent of the UAE's economy.⁵⁸ Therefore, Wheatland Tube argues, the Department should sustain its post-preliminary finding that the program is *de jure* specific, as only a fraction of industrial activities are eligible for the tariff exemptions.⁵⁹

In contrast to Wheatland Tube, the GUAE and Universal argue that the Department's finding of *de jure* specificity in the Post-Preliminary Analysis Memorandum is not supported by the Act,

⁵² See GQR at 4-8.

⁵³ *Id.*

⁵⁴ See GUAE Verification Report at 14 and VE-6 and VE-9.

⁵⁵ See GQR at Exhibit 5 and Exhibit 7.

⁵⁶ See PCB at 20-21.

⁵⁷ See GQR at Exhibit 1 at page 37.

⁵⁸ *Id.* See also PCB at 21 and NSA Letter at Exhibit 1, page 57.1.

⁵⁹ *Id.* See also PPPCB at 1.

the SAA,⁶⁰ Department precedent, or judicial precedent, and that in this final determination, the Department should reverse its position and find that the tariff exemptions are not specific.⁶¹ These comments and Wheatland Tube’s rebuttals are presented below. With respect to Wheatland Tube’s reliance on the GDP shares accounted for the oil and non-oil manufacturing sectors, Universal disputes Wheatland Tube’s use of pre-POI GDP data for determining *de jure* specificity,⁶² contending that it is unaware of any case where the Department has used a GDP-test analysis other than in the context of *de facto* specificity.⁶³

The Statute

The GUAЕ and Universal reference section 771(5A)(D) of the Act, which states that *de jure* specificity exists where “the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry” or group thereof.⁶⁴ As such, both parties argue that the focus of the Department’s *de jure* specificity test is not whether certain enterprises are excluded but rather whether only a limited number of enterprises or groups thereof are eligible to receive the benefit.⁶⁵ In other words, the GUAЕ maintains that the specificity test is administered to determine whether there is a definable “group of industries” that is expressly permitted to receive the benefit, not whether certain industries are excluded from participation.⁶⁶

According to the GUAЕ, the only requirement for participating in the program is possessing a valid industrial license, and there is a wide range of industries in the UAE eligible to receive duty exemptions, including food, beverage, and tobacco; textile, wearing apparel, and leather; wood products, including furniture; paper and printing; chemical and plastic products; non-metallic mineral products; basic metallic mineral products; fabricated metal and equipment; and other manufacturing activities.⁶⁷ The GUAЕ maintains that given the wide range of recipients, the exclusion of the oil and gas industry is irrelevant.⁶⁸

According to Wheatland Tube, the Act does not require the Department to base its specificity findings on an inclusionary list of eligible parties as opposed to an exclusionary list of those not eligible.⁶⁹

The SAA

According to the GUAЕ and Universal, the SAA provides further guidance for the purpose and scope of the specificity test, which, according to these respondents, states that the *de jure* prong of the specificity test is to determine whether the foreign government “limits access to the

⁶⁰ See SAA.

⁶¹ See GPPRB at 3, GRB at 3-9, UPPCB at 5.

⁶² See PCB at 21.

⁶³ See *Steel Products from Korea*, 58 FR at 37338, 37343.

⁶⁴ See URB at 20, UPPCB at 6, and GPPCB at 3.

⁶⁵ See UPPCB at 6.

⁶⁶ See GRB at 15-16, see, e.g., *PET Film from India Investigation*, 67 FR at 34905.

⁶⁷ See GQR at 17 and 21-23.

⁶⁸ See GRB at 16.

⁶⁹ See PPRB at 3.

subsidy to a sufficiently small number of enterprises.”⁷⁰ Thus, the GUAE and Universal contend, *de jure* specificity only exists where a program expressly limits eligibility to a limited or “sufficiently small” industry or group of industries.⁷¹ Given the facts of this case, Universal contends, where a variety of firms receives the exemption regardless of export performance, location, or sector, a finding of *de jure* specificity is not justified.⁷²

Wheatland Tube, on the other hand, argues that the GUAE and Universal present a fragmented interpretation of the SAA. Wheatland Tube explains that a full reading of the SAA supports the Department’s position, as it also states that there is no formula for determining when a number of enterprises or industries eligible for a subsidy may be deemed “sufficiently small,” and that the Department can only make this determination on a case-by-case basis.⁷³ Wheatland Tube argues that in the UAE, the applicable laws exclude a significant and important portion of the UAE’s economy from receiving an industrial license and, thus, receiving the duty exemptions, so a finding of *de jure* specificity is warranted.⁷⁴

Administrative Precedent

Universal and the GUAE contend that subsequent to the URAA, in virtually every case under section 771(5A)(D)(i) of the Act, the Department’s practice has been to examine whether benefits are limited to a “sufficiently small” number of enterprises and not, as in this case, whether there is any subsection of the economy “excluded” from program eligibility.⁷⁵ Both the GUAE and Universal reference several of the Department’s decisions to support their claim that the Department’s normal practice is to find *de jure* specificity where a law limits its benefits to a certain number of industries.⁷⁶ Conversely, according to the GUAE, several cases demonstrate that the Department generally does not find *de jure* specificity when a program is widely available.⁷⁷ The GUAE states that in *Hardwood Flooring Prelim*, the Department found that a Quebec employment enhancement program conferring eligibility on all enterprises except retail business was not *de jure* specific and found, in *Hardwood Flooring Final*, that a loan program available to a large number of industries (but not all) was not *de jure* specific.⁷⁸ The GUAE explains that in *Live Swine II*, the Department found a program available to all agricultural producers except for supply managed commodities was not *de jure* specific. Furthermore, the GUAE states that in *Grain-Oriented Steel*, the Department found that an Italian program that supported seventeen industries or sectors other than the steel sector was not *de jure* specific. Additionally, the GUAE continues that in *Wire Rod from Italy Prelim*, the Department concluded that a program focused on a diverse group of industrial sectors was not *de jure* specific. Finally,

⁷⁰ See SAA at 930.

⁷¹ *Id.*

⁷² See UPPCB at 13, referencing GUAE Verification Report at 4-5, VE-3A through VE-3I, and GQR at 15-17.

⁷³ See SAA at 930.

⁷⁴ See PPPRB at 5-7.

⁷⁵ See UPPCB at 9, URB at 19, and GPPCB at 5-7.

⁷⁶ See *CORE from Korea* and accompanying IDM at 2-3; *Drill Pipe* and accompanying IDM at 17-18; *Softwood Lumber* and accompanying IDM at 46.

⁷⁷ See, e.g., *Hardwood Flooring Prelim*, 61 FR at 59084; *Hardwood Flooring Final*, 62 FR at 5205, 5210; *Live Swine II* and accompanying IDM at Comment 1; *Grain-Oriented Steel*, 59 FR at 18357, 18362; *Wire Rod from Italy Prelim*, 63 FR at 824; *SSSSC from Korea*, 64 FR at 30647.

⁷⁸ See GPPCB at 5.

the GUAЕ cites *SSSSC from Korea* as another case where the Department did not find *de jure* specificity. Universal adds that in *Ni-Resist Inserts* and *Pasta from Italy (2006 Review)*, the Department found that certain benefits were widely available and, thus, not *de jure* specific.⁷⁹

ADPICO echoes these arguments, asserting that the Department does not normally find specificity by virtue of less than one-hundred percent of firms having access to the program.⁸⁰

According to the GUAЕ and Universal, the only instance where the Department deviated from what they claim is the Department’s standard “sufficiently small” test was in *PET Film from India Investigation*, where the Department found *de jure* specificity in part because the government excluded state-owned enterprises.⁸¹ However, the GUAЕ and Universal further argue that the Department later rejected the *PET Film from India Investigation* precedent and noted that the Act “makes no reference to specificity based on ‘industries otherwise excluded.’”⁸²

Wheatland Tube asserts that the Department’s finding of *de jure* specificity is consistent with Department precedent and each case cited by the GUAЕ and Universal is distinguishable from the instant proceeding. Wheatland Tube argues that, contrary to the GUAЕ’s and Universal’s claim, the Department did not reject the *PET Film from India Investigation* precedent, but continued to find the program in question *de jure* specific in subsequent administrative reviews that followed the *Wire Rod from Turkey* case.⁸³ In the *Wire Rod from Turkey* decision, Wheatland Tube counters, the Department’s statement that the Act “makes no reference to specificity based on ‘industries otherwise excluded,’” was simply a rejection of citation to language in *PET Film from India Investigation* that was inapplicable to the program in Turkey, and should not be taken as an overall rejection of the fact that certain programs can be *de jure* specific based on exclusions of enterprises, industries, or groups thereof.⁸⁴

Wheatland Tube continues, stating that in *Ni-Resist Inserts* and *Wire Rod from Italy Prelim*, the programs in question were limited to SMEs, which fall under a different Departmental practice when determining specificity, and are distinguishable from this investigation.⁸⁵ Wheatland Tube avers that for the Department to find specificity in such cases, the program would need a more narrow limitation than to SMEs alone, which, in those cases, it did not find. Additionally, in *Pasta from Italy (2006 Review)*, Wheatland Tube contends that the Department did not find specificity because the program in question was available to a significantly broader group of industries than in the instant case.⁸⁶ The benefits in *Pasta from Italy (2006 Review)*, Wheatland Tube asserts, were available to industrial enterprises, transportation firms, research centers, handicraft firms, and consortia companies. In the instant case, however, the benefits are only available to certain industrial enterprises, which Wheatland Tube claims is significantly narrower

⁷⁹ See *Ni-Resist Inserts* and accompanying IDM at Comment 2 and *Pasta from Italy (2006 Review)* and accompanying IDM at 17.

⁸⁰ See APPCB at 5.

⁸¹ See *PET Film from India Investigation* and accompanying IDM at Comment 9.

⁸² See *Wire Rod from Turkey* and accompanying IDM at Comment 1.

⁸³ See *PET Film from India Review Final*, 71 FR at 7534.

⁸⁴ See PPPRB at 15-17, referring to *Wire Rod from Turkey*, 67 FR at 55817, and accompanying IDM at Comment 1.

⁸⁵ See 19 CFR 351.502(e).

⁸⁶ See *Pasta from Italy (2006 Review)* and accompanying IDM at 17.

than in *Pasta from Italy (2006 Review)*.⁸⁷

As for *Live Swine II* and *Softwood Lumber*, Wheatland Tube argues that both of these cases discuss programs related to the agricultural sector, which is treated differently by the Department for purposes of the specificity analysis,⁸⁸ and are, therefore, inapplicable to this program. Wheatland Tube contends that in *Grain-Oriented Steel*, the Department found the program was not *de facto* specific without first making a *de jure* specificity finding, because *Grain-Oriented Steel* was published prior to the Department's current regulations requiring a sequential analysis of specificity, under which one could assume that a subsidy is not *de jure* specific if the Department has proceeded to a disproportionality, *i.e.*, *de facto*, analysis.⁸⁹ In the current proceeding, Wheatland Tube asserts that the Department has not conducted a *de facto* analysis. Wheatland Tube avers that *SSSSC from Korea* is also distinguishable from this proceeding, as the tariff exemption program in the UAE is provided only to a subset of industrial enterprises, while in *SSSSC from Korea* it was provided to a much broader base of users.⁹⁰

In *CFS from the PRC CVD*, Wheatland Tube asserts that the Department found specificity where programs were limited to Chinese FIEs, despite the Government of the PRC's claims that the numerous FIEs operated in a wide variety of industries.⁹¹ According to Wheatland Tube, the Department found that the fact that FIEs operated in numerous industries did not negate the *de jure* limitation of the FIEs.⁹² As for *Citric Acid*, Wheatland Tube contends that the Department stated that a *de jure* limitation to a specified group of enterprises is a sufficient basis to find specificity.⁹³ Wheatland Tube also argues that the Department's position is consistent with *Steel Wheels*, where the Department found a program *de jure* specific because it was limited to a group of enterprises, specifically defined by law, and stated that "the law anticipates groupings of enterprises that may otherwise belong to different industries."⁹⁴ In sum, Wheatland Tube avers that the Department's findings are in accordance with law and precedent, and it should affirm this finding in this final determination.

Judicial Precedent

Universal argues that the courts have affirmed that the specificity test is to determine whether a potential subsidy benefits specific companies, industries, or sectors, citing to *Al Tech* and *Inland Steel*.⁹⁵

Wheatland Tube counters that a complete reading of the court cases cited to by the respondents supports the Department's finding of *de jure* specificity. Wheatland Tube claims that in *Al Tech*, the court stated that the "purpose of the specificity provision is to distinguish between subsidies that provide generally available benefits to society (which have little trade distorting effect) from

⁸⁷ See PPPRB at 18-19.

⁸⁸ See 19 CFR 351.502(d).

⁸⁹ See PPPRB at 20-21.

⁹⁰ See *SSSSC from Korea*, 64 FR at 30646, and 30648.

⁹¹ See *CFS from the PRC CVD* and accompanying IDM at 88 and Comment 14.

⁹² See PPPRB at 12-13.

⁹³ See *Citric Acid* and accompanying IDM at 69-70.

⁹⁴ See *Steel Wheels* and accompanying IDM at Comment 25.

⁹⁵ See *Al Tech*, 28 CIT at 1512-1513 and *Inland Steel*, 188 F.3d at 1355.

those subsidies that are aimed at specific companies, industries, or sectors...⁹⁶ The tariff exemptions in the UAE do not provide “generally available benefits to society,” Wheatland Tube contends, but are aimed at a specific subset of UAE’s industrial enterprises.⁹⁷

Other Arguments

According to the GUAE and Universal, the Department’s finding of *de jure* specificity is based on a flawed understanding of the record. To begin with, Universal asserts that the Department should limit its examination to the language in the GCC Industrial Law and not the Federal Law of 1979, as only the GCC Industrial Law was in effect during the POI.⁹⁸ The exclusion provision in the GCC Industrial Law, the GUAE and Universal contend, only excludes: “projects” engaged in the field of oil exploration and extraction and “projects” engaged in the field of extraction of metal ores without transformation of their contents or shapes. “Projects,” according to the GUAE and Universal, are potentially narrower than “industries,” yet in the Post-Preliminary Analysis Memorandum, the Department based its finding on the fact that the law excludes particular “industries” from the scope of its application.⁹⁹

Wheatland Tube asserts that there is no discernible distinction between the exclusions of the GCC Industrial Law and the Federal Law of 1979, stating that simply because refining is not listed among the exclusions of the GCC Industrial Law does not mean refining is not excluded.¹⁰⁰ Wheatland Tube avers that even if refining is eligible for participation, record evidence indicates refining activities account for a narrow portion of the UAE’s oil sector’s total output.¹⁰¹ Furthermore, Wheatland Tube argues that record evidence does not support the assertion that the Federal Law of 1979 no longer governs the duty exemption program.¹⁰² Wheatland Tube argues that the respondents’ claims that exclusions from the program only apply to certain *projects* and not certain *industries* is misleading and is not supported by record evidence.¹⁰³

Universal contends that oil exploration and oil and metal extraction are non-manufacturing activities. Thus, the program extends to the entire industrial base of the economy, as only a narrow range of projects related to non-manufacturing activity (oil exploration and oil/metal extraction) are excluded.¹⁰⁴ Therefore, Universal concludes, the general availability to all industrial enterprises does not meet the Department’s standard for determining whether the recipients of the subsidy are “sufficiently small so as to properly be considered specific.”¹⁰⁵ Universal argues that the Department has previously found that certain grants were not *de jure* specific because the pool of eligible companies under the program was “sufficiently large.”¹⁰⁶

⁹⁶ See *Al Tech*, 28 CIT at 1509.

⁹⁷ See PPPRB at 24, referencing the CAFC’s opinion in *Inland Steel*, 188 F.3d at 1355.

⁹⁸ See UPPCB at 3, referencing the G3SR at 1.

⁹⁹ See Post-Preliminary Analysis Memorandum at 3.

¹⁰⁰ See PPPRB at 26-28.

¹⁰¹ *Id.*

¹⁰² See GQR at 3, 4, 10, 14, 16, Exhibit 6; see also G3SR at 1.

¹⁰³ See GQR at Exhibit 5.

¹⁰⁴ See UPPCB at 10-11.

¹⁰⁵ See SAA at 930.

¹⁰⁶ See *Ni-Resist Inserts* and accompanying IDM at Comment 2.

Again, Universal asserts, the pool of eligible companies in the instant case – virtually the entire industrial sector – is also “sufficiently large” that the benefits cannot be considered *de jure* specific.¹⁰⁷

On a final note, the GUAE and Universal warn of the policy implications for finding *de jure* specificity based on the facts of this case, as all GCC member states have adopted the GCC Industrial Law.¹⁰⁸ According to Universal, there are no meaningful differences between the duty exemption program in this case and the concurrent investigation of circular welded pipe from Oman, for which the Department issued a preliminary negative determination.¹⁰⁹ The GUAE asserts that the Department must logically conclude that *all* GCC nations are conferring countervailable subsidies in the form of import duty allowances, including Oman, or that *none* are.¹¹⁰ The GUAE states that finding *de jure* specificity in this program would signal to United States’ trading partners that they may legitimately find *de jure* specificity against United States exporters in any situation where a program’s authorization is not limited to only a small group of industries or discrete segment of the economy, which the GUAE states runs counter to the *SCM Agreement*.¹¹¹

Wheatland Tube disagrees, stating that the Department makes specificity decisions on a case-by-case basis informed by country-specific facts.¹¹² Regarding the GUAE’s reference to the *SCM Agreement*, Wheatland Tube refers to two European Union rulings to emphasize that other WTO members have made specificity findings in similar situations.¹¹³

Department’s Position

The Department’s finding of *de jure* specificity in this situation is consistent with both the Act and the SAA. The Act explains that *de jure* specificity exists “where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry.”¹¹⁴ Wheatland Tube argues that the industries receiving the tariff exemption account for only a small portion of the UAE economy. Our determination relies, however, on the fact that other industries in the UAE are denied the exemptions as a matter of law to find that the tariff exemptions are *de jure* specific. In particular, the Federal Law of 1979 limits access to industrial licenses to “all industrial projects in the country,” *i.e.*, to enterprises that transform or convert raw materials into semi-finished or finished goods. At the same time it expressly excludes from the industrial licensing regimen (and the subsidies conditioned on industrial licenses) enterprises involved with extraction or refining of petroleum; extraction, refining, or liquefaction of natural gas; or extraction or refining of minerals and their preparation for manufacturing. The GCC Industrial Law also defines industrial projects/establishments in the same manner, and expressly excludes oil and metal ore extraction

¹⁰⁷ *Id.* See also *Pasta from Italy (2006 Review)* and accompanying IDM at 17.

¹⁰⁸ See UPPCB at 15-16 and GPPCB at 9-10.

¹⁰⁹ See *Circular Welded Pipe from Oman Prelim.*

¹¹⁰ See GPPCB at 9-10 (emphasis in original).

¹¹¹ *Id.* at 11, referencing Article 2.1(a) of the *SCM Agreement*.

¹¹² See PPRB at 33.

¹¹³ See *Commission Regulation (EC) No 1741/2000* (August 3, 2000) at paragraph 195 and *Council Regulation (EC) No 2603/2000* (November 27, 2000) at paragraph 44.

¹¹⁴ See section 771(5A)(D)(i) of the Act.

industries from the industrial licensing and registration regimen.

We disagree that the Department must limit its *de jure* analysis to testing for a “sufficiently small” group of recipients of a subsidy. Such a limitation on the Department’s analysis would be contrary to language in the SAA, which explains that an evaluation of *de jure* specificity can only be performed on a case-by-case basis, at the Department’s discretion, and also states:

As under existing law, clause (i) does not attempt to provide a precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small so as to properly be considered specific.¹¹⁵

Although the SAA relieves the Department from such restrictive parameters, an assessment as to whether the industries covered by the exemption are “sufficiently small” would be unnecessary due to the plain exclusionary language of the laws governing the industrial licensing system, which clearly limit access to a specific subset of industrial establishments. Where there is an explicit exclusion of certain industries in the law itself, as here, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.

As for Department precedent, several of the cases referenced by the GUAE and Universal are distinguishable from the instant proceeding. In *Ni-Resist Inserts* and *SSWR from Italy*, we examined the specificity of the programs in question within the parameters of 19 CFR 351.502(e), which, as noted by Wheatland Tube, establishes procedures for examining the specificity of programs as they relate to SMEs. In the instant proceeding, we are not examining the duty exemption program as it applies to SMEs and, therefore, those decisions are not relevant. Similarly, *Live Swine II* and *Softwood Lumber*, as Wheatland Tube stated, both address programs related to the agricultural sector. Again, the Department has a different analytical framework for that sector, 19 CFR 351.502(d), and, accordingly, those precedents are not relevant here.

The respondents argue that the Department has, at times, examined the breadth of availability of programs in conducting its *de jure* analysis, and that it does not, as standard practice, consider exclusions from participation as a basis for *de jure* specificity. This argument is contrary to the Act, which explicitly directs the Department to consider “limitations” of availability to programs. In the instant proceeding, we have made an affirmative finding of *de jure* specificity based on the explicit exclusions that deny certain industrial establishments from obtaining an industrial license and, thus, from receiving the benefit of tariff exemptions. In the cases referenced by the respondents in which we did not find *de jure* specificity, there was no indication that the laws under which the programs were administered contained exclusionary language.

Further, contrary to the respondents’ arguments, the Department has found programs to be *de jure* specific when certain industries or subsets of industries are excluded from participation. The GUAE, Universal, and Wheatland Tube are in agreement that *PET Film from India Investigation* is one such case: the Department found *de jure* specificity based on the express exclusion of firms wholly-owned by the Government of India from eligibility for several

¹¹⁵ See SAA at 930.

programs.¹¹⁶ As Wheatland Tube explained, the Department continued to take this position in subsequent reviews.¹¹⁷ Furthermore, with respect to *Wire Rod from Turkey*, we agree with Wheatland Tube that the Department did not reject the position taken in *PET Film from India Investigation*, but only stated that the precedent was not applicable to the facts in *Wire Rod from Turkey*.

We further disagree with Universal's argument that the provisions of Federal Law of 1979 are inapplicable here. The 1979 law governed the administration of this program for all of the years in the AUL prior to 2005, a period that included duty exemptions on capital equipment. Furthermore, KHK, one of Universal's cross-owned firms, initially received its industrial license and, therefore, enrolled in the program under Federal Law of 1979. Consequently, both the Federal Law of 1979 and the GCC Industrial Law are relevant to our investigation.

As for the GUAЕ's and Universal's argument that the scope of industrial "projects" is narrower than the scope for industrial enterprises, we disagree. Neither the Federal Law of 1979 nor the GCC Industrial Law makes any distinction between industrial "projects" and industrial enterprises. Industrial projects are defined in Federal Law of 1979 as "any investment operation whose main purpose is to convert raw materials... into final or intermediate products."¹¹⁸ Article 1 of the GCC Industrial Law includes the following definition: "'Industrial project (establishment)': Any establishment engaged basically in transforming raw materials into manufactured or semi-manufactured products..."¹¹⁹ Thus, both laws refer to industrial enterprises as industrial projects and both laws, which govern the import duty exemption program, establish the requirements and processes for industrial projects to legally operate in the UAE, including obtaining an industrial license. According to the GCC Industrial Law, "industrial projects" apply for an industrial license to operate; obtaining the industrial license qualifies a firm for enrollment into the duty exemption program.¹²⁰ It appears that the GUAЕ and Universal are attempting to create a distinction where none exists; industrial "projects," as described in the relevant UAE statutes and industrial "establishments" are effectively one and the same.

Accordingly, due to the express exclusion of certain industries from obtaining industrial licenses, we determine that the tariff exemption subsidies conditioned on industrial licenses are *de jure* specific. Further, we determine that a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act, as the exempted duties represent revenue forgone by the GUAЕ, and that Universal and ADPICO received a benefit in the amount of duty savings from the program. See 19 CFR 351.510(a)(1).

Comment 2 Tariff Exemptions as Export Subsidies

According to Wheatland Tube, the GUAЕ's provision of import duty exemptions is contingent upon exportation alone, or as one of two more conditions and is, thus, a specific export subsidy

¹¹⁶ See *PET Film from India Investigation* and accompanying IDM at Comment 9.

¹¹⁷ See *PET Film from India Review Prelim*, 70 FR at 46490, unchanged in *PET Film from India Review Final*.

¹¹⁸ See GQR at Exhibit 7, page 4.

¹¹⁹ *Id.* GQR at Exhibit 4, Article 1, page 7.

¹²⁰ *Id.* at Exhibit 4, page 10-11 and 13, Articles 8 and 17 of the GCC Industrial Law.

under section 771(5A)(B) of the Act.¹²¹ Wheatland Tube argues that Articles 20 and 21 of the Federal Law of 1979 and Article 16 of the GCC Industrial Law include export-oriented projects or projects producing export goods as qualifiers for receiving exemptions.¹²² Based on this language, Wheatland Tube reasons, the Department should find the tariff exemptions are *de jure* specific export subsidies, consistent with 771(5A)(B) of the Act.

The GUAE and Universal, in contrast, argue that the import duty exemptions do not constitute prohibited export subsidies. According to the GUAE and Universal, Wheatland Tube portrays the language in the Federal Law of 1979 as making exporting a condition for receiving the subsidy when in actuality the law states that certain industrial projects – including export-oriented projects – shall be given priority in getting the privileges and exemptions. In addition, the GUAE and Universal assert the list of industrial projects with priority of privileges is not exhaustive.¹²³ Universal asserts that the GCC Industrial Law does not make duty exemptions contingent on export performance,¹²⁴ and the GUAE notes that the reporting requirements under the GCC Industrial Law do not include export-related data. Furthermore, the GUAE and Universal explain that the Department verified that the provision of the exemption is not contingent upon export performance.¹²⁵ The GUAE and Universal state that the GUAE demonstrated that a variety of industries received the import duty exemption, irrespective of export performance,¹²⁶ and that the provision of import duty exemptions is in no way contingent upon export performance.¹²⁷ If the exemptions are *de jure* contingent upon export performance, the GUAE argues, it would be reflected in the actual export performance of recipients, which the Department verified is not the case.¹²⁸

Department's Position

Wheatland Tube has pointed to provisions in the UAE laws administering the industrial licensing system and import duty exemption program to argue that the program constitutes a *de jure* specific export subsidy consistent with section 771(5A)(B) of the Act. A complete review of the provisions, however, supports the GUAE's position that the laws do not establish exportation as a condition for receiving an industrial license and, therefore, exemptions on import duties.

While it is true that Article 21 of the 1979 Federal Law and Article 16 of the GCC Industrial Law state that projects producing, *inter alia*, export goods, shall have priority of privileges and exemptions,¹²⁹ they do not, as Wheatland Tube claims, make import duty exemptions “contingent” upon exportation. Nothing on the record indicates that export performance is considered when granting an industrial license, which, according to the evidence on the record, is the sole qualifier for enrolling in the import duty exemption program. Indeed, Chapter Four of the Rules of Implementation for the GCC Industrial Law and Article 10 of the 1979 Federal Law

¹²¹ See PCB at 22, referencing 19 CFR 351.514 and the *CVD Preamble*, 63 FR at 65381.

¹²² See GQR at Exhibit 4, Exhibit 7, and Exhibit 8.

¹²³ See URB at 21-22 and GRB at 16-17.

¹²⁴ See G2SR at 5.

¹²⁵ See GUAE Verification Report at 4-5 and VE-3A through VE-3I.

¹²⁶ *Id.* at 4.

¹²⁷ *Id.*

¹²⁸ *Id.* at 5.

¹²⁹ See GQR at Exhibit 4, page 12, Article (16) and Exhibit 7, page 16, Article (21).

establish the information required to apply for an industrial license.¹³⁰ Among the information required to apply for an industrial license in the UAE, there is no reference to export performance or expectations of export performance. Annually, firms in the UAE are required to renew their industrial licenses; one element of the renewal process is reporting production and sales totals for the year, both local and export.¹³¹ However, there is nothing on the record to suggest that the export figures are used as a basis for denying a firm's industrial license renewal application.

The GUAE maintains that the term "priority" has no meaning with respect to the administration of import duty exemptions and an examination of the record evidence, as verified by the Department, supports the GUAE's contention that, in practice, no relationship exists between export performance and import duty exemptions.¹³² Additionally, there is no evidence to support that exportation is a condition for receiving an industrial license and, thus, participating in the import duty exemption program. Consequently, we find that the exemption from import duties on imported machinery, equipment, and parts is not a specific export subsidy consistent with section 771(5A)(B) of the Act.

Comment 3 Application of AFA Due to the GUAE's Failure to Provide Industry Usage Data

According to the Wheatland Tube, the Department's standard practice in assessing whether a subsidy is *de facto* specific when it is provided to numerous industries is to analyze total value data by industry.¹³³ Wheatland Tube contends that when a government fails to provide such data, the Department's standard practice is to apply AFA.¹³⁴ Further, Wheatland Tube contends that the Department repeatedly requested these data and each time the GUAE claimed it was unable to provide these data, yet the verification report suggests that the GUAE could have easily extracted the value by sector.¹³⁵ Thus, Wheatland Tube concludes that the Department should find the GUAE did not cooperate to the best of its ability to provide the data the Department requested several times during the proceeding and, on the basis of AFA, find that this program provides a financial contribution that is specific under 771(5A)(D)(iii) of the Act.¹³⁶

The GUAE and Universal contend that Wheatland Tube's argument is based on an erroneous reading of the record and misapplies legal precedent.¹³⁷ The GUAE asserts that it provided detailed information concerning the purpose, scope, and operation of the duty exemption program throughout the investigation, including the number of firms operating in each industrial sector and eligible for the exemptions.¹³⁸ Further, the GUAE states that while it did provide usage data for the respondents, it explained that the MOE faced considerable technical

¹³⁰ See GQR at Exhibit 5, pages 10-12; see also GQR at Exhibit 7, page 11.

¹³¹ See G2SR at 7-8 and Exhibit 1.

¹³² See GUAE Verification Report at 4-5.

¹³³ See *CVD Preamble*, 63 FR at 65359.

¹³⁴ See, e.g., *Pasta from Italy (2010 Review)*, 77 FR at 45584; *Wind Towers*, 77 FR at 33426-34427; *Aluminum Extrusions; HPSC from the PRC; Ribbons from the PRC* and accompanying IDM at Comment 2.

¹³⁵ See PCB at 12-15.

¹³⁶ *Id.* at 16.

¹³⁷ See URB at 14 and GRB at 7.

¹³⁸ See GQR at 21-23.

difficulties in compiling the range of data as requested.¹³⁹ According to the GUAЕ, it also explained that the databases do not include sector designations associated with company-specific applications and, thus, reporting the usage value by sector would be overly burdensome and time-consuming, and would likely take several weeks to complete as its normal records are not maintained in this manner.¹⁴⁰ Moreover, the GUAЕ maintains that at verification, the Department confirmed the limitations of the system and the effort that would be needed to produce the usage data as requested.¹⁴¹ Universal contends that Wheatland Tube misinterprets the verification report in this respect.

In sum, the GUAЕ and Universal assert that the record demonstrates that the GUAЕ acted to the best of its ability to provide the information requested by the Department and, consequently, an adverse inference is not warranted.¹⁴² Moreover, they claim, the cases cited by Wheatland Tube do not apply to this proceeding, as the governments in those cases were deemed non-cooperative.¹⁴³

Department's Position

We have determined that the program is *de jure* specific. Consequently, we need not further examine whether the program is *de facto* specific. Thus, the issue of whether AFA is warranted with regard to *de facto* information is moot.

Comment 4 Countervailability of Alita's Tariff Exemptions

According to Wheatland Tube, the Department should determine that ADPICO's duty exemptions confer a regionally-specific countervailable subsidy consistent with section 771(5A)(D)(iv) of the Act. According to Wheatland Tube, ADPICO's operations are located in ICAD,¹⁴⁴ and ADPICO leases its land from the ZonesCorp,¹⁴⁵ an establishment owned by the Government of Abu Dhabi.¹⁴⁶ Wheatland Tube continues that in its advertising materials, ICAD advertises the duty free import of machinery and raw materials. Thus, Wheatland Tube asserts, a government authority administers this program in a specific region, consistent with section 771(5)(B) of the Act.¹⁴⁷

Alternatively, Wheatland Tube contends, the Department should apply AFA to ADPICO and find the program is *de facto* specific. According to Wheatland Tube, the GUAЕ described the process under which the duty exemption program is administered, yet omitted any discussion of the duty exemption program as administered through ZonesCorp.¹⁴⁸ According to Wheatland

¹³⁹ *Id.* at 18-19 and G1SR at 13.

¹⁴⁰ *See* G2SR at 11-13 and G3SR at 11.

¹⁴¹ *See* GUAЕ Verification Report at 6-7.

¹⁴² *See* section 782(e) of the Act.

¹⁴³ *See* GRB at 13-14, referencing *Pasta from Italy (2010 Review)*, 77 FR at 45584, and *Wind Towers*, 77 FR at 33426-33427.

¹⁴⁴ *See* AQR at 1.

¹⁴⁵ *Id.* at 12-13.

¹⁴⁶ *See* G2SR at 14.

¹⁴⁷ *See* PCB at 25-26.

¹⁴⁸ *Id.* *See also* GUAЕ Verification Report at 10 and VE-8.

Tube, the GUAЕ never reported there was any system for the administration of the program other than through the DUTEX system and the Department discovered the existence of ZonesCorp processing at verification.¹⁴⁹

Wheatland Tube states that because ADPICO obtains duty exemptions through ZonesCorp, for which Wheatland Tube contends the GUAЕ did not provide information, it is impossible for the Department to determine the program’s specificity.¹⁵⁰ Wheatland Tube avers that because the Department was unaware of the ZonesCorp system, the Department was unable to verify the completeness and accuracy of the data submitted by the GUAЕ, as the MOE’s DUTEX system did not contain all of ADPICO’s duty exemption data.¹⁵¹ According to Wheatland Tube, verification revealed a host of inaccuracies and inconsistencies in the import duty exemption databases submitted by the GUAЕ and ADPICO and, as a result, the Department was unable to verify the completeness and accuracy of ADPICO’s import duty exemptions on capital goods and raw materials.¹⁵²

Finally, Wheatland Tube contends, ADPICO denied having any cross-owned affiliates and only belatedly revealed that Alita was a cross-owned company.¹⁵³ Despite this revelation, Wheatland Tube continues, ADPICO never provided a full questionnaire response for Alita and, thus, the Department did not have the information required to conduct its verification.¹⁵⁴ In addition, Wheatland Tube contends that the verification report suggests that Alita benefited from import duty exemptions on raw materials, which is inconsistent with the information provided by the GUAЕ and ADPICO.¹⁵⁵ In sum, Wheatland Tube contends that the Department should determine that Alita’s exemptions provide a financial contribution consistent with section 771(5)(B) of the Act, are specific consistent with sections 771(5A)(D)(iii) or 771(5A)(D)(iv) of the Act, and provide a benefit in the amount of duties exempted, consistent with 19 CFR 351.510(a).¹⁵⁶ Wheatland Tube states that ADPICO’s “excuses” (as summarized in the following paragraph) should carry no weight as ADPICO had ample opportunity to correct the deficiencies on the record, that the Department calculated a rate using the information placed on the record by the GUAЕ and ADPICO and, thus, the calculation is not punitive.¹⁵⁷

ADPICO counters that both the DUTEX and DHABI systems operate under the authority of the GUAЕ and that exemptions are processed in both systems in the same manner.¹⁵⁸ ADPICO claims that mistakes in the reporting of duty exemptions discovered at verification were not substantial and that the verification report clarified any discrepancies between ADPICO’s reported exemptions and the GUAЕ’s reported exemptions.¹⁵⁹ ADPICO further asserts that the verification report corrected any mistakes discovered in its original exemption database and,

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* See also GUAЕ Verification Report at 10 and 14.

¹⁵³ See A3SR at 1.

¹⁵⁴ See PCB at 33-34.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 34-35.

¹⁵⁷ See PPRB at 36.

¹⁵⁸ See ACB at 2.

¹⁵⁹ *Id.*

thereby, adverse inferences are inappropriate in this situation because this investigation is ADPICO's first experience with CVD proceedings.¹⁶⁰

The GUAE states that it is not in a position to comment on Wheatland Tube's assertions regarding the verification of ADPICO's duty exemptions, as it was not present for ADPICO's verification and there is limited public record concerning the verification of ADPICO. Nevertheless, the GUAE maintains that the DUTEX as administered by the MOE is the only UAE-wide import duty exemption system.¹⁶¹ The GUAE attests that the Department has a reliable basis to determine the program is not *de facto* specific. Citing *Pasta from Italy (2010 Review)* and *Wind Towers*, the GUAE further asserts that the Department's practice is to apply AFA where the Department concludes that respondents have been non-cooperative which, it contends, does not apply in this investigation.

Department's Position

As noted above, we have found this program to be *de jure* specific. Therefore, there is no need to consider the arguments regarding regional or *de facto* specificity.

As for the application of AFA in calculating a rate for ADPICO, the Department's position has not changed from that in the Post-Preliminary Analysis Memorandum.¹⁶² Throughout the investigation, the GUAE maintained that there was a single system for processing import duty exemptions, the DUTEX system, which is administered through the MOE.¹⁶³ In the InitQ, we requested the name and address of each of the government authorities responsible for administering the program, to which the GUAE responded that the MOE administers the program.¹⁶⁴ Further, the GUAE explained how the program is administered within the MOE, through the DUTEX system, so the Department's investigation proceeded from the GUAE's assertion that there was a single system under which firms in the UAE receive duty exemptions.¹⁶⁵ At no time did the GUAE state that there was an alternate system for administering the program, *i.e.*, DHABI.¹⁶⁶ Had the GUAE fully explained the roles of other government authorities, the Department would have proceeded in light of these facts.

At verification, the Department discovered that there is a second system, DHABI, administered by ZonesCorp through the Abu Dhabi General Administration of Customs, under which ADPICO received duty exemptions.¹⁶⁷ As a result, the Department was unable to verify the completeness and accuracy of ADPICO's duty exemptions on the record of the investigation.¹⁶⁸ Because we were not able to verify the duty exemptions reported by the GUAE and found numerous errors in ADPICO's reporting, we relied on facts available in the Post-Preliminary

¹⁶⁰ *Id.* See also APPCB.

¹⁶¹ See GRB at 13.

¹⁶² See Post-Preliminary Analysis Memorandum at 4.

¹⁶³ See GQR, G1SR, G2SR, and G3SR.

¹⁶⁴ See GQR at 9.

¹⁶⁵ See *Preliminary Determination* and GUAE Verification Report.

¹⁶⁶ See GQR, G1SR, G2SR, G3SR.

¹⁶⁷ See GUAE Verification Report at 10-11.

¹⁶⁸ *Id.*

Analysis Memorandum to calculate the countervailable subsidy received by ADPICO.¹⁶⁹ Moreover, the GUAE and ADPICO's failure to provide the data which they had or should have had demonstrates that they failed to cooperate by not acting to the best of their ability and, hence, that an adverse inference is warranted.

Finally, with respect to Alita, the company operates under a Trading License and does not have an industrial license. Therefore, Alita is ineligible to receive tariff exemptions. ADPICO's verified records demonstrate that duty-exempt transactions which appeared to have been made by Alita were actually purchases on behalf of ADPICO, and were reported in Revised Appendix V of the AISR as ADPICO duty-exempt imports.¹⁷⁰ Thus, record information supports our finding that Alita received no subsidies to attribute to ADPICO's sales.

B. Subsidies Within the Jebel Ali Free Zone

Comment 5 Scope of the Tariff Exemptions Program: UAE Customs Territory and the JAFZ

Universal contends that Wheatland Tube's allegation was limited to duty exemptions under the Federal Law of 1979 and, thus, the Department's initiation and conduct of this investigation was limited to the Federal Law of 1979.¹⁷¹ Universal further argues that all questionnaires issued to it in this investigation relating to import duty exemptions have been entitled "Tariff Exemptions on Imported Equipment, Spare Parts, and Building Materials under UAE Federal Law No.1 of 1979." Since the Department has verified that FTZs such as JAFZ are outside the customs territory of the UAE, the provisions of the Federal Law of 1979 do not apply, according to Universal. Consequently, Universal argues, the Department should dismiss Wheatland Tube's claims regarding the countervailability of these duty exemptions.

Nonetheless, Universal acknowledges that the Department has the authority to investigate potential subsidies that were not alleged in the Petition, and notes the Department requested information regarding Universal Plastic's imports into the JAFZ, as well as its electricity usage, water usage, and its land leases. According to Universal, the information it submitted served to confirm that there were no countervailable subsidies provided to enterprises located in the JAFZ.¹⁷² Thus, Universal maintains, there is no basis for the Department to investigate the provision of benefits to enterprises located in JAFZ, as the record confirms that there are no countervailable subsidies.

The GUAE avers that since the Department is the administering authority for U.S. CVD law, it is up to the Department to interpret Petitioners' allegations, define the scope of the programs under investigation, and determine what information is needed to conduct its investigation. Further, the GUAE shares Wheatland Tube's position that the Department possesses the inherent authority to "determin[e] the purview of this investigation."¹⁷³ As such, the GUAE argues that the

¹⁶⁹ See Post-Preliminary Analysis Memorandum at 4.

¹⁷⁰ See ADPICO Verification Report at 15-16 and VE-8.

¹⁷¹ See URB at 1.

¹⁷² See URB at 6.

¹⁷³ See GRB at 4-5, referencing PCB at 11.

Department should reject Wheatland Tube's attempt to dictate the scope of the Department's questionnaires, because Petitioners did not specifically and separately allege any subsidy program stemming from the administration of any of the UAE's FTZs.¹⁷⁴

The GUAE contends that Petitioners only referenced FTZs in connection with their broader allegation related to import duty exemptions as authorized by the Federal Law of 1979.¹⁷⁵ Further, the GUAE contends that the Initiation Checklist mirrors the structure of Petitioners' allegation, referencing the program in the context of the GUAE's implementation of the Federal Law of 1979.¹⁷⁶ The Department's questionnaires likewise focused on the UAE's provision of import duty exemptions pursuant to the Federal Law of 1979, according to the GUAE, as did the Department's verification.¹⁷⁷

The GUAE argues that it has cooperated fully with the Department's information requests concerning the Federal Law of 1979 and the operation of the duty allowance program it authorizes, and explained in detail how, as a matter of UAE law, FTZs lie outside of the customs territory of the UAE and, therefore, are outside the ambit of the Federal Law of 1979.¹⁷⁸

Wheatland Tube contends that Universal's presumption regarding the limitations on the scope of Petitioners' allegations is incorrect because the Petition and Initiation Checklist make it clear that Petitioners' allegations included benefits given in the UAE's FTZs. Wheatland Tube refers to the Petition and statements in the *2006 UAE Yearbook* that "producers in UAE FTZs are eligible for 'custom exemption for goods, equipment and machines imported by the factories.'"¹⁷⁹ Further, Wheatland Tube contends, the Initiation Checklist proves that both the allegation and the Department's *Initiation Notice* were in no way limited only to benefits provided directly under the Federal Law of 1979. Specifically, Wheatland Tube points to the second sentence in the "Description" of the import duty exemption program in the Initiation Checklist, where the Department stated, "Additionally, Petitioners contend that producers in UAE free trade zones are eligible for {import duty exemptions}."¹⁸⁰ Finally, Wheatland Tube argues that neither the *Initiation Notice* nor the Initiation Checklist titles any of the programs in question in a way that limits the investigation of these programs to benefits provided "under UAE Federal Law No.1 of 1979."

In the UPPRB, Universal states that the Department's decision that Universal Plastic did not receive any countervailable subsidies because it lies outside of the UAE's customs territory is supported by "substantial evidence" and should be followed in this final determination.¹⁸¹ In support of this, Universal avers that throughout the investigation, the GUAE has demonstrated that FTZs in the UAE, such as the JAFZ, lie outside the UAE customs territory and are, therefore, not subject to the Federal Law of 1979 or the GCC Industrial Law. As evidence of this, Universal quotes the GQR at 3-4, the G2SR at 2-3, and references sections of the GQR at

¹⁷⁴ See Petition at Volume III-C, page 8.

¹⁷⁵ See GRB at 5.

¹⁷⁶ See Initiation Checklist at 9.

¹⁷⁷ See GUAE Verification Report at 2.

¹⁷⁸ See GRB at 6, referencing GQR at 5, G3SR at 4-6, and GUAE Verification Report at 5.

¹⁷⁹ See Petition at 8 and Exhibit 2 at page 104.

¹⁸⁰ See PCB at 4, citing Initiation Checklist at 9-11.

¹⁸¹ See UPPRB at 3.

Exhibits 2 and 3.¹⁸²

Furthermore, Universal contends that it has responded fully to the Department's requests for information in this regard. Specifically, it provided draft GCC legislation regarding the granting of preferential treatment in government procurements for GCC products; information on the GCC website stating that “{t}he foreign goods imported into the GCC States from the free zones shall be subject to the customs duties when exiting these zones and shall be treated during movement to the other member States the same as other foreign goods;”¹⁸³ Dubai Customs Law No. 4 of 1998, which defines the customs territory as the “Emirate of Dubai with its regional borders except free zone;”¹⁸⁴ and information from the website of the Dubai Customs Authority, which specifically provides that FTZs are outside the customs territory.¹⁸⁵ As additional evidence of this, Universal points to the Department's GUAE Verification Report at 5.

Department's Position

In the Initiation Checklist, the Department identifies the program at issue as “Tariff Exemptions on Imported Equipment, Spare Parts, and Building Materials,” and the “Description” section addresses exemptions under both the Federal Law of 1979 and in UAE free trade zones. The Department's “Recommendation” is to investigate the program, without discussing any distinction between the alleged duty exemptions granted under the Federal Law of 1979 and those granted in free trade zones. In particular, the Department did not identify one or the other as an allegation that should not be pursued in the investigation. Thus, we agree with Wheatland Tube that its allegation and the Department's initiation extended to duty-free importations in the FTZs.

We also agree with Universal that it responded to our questions with regard to the benefits it allegedly received due to its location in the JAFZ. Based on our investigation, we determined that certain alleged programs (the GUAE's provision of electricity, water, land and/or buildings) did not exist. Our finding with regard to the alleged duty exemptions in the JAFZ are discussed further in response to Comment 6, below.

Comment 6 Regional Specificity of Subsidies in the JAFZ

Wheatland Tube states that pursuant to the UAE Federal Decree No. 85 of 2007, which ratified the Common Customs Law of the GCC States, FTZs (including the JAFZ), are exempt from paying import duties in the UAE.¹⁸⁶ Wheatland Tube contends that when a subsidy program is limited to enterprises located in a designated geographical region within a country's territory, it is the Department's practice to find that program regionally-specific within the meaning of section 771(5)(B) of the Act.¹⁸⁷ As such, Wheatland Tube argues that the GUAE is by definition an “authority” that has eliminated import charges within a specific portion of its territory within

¹⁸² *Id.* at 3-4.

¹⁸³ *See* G3SR at 2 and Exhibit 2.

¹⁸⁴ *Id.* at 5 and Exhibit 4.

¹⁸⁵ *Id.* at 5-6.

¹⁸⁶ *See* PCB at 17-18.

¹⁸⁷ *See HPSC from the PRC*, 77 FR at 26739; *Washers from Korea*, 77 FR at 33188-33189; and *CFS from the PRC Final* and accompanying IDM at 19.

the meaning of this provision of the Act.

Wheatland Tube avers that the GUAE has indicated that “free zones are part of the country’s territories but considered to be outside the customs territory and subject to customs control other than normal customs procedures. This is applicable to JAFZ.”¹⁸⁸ By this, Wheatland Tube contends that the GUAE has exempted all enterprises operating in the JAFZ from import duties and, thus, the Department should find this program to be regionally-specific in accordance with section 771(5A)(D)(iv) of the Act.¹⁸⁹ Wheatland Tube states that in choosing to define its FTZs as outside its customs territory, the GUAE has created a “designated geographical region” of its territory where companies are exempt from paying import charges.¹⁹⁰ Further, Wheatland Tube argues that the SAA requires the Department to find subsidies specific if: (1) the subsidies are provided by a central government; (2) to an enterprise or industry or group thereof; (3) which are located in a “particular region” or “designated geographical region.” In addition, Wheatland Tube notes, the Act provides that “in determining whether a subsidy... is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply... (iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.”¹⁹¹ Elaborating on this, Wheatland Tube states that in clarifying the standard for regionally-specific subsidies, the SAA states that “subsidies provided by a central government to particular regions (including a province or a state) are specific regardless of the degree of availability or use within the region. Likewise, state and provincial subsidies that are limited to particular regions within the state or province are specific.”¹⁹² Wheatland Tube further points to *Al Tech* in support of its position.¹⁹³

Wheatland Tube concludes that since the standard customs duty rate in the UAE is five percent, by promulgating a blanket exemption from import duties in its FTZs, the GUAE is providing a benefit in the amount of the import duties that would be due in the absence of this exemption, and that the Department should find these exemptions to be countervailable subsidies in this final determination, consistent with 19 CFR 351.510(a).¹⁹⁴

Universal contends that even if the Department were to conclude that its investigation covers the duty-free import of goods into the JAFZ, the record refutes Wheatland Tube’s argument that the benefit would be regionally-specific, as the only difference between companies operating inside of the JAFZ and companies operating outside is that companies such as Universal Plastic do not have to apply for the duty exemptions, whereas those outside do, but both groups receive the

¹⁸⁸ See G3SR at 5-6.

¹⁸⁹ See PCB at 19.

¹⁹⁰ See PRB at 4.

¹⁹¹ See section 771(5A) of the Act.

¹⁹² See SAA at 932.

¹⁹³ See PRB at 5, citing *Al Tech*, 28 CIT at 1511, referencing “the appropriate analysis of regional specificity by reference to the terms ‘within a designated geographical region’ contained in section 771 (5A)(D)(iv) of the Act. The CIT noted that “Designated” is defined as “to indicate or specify, point out” and that, the statute’s placement of the qualifier “designated” before “geographic region” seems to require some sort of an affirmative indication of a limitation to a specified geographical region, if a subsidy is to be considered *de jure* specific on that basis.

¹⁹⁴ See PCB 19-20.

duty exemptions.¹⁹⁵ Therefore, Universal states that the benefit is generally available to all companies in the UAE, and is not “limited to an enterprise or industry located within a designated geographical region” as defined under section 771(5A)(D)(iv) of the Act. Furthermore, Universal conveys that since there are no restrictions on receiving duty exemptions within the JAFZ, the benefit is not limited to certain companies within the JAFZ.

The GUAE states that Wheatland Tube’s argument that UAE special economic zones, such as the JAFZ, are regionally-specific, has no merit because both the UAE and the FTZs operating within it automatically provide import duty exemptions. Therefore, the GUAE contends that there is no differently situated “region” within the meaning of section 771(5A)(D)(iv) of the Act, as Wheatland Tube alleges. The GUAE further contends that since all industrial establishments importing raw materials and capital goods into the UAE are exempt from import duties, the exemption has essentially rendered the five percent duty rate a nullity.

Universal argues that verified documents demonstrate that, except for the fact that companies outside JAFZ have to apply for duty exemptions through the DUTEX system, companies located both inside and outside the JAFZ are all able to import goods duty free.¹⁹⁶ Further, Universal contends that because the duty free importation of raw materials and capital goods is available to all companies - regardless of location - these benefits are not regionally-specific, and references the Department’s negative determination in *Textile Mill Products Final*. Universal contends that in *Textile Mill Products Final*, the Department analyzed whether producers of textiles located in FTZs benefited from the preferential exemption of customs duties and taxes on imported capital equipment and other goods, and found that the duty exemption program was not specific. Specifically, Universal states that the Department found that “a company does not receive any benefit as a result of being located in a FTZ other than the administrative convenience of not having to apply for exemptions and drawbacks from import duties,”¹⁹⁷ and that “{b}ecause companies located in the FTZ’s do not receive preferential treatment vis-à-vis companies located outside the FTZ’s, we determine that this program does not constitute a bounty or grant.”¹⁹⁸

Universal and the GUAE argue that the facts in *Textile Mill Products Final* are similar to the facts in this proceeding, wherein companies located in the JAFZ do not receive preferential treatment over companies located outside the JAFZ, because, as stated above, the duty free importation of goods is available to companies inside and outside the JAFZ with the only difference being the administrative convenience for companies located in the JAFZ of not having to apply for the duty exemption using the DUTEX system. Further, Universal and the GUAE argue that as in *Textile Mill Products Final*, this “administrative convenience” does not change the fact that companies inside and outside the FTZs can import duty free.

¹⁹⁵ See URB at 7-8, referencing the GCC Common Customs Law at Article 78.

¹⁹⁶ See URB at 8-9; see also GUAE Verification Report at 2-3, 7, VE-2 and VE-7; and Universal Verification Report at 10-11, VE-8a and 15b.

¹⁹⁷ See *Textile Mill Products Prelim*.

¹⁹⁸ See *Textile Mill Products Final*.

Department's Position

The record of this investigation demonstrates that Universal Plastic is located in the JAFZ and that the JAFZ, like other FTZs in the UAE, is outside the customs territory of the UAE. Customs law regulating the importation and exportation of goods in the UAE explicitly excludes free zones from its authority.¹⁹⁹ In particular, JAFZ Ordinance No. 1 of 1980 established the JAFZ as a distinct, duty free zone.²⁰⁰ Goods “of whatever kind or origin” may be brought into the free zones and taken outside the country or to other free zones without being subject to customs duties.²⁰¹ Goods taken out from the free zones into the local UAE markets are subject to the customs tariff effective at that time.²⁰² Goods taken out from the free zones into the UAE are treated as foreign goods by customs officials.²⁰³

As we explain in the concurrent final CVD determination with respect to circular welded pipe from Vietnam, we have determined that companies located outside of the customs territory of a country are not liable for duties and, consequently, that a government does not forego revenue when those companies import items free of duty. Thus, there is no financial contribution and no subsidy is conferred.

As we further explain in the Vietnam determination, it is not enough merely to designate a company or label an area as a FTZ in order for the Department to treat that area as being outside the customs territory of the designating country. Instead, the respondents must demonstrate that the FTZ is 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.

In the instant investigation, the information to make such a determination is lacking because the Department did not seek it. Therefore, we are deferring our examination of import duty exemptions for Universal Plastic to a future administrative review, pursuant to 19 CFR 351.311(c)(2), if this investigation results in an order.

Regarding Wheatland Tube's contention that the subsidy is regionally-specific, because we have found no subsidy we do not reach a determination of specificity.

Comment 7 Application of Facts Available to Universal Plastic Due to Non-Cooperation Regarding Subsidies in the JAFZ

Wheatland Tube argues that the Department initiated an investigation of subsidies provided within the UAE's FTZs as regionally-specific subsidies. As such, the assertions made by the GUA and Universal during the investigation, that the programs under investigation do not extend to FTZs, qualify as significant impediments to the Department's investigation. Thus, the Department should rely on facts available for the final determination, pursuant to sections

¹⁹⁹ See GQR at Exhibit 2, Article 2.

²⁰⁰ See G3SR at Exhibit 6.1.

²⁰¹ See GQR at Exhibit 2, Article 78.

²⁰² See GQR at Exhibit 2, Article 15.

²⁰³ See GQR at Exhibit 2, Articles 85 and 88.

776(a)(2)(A) and (C) of the Act.²⁰⁴

Universal views Wheatland Tube's argument to be completely unfounded. Universal argues that it fully responded to all information requests regarding its electricity, water, land, natural gas, and duty-free import of goods into the JAFZ, and this information was fully verified by the Department.²⁰⁵ Furthermore, Universal argues that the GUAE fully responded to all information requests and the Department verified the information during its meetings with officials from the JAFZ.²⁰⁶ Thus, Universal avers that there is no basis for any AFA determination with respect to these alleged programs.²⁰⁷

The GUAE also disputes Wheatland Tube's argument that the respondents "significantly impeded the Department's investigation."²⁰⁸ The GUAE contends that the Department properly defined the scope of its investigation, and that the GUAE responded fully and reasonably to all questions pertaining to its implementation (or lack of implementation) of the Federal Law of 1979. As such, the GUAE states that there is no basis for Wheatland Tube's claim that the GUAE impeded the Department's investigation.

The GUAE states that while Wheatland Tube wishes that the Department had asked additional questions those questions were not asked and, thus, the GUAE cannot be faulted for not having responded. The GUAE asserts that the Department has rejected comparable unfounded requests by petitioners in other cases to apply AFA, and should do so here as well.²⁰⁹

Department's Position

Initially, Universal responded to the Department's questionnaires by stating that certain questions were inapplicable to Universal Plastic, as it operates in the JAFZ.²¹⁰ Ultimately, after the Department explained that it was indeed requesting a response with respect to Universal Plastic, Universal submitted the information as requested.²¹¹ In limited instances, Universal explained it was unable to obtain complete information, and the record supports that, in those instances, Universal provided the information reasonably available to it.²¹² Likewise, the GUAE responded to our requests for information with respect to these programs as they relate to the JAFZ.²¹³ As such, we disagree with Wheatland Tube's argument that the GUAE and Universal significantly impeded this proceeding within the meaning of sections 776(a)(2)(A) and (C) of the Act, with respect to the investigation of these programs within the JAFZ.

²⁰⁴ See PCB at 5.

²⁰⁵ See URB at 6, referencing UNSAQR, U2SR, U3SR, and U3SRA.

²⁰⁶ See GQR, G1SR, and G3SR.

²⁰⁷ See *DRAMS from Korea* and accompanying IDM at Comment 2.

²⁰⁸ See GRB at 4, referencing PCB at 5.

²⁰⁹ See *DRAMS from Korea* and accompanying IDM at Comment 2.

²¹⁰ See UQR at 13, 16, 17, and 18; USR at 6, 8, 9, 10, 12, 13, and 14.

²¹¹ See UNSAR at 1; U2SR at 11, 13-16, U3SR at 3, and U4SR at 4.

²¹² See U3SR at 3; U3SRA at 2; U4SR at 4.

²¹³ See GSR at 1; G2SR at 2-4; GNSAR at 2 and 3; G3SR at 1-3, 4-7; G3SRA at 1.

C. The GUAE's Provision of Natural Gas for LTAR

Comment 8 Scope of the Investigation of the GUAE's Provision of Natural Gas for LTAR

Due to the proprietary nature of the discussion of this issue, *see* Final BPI Memo.

Comment 9 Whether the Department Should Delay its Finding or Apply AFA Due to Non-Cooperation for the Provision of Natural Gas for LTAR

Wheatland Tube states that the Department should not defer its examination of this subsidy practice because at the point when the Department initiated an investigation of natural gas, sufficient time remained to investigate this subsidy.²¹⁴ Wheatland Tube contends that if any information is lacking, it is because the GUAE failed to provide such information, and the Department should apply AFA for this final determination.²¹⁵ Wheatland Tube states that Universal's response in its UNSAQR regarding the provision of natural gas for LTAR clearly required no coordination with the GUAE or any "diligent" effort to prepare, but was more of a pretext that successfully impeded the Department's investigation within the meaning of section 776(a)(2)(C) of the Act.²¹⁶ As such, Wheatland Tube argues that Universal and the GUAE failed to provide complete responses regarding this program and, thus, withheld information and significantly impeded the Department's investigation within the meaning of sections 776(a)(2)(A) and (C) of the Act.²¹⁷

Additionally, Wheatland Tube argues that in its Post-Preliminary Analysis Memorandum, the Department incorrectly stated "that only one of the respondents, ADPICO, purchased natural gas during the POI." Wheatland Tube contends that Universal also purchased a certain type of natural gas and that the Department should countervail Universal's and ADPICO's usage of this input as AFA.²¹⁸ Finally, Wheatland Tube contends that the Department's verification findings imply that the GUAE failed to provide the documentation requested by the Department with respect to ADPICO. Consequently, Wheatland Tube urges the Department to determine that the GUAE failed to act to the best of its ability and the Department should find the program to be countervailable as AFA in this final determination, rather than deferring consideration of this program until the first administrative review.²¹⁹

The GUAE states that the evidence it supplied and the Department's verification thereof, confirm that there is no GUAE program to supply any industry with natural gas at LTAR.²²⁰ The GUAE explains that, as cited in the GUAE Verification Report, Department officials met with a GUAE official who explained how natural gas is distributed and priced in the UAE, and confirmed that local governments of the individual emirates do not control natural gas prices or the supply of natural gas within their borders. Further, the GUAE avers that this GUAE official explained that gas sales are negotiated directly between suppliers and the off-taking users, with no government

²¹⁴ *See* PPPCB at 3.

²¹⁵ *Id.*

²¹⁶ *See* PCB at 5-6.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 3-4.

²²⁰ *See* GCB at 6.

intervention. The GUAЕ notes that it submitted a sales contract between ADNOC and ADWEA showing that prices to entities outside specific economic zones were the same as prices to entities within the zones.²²¹

In addition to this, the GUAЕ states that it provided evidence to the Department that certain natural gas shortages in Sharjah were caused by infrastructure failures rather than a preferential deployment of gas to other emirates, and responded to the Department's questions concerning transactions between certain GUAЕ-owned entities.²²² Consequently, the GUAЕ claims, record evidence compels the conclusion that this alleged program does not exist.

The GUAЕ further contends that it explained that there is no government control over natural gas pricing, nor any program that steers preferential gas supply arrangements towards particular industries or users.²²³ Therefore, the GUAЕ concludes, that there is no basis for the Department to determine that the GUAЕ's provision of natural gas confers a countervailable subsidy.²²⁴

As support for its argument, the GUAЕ states that there are no rate schedules for the individual emirates, just as there is no rate schedule maintained by any central authority, and that such rate schedules do not exist because no GUAЕ authorities fix such rates.²²⁵ Further, the GUAЕ avers that the UAE does not yet possess a nation-wide natural gas distribution network, and as a consequence, natural gas markets in the UAE are relatively illiquid.²²⁶ The GUAЕ continues, stating that the natural marketing structure for significant industrial users relies primarily on individually negotiated GSAs, and that hundreds of GSAs exist, each with different terms established by the relative negotiating power of the supplying and off-taking parties.²²⁷ The GSA between ADNOC and ZonesCorp supplied to the Department is one such GSA among many, according to the GUAЕ.²²⁸

The GUAЕ states that the largest suppliers of natural gas in the UAE are GUAЕ-owned GASCO and DUSUP, and privately-held Crescent Petroleum.²²⁹ Further, the GUAЕ states that natural gas prices in the UAE are driven by market factors and not centralized policy; a major factor contributing to domestic natural gas prices is competition between ADGAS and DEL; and development of UAE natural resources is occurring at a rapid rate, with participation of major oil and gas companies, as well as the GUAЕ.²³⁰ The GUAЕ contends that the Department covered many of these assertions at verification, including the structure of the UAE's natural gas market, the role of DUSUP, and GSAs involving the FTZs.²³¹ The GUAЕ contends that with regard to FTZs, the Department conferred with a GUAЕ official who "conveyed that there are no systematic agreements to ensure that industrial users get a better rate, as there is no governmental

²²¹ See GUAЕ Verification Report at 11 and VE-10C.

²²² *Id.* at 12.

²²³ See GRB at 19.

²²⁴ *Id.*

²²⁵ See G3SRA at 1-2.

²²⁶ *Id.* at 2-3.

²²⁷ *Id.*

²²⁸ *Id.* at 4 and Exhibit 2.

²²⁹ See G2SR at 2.

²³⁰ *Id.* at 5 and 9.

²³¹ See GRB at 20.

gas authority negotiating prices, so there cannot be a preferential agreement.”²³²

The GUAЕ also disputes Wheatland Tube’s allegation that the GUAЕ significantly impeded the investigation by withholding information concerning the provision of natural gas to the company respondents in this investigation and that AFA should be imposed.²³³ The GUAЕ concludes that Wheatland Tube is faulting the GUAЕ for not providing information that Wheatland Tube wished the Department had requested, rather than information that the Department actually requested, and that Wheatland Tube offers no real basis for the Department to conclude that the GUAЕ impeded the investigation.

The GUAЕ contends that Wheatland Tube’s AFA argument with respect to ADPICO is unsupported by the record, and contradicts evidence of market-determined natural gas pricing.²³⁴ The GUAЕ argues that evidence obtained at verification shows that industrial users inside special economic zones are charged the same as those outside such zones, and that the record as a whole compels the conclusion that the GUAЕ cooperated fully with the Department.

The GUAЕ states that Wheatland Tube’s contention that the Department “did not make a determination” with respect to the alleged provision of natural gas for LTAR is incorrect.²³⁵ Moreover, the GUAЕ contends that the Department’s finding that there is no program as alleged by Wheatland Tube, is supported by considerable evidence supplied by the GUAЕ over the course of the investigation.²³⁶ The GUAЕ contends that Wheatland Tube’s continued appeals for the application of AFA with respect to the provision of natural gas are irrelevant because, as the Department concluded, the record contains no support for the existence of such a program.²³⁷

ADPICO states that it provided “sufficient evidence that natural gas has been supplied and invoiced to ADPICO under no subsidy or special rate.”²³⁸ Moreover, ADPICO states that the “{p}rovision of natural gas to ADPICO is supplied according to an official standard rate and ADPICO is getting charged with a minimum consumption rate even if ADPICO has used less gas... {t}herefore the provision of natural gas is not countervailable and needs no further information.”²³⁹ ADPICO rebuts Wheatland Tube’s claims, stating that “{t}he access to public information of the gas supply company, the reports of the GUAЕ, ADPICO’s gas supply contract and the verified gas bills are showing sufficient evidence that natural gas has been supplied, invoiced and paid by ADPICO under no subsidy or special rate...”²⁴⁰

Universal states that since it did not use natural gas during the POI, the Department should find that Universal received no countervailable subsidy from this program.²⁴¹ See Final BPI Memo for further discussion.

²³² *Id.* at 20-21, referencing GUAЕ Verification Report at 11 and VE-10C.

²³³ See GRB at 7, referencing PCB at 6 and 11.

²³⁴ *Id.* at 21.

²³⁵ See GPPRB at 4.

²³⁶ *Id.*

²³⁷ *Id.* See also Post-Preliminary Analysis Memorandum at 6.

²³⁸ See APPCB at 4.

²³⁹ *Id.* at 6.

²⁴⁰ See APPRB at 4.

²⁴¹ See UCB at 2.

Department's Position

As explained above under section “D. Programs for Which More Information Is Required,” we continue to conclude that we need more information before determining whether the GUAE’s provision of natural gas confers a countervailable subsidy and, thus, we are deferring our examination, pursuant to 19 CFR 351.311(c)(2). Specifically, questions remain regarding the provision of natural gas within the Emirate of Abu Dhabi, and within ICAD, in which ADPICO is located.

With respect to Wheatland Tube’s claims that the GUAE “repeatedly refused” to provide certain information related to natural gas pricing in the UAE, we disagree. The GUAE’s responses show that the GUAE attempted to provide complete responses to the questions asked by the Department.²⁴² Furthermore, while the GUAE was not able to provide information at verification to support one aspect of its claims with respect to the pricing of natural gas, this particular piece of information by itself would not lead to finding whether the GUAE’s provision of natural gas to ADPICO is countervailable or not. Instead, the Department will seek all relevant information regarding this program, including this piece of information, when it evaluates the GUAE’s provision of natural gas in an administrative review (if this investigation results in a countervailing duty order). Thus, the GUAE’s failure to provide support for this claim did not impede our investigation or otherwise warrant the application of AFA.

D. Other Programs

Comment 10 Non-Existence of Alleged Programs under the Federal Law of 1979 and/or the GCC Industrial Law

The GUAE argues that record evidence establishes that provisions for profit tax exemptions, the provision of electricity for LTAR, the provision of land and/or buildings for LTAR, the provision of water for LTAR, and preferential export lending under the Federal Law of 1979 were never implemented.²⁴³ The GUAE points to verification interviews with MOE officials, as well documents submitted at verification which, in its view, confirm that these programs do not exist.²⁴⁴ The GUAE further argues that WTO Trade Policy Review documents demonstrate the absence of corporate taxes in the UAE.²⁴⁵ Finally, the GUAE asserts that the letters issued by FEWA confirm that electricity and water prices are based on publicly available rate schedules, and that the respondents in this investigation did not receive preferential prices.²⁴⁶ Based on this record evidence, the GUAE states that the Department should confirm that these programs do not exist.

Wheatland Tube argues that the GUAE failed to document that these programs do not exist. Wheatland Tube asserts the GUAE does not cite to any actual government records, just statements by government officials. Thus, Wheatland Tube argues, the documents the GUAE

²⁴² See GNSAQR, G3SR, and G3SRA.

²⁴³ See GCB at 2-4.

²⁴⁴ See GUAE Verification Report at 14, VE-6, and VE-9.

²⁴⁵ *Id.* at 14.

²⁴⁶ *Id.* at 14 and VE-9.

put on the record do not meet the Department’s definition of “source documents,” or meet the level of “substantial evidence” upon which the courts require the Department to ground its determinations.²⁴⁷ Citing to *Fine Furniture*, Wheatland Tube argues that the Department should countervail these programs based on an adverse inference of facts available.

Wheatland Tube asserts that the electricity and water markets within the UAE are highly distorted because “a significant amount” of the electricity and water in the UAE are produced using a “subsidized natural gas input.”²⁴⁸ As such, Wheatland Tube urges the Department to use an external benchmark to calculate the benefit to the respondents.²⁴⁹

Universal avers that Wheatland Tube’s arguments are unsubstantiated and are in opposition to verified information, and that since there is no program for the provision of electricity or water for LTAR, the Department should reject Wheatland Tube’s arguments.²⁵⁰

Department’s Position

Despite Wheatland Tube’s claims, the respondents paid rates for electricity and water that were on par with the publicly-available pricing schedules as submitted by the GUAE.²⁵¹ Furthermore, a review of record evidence and verification of source documents found no evidence of preferential export lending,²⁵² profit tax exemptions,²⁵³ or any land and/or buildings being provided by a GUAE authority for LTAR.²⁵⁴ In short, there is no evidence that detracts from or calls into question the GUAE’s claim that the provisions were never implemented.

Furthermore, we find Wheatland Tube’s reliance on *Fine Furniture* to be misplaced. In that case, parties argued that they should not be assigned AFA because they had provided evidence responsive to the Department’s questionnaire. The Department found otherwise, relying on other record evidence. Because the record contained potentially conflicting evidence, the CIT found that the Department’s determination was not supported by substantial evidence.²⁵⁵ In the instant investigation, there is no conflicting evidence. After developing the record through our questionnaires and verification, there is no indication that the programs alleged by Petitioners exist.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above

²⁴⁷ See PRB at 2, citing *Fine Furniture* at *7 (citing 19 U.S.C. 1516a(b)(1)(B)(i) which states that “the court shall hold unlawful any determination, finding, or conclusion found... to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.”).

²⁴⁸ See PCB at 2 and 41.

²⁴⁹ *Id.* at 41.

²⁵⁰ See URB at 27-28.

²⁵¹ See UQR at Exhibit S-11 through S-15, AQR at Appendix VIII and Appendix X, and G1SR at 14-16.

²⁵² See ADPICO Verification Report at 17-19 and VE-10A through VE-10G, and Universal Verification Report at 19-22 and VE-13a through VE-13h.

²⁵³ *Id.*

²⁵⁴ See ADPICO Verification Report at 20-21 and VE-5A and VE-5B, and Universal Verification Report at 17-18, VE-1a and VE-1b, and VE-11a through VE-11c.

²⁵⁵ See *Fine Furniture* Slip. Op. 12-113 at 26-27.

positions. If these positions are accepted, we will publish the final determination in the *Federal Register*.

AGREE _____ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
ADGAS	Abu Dhabi Gas Liquefaction Company
ADNOC	Abu Dhabi National Oil Company
ADPICO	Abu Dhabi Metal Pipes & Profiles Industries Complex LLC
ADWEA	Abu Dhabi Water and Electricity Authority
AFA	Adverse Facts Available
Alita	Alita Trading DMCC
AUL	Average useful life
BPI	Business proprietary information
CAFC	U.S. Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CVD	Countervailing Duty
circular welded pipe	Circular welded carbon-quality steel pipe
DCR	Dubai Commodity Receipt
DEL	Dolphin Energy Limited
Department	Department of Commerce
DMCC	Dubai Multi Commodities Center
DUTEX	Duty Exemption Service
DUSUP	Dubai Supply Authority
Federal Law of 1979	UAE Federal Law No.1 of 1979: Organizing Industrial Affairs
FEWA	Federal Electric Water Authority
FIEs	Foreign-Invested Enterprises
FTZ	Free trade zone
GCC	Gulf Cooperation Council
GASCO	Abu Dhabi Gas Industries
GCC Industrial Law	GCC Common Industrial Regulatory Law of the Cooperation Council for the Arab States of the Gulf
GDP	Gross Domestic Product
GSA	Gas sales agreement
GUAE	Government of the United Arab Emirates
IA	Import Administration
IA ACCESS	Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System

ICAD	Industrial City of Abu Dhabi
IDM	Issues and Decision Memorandum
IRS	Internal Revenue Service
JAFZ	Jebel Ali Free Trade Zone
KHK	KHK Scaffolding and Formwork LLC
Korea	Republic of Korea
LTAR	Less than adequate remuneration
MOE	GUAE's Ministry of Economy
Oman	The Sultanate of Oman
Petitioners	Allied Tube and Conduit, JMC Steel Group, United States Steel Corporation, and Wheatland Tube
POI	Period of Investigation
PRC	People's Republic of China
Rules of Implementation	"Rules for Implementing the Common Industrial Regulatory Law for the Cooperation Council for the Arab States of the Gulf"
SMEs	Small and Medium Sized Enterprises
Tariff Exemptions	Tariff Exemptions on Imported Equipment, Machinery, Materials, and Packaging Materials under the Federal Law of 1979 and/or GCC Industrial Law
UAE	United Arab Emirates
U.S.C.	United States Code
WTO	World Trade Organization
Universal	Universal Plastic, Universal Pipe, and KHK, collectively
Universal Pipe	Universal Tube and Pipe Industries LLC
Universal Plastic	Universal Tube and Plastic Industries, Ltd.
VE	Verification Exhibit
Vietnam	Socialist Republic of Vietnam
Wheatland Tube	Wheatland Tube, one of the Petitioners

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GUAE
GQR	GUAE's Initial Questionnaire Response (February 17, 2012).
G1SR	GUAE's 1 st Supplemental Questionnaire Response (March 16, 2012).
GNSAQR	GUAE's New Subsidy Allegations Questionnaire Response (April 26, 2012).
G2SR	GUAE's 2 nd Supplemental Questionnaire Response (April 26, 2012).
G3SR	GUAE's 3 rd Supplemental Questionnaire Response (May 24, 2012).
G3SRA	GUAE's Addendum to the G3SR (May 30, 2012).
GCB	GUAE's Case Brief (August 30, 2012).
GRB	GUAE's Rebuttal Brief (September 6, 2012).
GPPCB	GUAE's Post-Preliminary Analysis Memorandum Case Brief (September 26, 2012).
GPPRB	GUAE's Post-Preliminary Analysis Memorandum Rebuttal Brief (October 2, 2012).
	Petitioners
Petition	Letter from Petitioners to the Department, "Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam: Antidumping and Countervailing Duty Petitions," (October 28, 2011).
NSA Letter	Letter from Wheatland Tube to the Department, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the UAE: New Subsidies Allegation and Additional Factual Information," (February 28, 2012).
PCB	Petitioner's Case Brief (August 30, 2012).
PRB	Petitioner's Rebuttal Brief (September 6, 2012).
PPPCB	Petitioner's Post-Preliminary Analysis Memorandum Case Brief (September 26, 2012).
PPPRB	Petitioner's Post-Preliminary Analysis Memorandum Rebuttal Brief (October 2, 2012).
	ADPICO
AQR	ADPICO's Initial Questionnaire Response (February 17, 2012).
A1SR	ADPICO's 1 st Supplemental Questionnaire Response (March 14, 2012).
A1SRA	ADPICO's Addendum to the A1SR (March 19, 2012).
ANSAQR	ADPICO's New Subsidy Allegations Questionnaire Response (April 7, 2012).
A2SR	ADPICO's 2 nd Supplemental Questionnaire Response (April 20, 2012).
A3SR	ADPICO's 3 rd Supplemental Questionnaire Response (May 24,

	2012).
ACB	ADPICO's Case Brief (September 5, 2012).
APPCB	ADPICO's Post-Preliminary Analysis Memorandum Case Brief (October 1, 2012)
APPRB	ADPICO's Post-Preliminary Analysis Memorandum Rebuttal Brief (October 2, 2012)
	Universal
UQR	Universal's Initial Questionnaire Response (February 16, 2012).
U1SR	Universal 1 st Supplemental Questionnaire Response (March 16, 2012).
UNSAQR	Universal's New Subsidy Allegations Questionnaire Response (April 10, 2012).
U2SR	Universal's 2 nd Supplemental Questionnaire Response (April 25, 2012).
U3SR	Universal's 3 rd Supplemental Questionnaire Response (May 9, 2012).
U3SRA	Universal's Addendum to the U3SR (May 23, 2012).
U4SR	Universal's 4 th Supplemental Questionnaire Response (May 24, 2012).
UCB	Universal's Case Brief (August 30, 2012).
URB	Universal's Rebuttal Brief (September 6, 2012).
UPPCB	Universal's Post-Preliminary Analysis Memorandum Case Brief (September 26, 2012).
UPPRB	Universal's Post-Preliminary Analysis Memorandum Rebuttal Brief (October 2, 2012).
	Department
ADPICO Post-Preliminary Calculation Memorandum	Memorandum to the File, "Post-Preliminary Analysis Memorandum Calculation Memorandum for Abu Dhabi Metal Pipes & Profiles Industries Complex LLC," (September 21, 2012).
ADPICO Verification Report	Memorandum from Joshua Morris, Dustin Ross, and Shane Subler, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, "Verification Report: ADPICO and Alita," (August 21, 2012).
Final BPI Memo	Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, "Business Proprietary Information Memorandum for the Final Determination," (October 15, 2012).
GUAE Verification Report	Memorandum from Joshua Morris, Dustin Ross, and Shane Subler, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, "Verification Report: Government of the UAE," (August 16, 2012).
Initiation Checklist	<i>Countervailing Duty Investigation Initiation Checklist: Certain Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates</i> (November 15, 2011).
<i>Initiation Notice</i>	<i>See Circular Welded Carbon-Quality Steel Pipe from India, the</i>

	<i>Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations</i> , 76 FR 72173 (November 22, 2011).
InitQ	Department's Initial Questionnaire (December 21, 2011).
Post-Preliminary Analysis Memorandum	Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Post-Preliminary Analysis Memorandum," (September 20, 2012).
Respondent Selection Memo	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection Memorandum," (December 16, 2011).
Universal Post-Preliminary Calculation Memorandum	Memorandum to the File, "Post-Preliminary Analysis Calculation Memorandum for Universal Tube and Plastic Industries, Ltd.," (September 21, 2012).
Universal Verification Report	Memorandum from Dustin Ross, Joshua Morris, and Shane Subler, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, "Verification Report: Universal," (August 22, 2012).

III. LITIGATION TABLE

Short Cite	Cases
<i>Al Tech</i>	<i>Al Tech Specialty Steel Corp v. United States</i> , 28 CIT 1468 (2004)
<i>Fabrique</i>	<i>Fabrique de Fer de Charleroi, S.A. v. United States</i> , 166 F. Supp. 2d 593 (CIT 2001)
<i>Fine Furniture</i>	<i>Fine Furniture (Shanghai) Ltd. v. United States</i> , Ct. No. 11-00533 CIT Lexis 115 (CIT 2012)
<i>Inland Steel</i>	<i>Inland Steel v. United States</i> , 188 F.3d 1349 (CAFC 1999)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Short Cite	Administrative Case Determinations
	<i>Aluminum Extrusions – PRC</i>
<i>Aluminum Extrusions</i>	<i>Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011).</i>
	<i>CVD Preamble</i>
<i>CVD Preamble</i>	<i>Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998).</i>
	<i>Carbon and Alloy Steel Wire Rod – Turkey</i>
<i>Wire Rod from Turkey</i>	<i>Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey, 67 FR 55815 (August 30, 2002).</i>
	<i>Circular Welded Carbon-Quality Steel Pipe – Oman</i>
<i>Circular Welded Pipe from Oman Prelim</i>	<i>Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 FR 19635 (April 2, 2012).</i>
	<i>Circular Welded Carbon-Quality Steel Pipe – UAE</i>
<i>Preliminary Determination</i>	<i>Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 FR 19219 (March 30, 2012).</i>
	<i>Citric Acid and Certain Citrate Salts – PRC</i>
<i>Citric Acid</i>	<i>Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009).</i>
	<i>Coated Free Sheet Paper Final AD – PRC</i>
<i>CFS from the PRC Final</i>	<i>Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).</i>
	<i>Coated Free Sheet Paper Final CVD – PRC</i>
<i>CFS from the PRC CVD</i>	<i>Coated Free Sheet Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007).</i>
	<i>Corrosion-Resistant Carbon Steel Flat Products – Korea</i>
<i>CORE from Korea</i>	<i>Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 76 FR 3613 (January 20, 2011).</i>

	<i>Drill Pipe – PRC</i>
<i>Drill Pipe</i>	<i>Drill Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011).</i>
	<i>Dynamic Random Access Memory Semiconductors – Korea</i>
<i>DRAMS from Korea</i>	<i>Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR7395 (February 17, 2009).</i>
	<i>Grain–Oriented Electrical Steel – Italy</i>
<i>Grain–Oriented Steel</i>	<i>Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy, 59 FR 18357 (April 19, 1994).</i>
	<i>High Pressure Steel Cylinders – PRC</i>
<i>HPSC from the PRC</i>	<i>High Pressure Steel Cylinders From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012).</i>
	<i>Laminated Hardwood Trailer Flooring Prelim – Canada</i>
<i>Hardwood Flooring Prelim</i>	<i>Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring (“LHF”) From Canada, 61 FR 59079 (November 20, 1996).</i>
	<i>Laminated Hardwood Trailer Flooring Final – Canada</i>
<i>Hardwood Flooring Final</i>	<i>Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) From Canada, 62 FR 5201 (February 4, 1997).</i>
	<i>Large Residential Washers – Korea</i>
<i>Washers from Korea</i>	<i>Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 77 FR 33181 (June 5, 2012).</i>
	<i>Live Swine II – Canada</i>
<i>Live Swine II</i>	<i>Final Negative Countervailing Duty Determination: Live Swine from Canada, 70 FR 12186 (March 11, 2005).</i>
	<i>Narrow Woven Ribbons with Woven Selvedge – PRC</i>
<i>Ribbons from the PRC</i>	<i>Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 41804 (July 19, 2010).</i>
	<i>Ni–Resist Piston Inserts – Korea</i>
<i>Ni–Resist Inserts</i>	<i>Ni–Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination, 74 FR 48059 (September 21, 2009).</i>

	<i>Pasta 2006 Review – Italy</i>
<i>Pasta from Italy (2006 Review)</i>	<i>Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review, 74 FR 5922 (February 3, 2009).</i>
	<i>Pasta 2010 Review – Italy</i>
<i>Pasta from Italy (2010 Review)</i>	<i>Certain Pasta From Italy: Preliminary Results of the 15th (2010) Countervailing Duty Administrative Review and Rescission, In Part, 77 FR 45582 (August 1, 2012).</i>
	<i>Polyethylene Terephthalate Film, Sheet, and Strip Investigation – India</i>
<i>PET Film from India Investigation</i>	<i>Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002).</i>
	<i>Polyethylene Terephthalate Film, Sheet, and Strip Review Preliminary Results – India</i>
<i>PET Film from India Review Prelim</i>	<i>Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483 (August 10, 2005).</i>
	<i>Polyethylene Terephthalate Film, Sheet, and Strip Review Final Results – India</i>
<i>PET Film from India Review Final</i>	<i>Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006).</i>
	<i>Softwood Lumber Products – Canada</i>
<i>Softwood Lumber</i>	<i>Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002).</i>
	<i>Stainless Steel Sheet and Strip in Coils – Korea</i>
<i>SSSSC from Korea</i>	<i>Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636 (June 8, 1999).</i>
	<i>Stainless Steel Wire Rod Prelim – Italy</i>
<i>Wire Rod from Italy Prelim</i>	<i>Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 809 (January 7, 1998).</i>
	<i>Static Random Access Memory Semiconductors – Taiwan</i>
<i>SRAMS from Taiwan</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998).</i>
	<i>Steel Products – Korea</i>

<i>Steel Products from Korea</i>	<i>Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea, 58 FR 37338 (July 9, 1993).</i>
	<i>Steel Wheels – PRC</i>
<i>Steel Wheels</i>	<i>Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012).</i>
	<i>Textile Mill Products and Apparel Prelim – Malaysia</i>
<i>Textile Mill Products Prelim</i>	<i>Preliminary Affirmative Countervailing Duty Determination; Certain Apparel From Malaysia; and Preliminary Negative Countervailing Duty Determination; Certain Textile Mill Products From Malaysia, 49 FR 49651 (December 21, 1984).</i>
	<i>Textile Mill Products and Apparel Final – Malaysia</i>
<i>Textile Mill Products Final</i>	<i>Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia, 50 FR 9852 (March 12, 1985).</i>
	<i>Utility Scale Wind Towers – PRC</i>
<i>Wind Towers</i>	<i>Utility Scale Wind Towers From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 33422 (June 6, 2012).</i>

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

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

Short Cite	Full Name
<i>SAA</i>	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994).
<i>SCM Agreement</i>	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994).
<i>URAA</i>	<i>Uruguay Round Agreements Act</i> , Pub L. No. 103-465, 108 Stat. 4809 (1994).