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Investigation  
Public Document  
AD/CVD IV: LA

DATE: December 17, 2014

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation: Certain Steel Nails From the  
Sultanate of Oman

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## I. SUMMARY

The Department of Commerce (“the Department”) preliminarily determines that certain steel nails (“nails”) from the Sultanate of Oman (“Oman”) are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The estimated weighted-average dumping margin for the only investigated company in this investigation, Oman Fasteners, LLC (“Oman Fasteners”), is shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On May 29, 2014, the Department received an antidumping duty (“AD”) petition concerning imports of nails from Oman filed in proper form by Mid Continent Steel & Wire, Inc. (“Petitioner”). In June 2014, the Department requested information and clarification of certain areas of the petition. Petitioner filed timely responses to these requests. The Department initiated an AD investigation of nails from Oman on June 25, 2014.<sup>1</sup>

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged interested parties to submit such comments by July 8, 2014. In addition, we set aside time for parties to submit comments regarding product characteristics, and invited all parties to submit comments by July 8, 2014, and rebuttal comments by July 15, 2014.

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<sup>1</sup> See *Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019 (June 25, 2014) (“*Initiation Notice*”).



In the *Initiation Notice*, we stated that the petition named seven companies in Oman as producers/exporters of nails, and we stated our intention to select respondents based on United States Customs and Border Protection (“CBP”) data. Therefore, we obtained CBP data for entries of subject merchandise during the period of investigation (“POI”). Because of the large number of companies identified in the petition, and after careful consideration of our resources, we concluded that it would not be practicable in this AD investigation to examine all known producers/exporters of the subject merchandise. For the reasons stated in the Respondent Selection Memo<sup>2</sup>, the Department selected one producer/exporter of subject merchandise as the mandatory respondent: Oman Fasteners.

On July 18, 2014, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nails from Oman.<sup>3</sup>

On July 29, 2014, we issued an antidumping questionnaire to Oman Fasteners.<sup>4</sup> Between August and October, 2014 the Department issued numerous supplemental questionnaires to Oman Fasteners. Between August 26 and November 24, 2014, Oman Fasteners submitted responses to the Department’s questionnaires. Petitioner submitted comments on Oman Fasteners’ responses between September 5 and November 10, 2014.

Between October 6 and November 10, 2014, Petitioner and Oman Fasteners submitted new factual information on constructed value (“CV”) profit and selling expenses. On October 28, 2014, Petitioner submitted its affiliation analysis, which was subsequently re-submitted on November 7, 2014.

On November 24, 2014, Petitioner and Oman Fasteners filed comments for the Department to consider in its preliminary determination.<sup>5</sup>

### **III. PERIOD OF INVESTIGATION**

The POI is April 1, 2013, through March 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2014.<sup>6</sup>

### **IV. POSTPONEMENT OF PRELIMINARY DETERMINATION**

On October 10, 2014, Petitioner requested a postponement of the preliminary determination.<sup>7</sup> On October 22, 2014, pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the

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

<sup>3</sup> *See Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam*, 79 FR 42049 (July 18, 2014).

<sup>4</sup> *See* The Department’s letter to Oman Fasteners and the enclosed antidumping questionnaire dated July 29, 2014.

<sup>5</sup> *See* Letter from Oman Fasteners to the Department, regarding “Pre-Preliminary Determination Comments” (November 24, 2014); *see also* Letter from Petitioner to the Department, regarding “Pre-Preliminary Determination Comments” (November 24, 2014).

<sup>6</sup> *See* 19 CFR 351.204(b)(1).

<sup>7</sup> *See* Letter from Oman Fasteners to the Department, regarding “Request for Extension of Final Determination” (July 9, 2014); *see also* Letter from Petitioner to the Department, regarding “Request to Extend Antidumping Duty

Department determined that it was appropriate to postpone the preliminary determination. Specifically, the Department postponed the deadline for issuing the preliminary determination by 42 days.<sup>8</sup>

## **V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

Pursuant to section 735(a)(2) of the Act, on December 11, 2014, Oman Fasteners requested that the Department postpone the final determination and extend provisional measures from four months to six months.<sup>9</sup> Additionally, on December 10, 2014, Petitioner requested that the Department fully postpone the final determination in the event that the Department makes a negative preliminary determination.<sup>10</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporter, Oman Fasteners, accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## **VI. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>11</sup> Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more

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Final Determination in the Event of a Negative Preliminary Determination” (July 14, 2014).

<sup>8</sup> See *Certain Steel Nails from Republic of Korea, Malaysia, Taiwan, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 79 FR 63082 (October 22, 2014).

<sup>9</sup> See Letter from Oman Fasteners to the Department, regarding “Certain Steel Nails from Oman: Antidumping Investigation Oman Fasteners’ Request to Postpone Final Determination” (December 11, 2014).

<sup>10</sup> See Letter from Petitioner to the Department, regarding “Certain Steel Nails from the Sultanate of Oman: Extension Request of Final Determination” (December 10, 2014).

<sup>11</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## **VII. SCOPE COMMENTS**

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.<sup>12</sup> The Department specified that any such comments were due by July 8, 2014, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by July 18, 2014.<sup>13</sup>

On July 8, 2014, IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot, interested parties in the investigation, each submitted comments to the Department, expressing concern that the scope would cover nails that were

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<sup>12</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997).

<sup>13</sup> See *Initiation Notice* at 36020.

packaged with other types of merchandise (*e.g.*, ready-to-assemble furniture, *etc.*) for use with such other merchandise. These parties believe the existing scope exclusion for nails numbering less than 25 is inadequate, and urge that the language of the scope be modified to broaden the exclusion of nails packaged with non-subject merchandise. On July 18, 2014, Petitioner submitted rebuttal comments, noting the language of the scope as written is clear, and rejecting the aforementioned parties' proposed changes. On October 17, 2014, Target Corporation and The Home Depot submitted additional comments, reiterating their concerns regarding the coverage of nails packaged with non-subject merchandise. On October 24, 2014, Petitioner submitted additional comments, again advocating that the Department reject the arguments of Target Corporation and The Home Depot. On November 3, 2014, IKEA also submitted additional comments, reiterating the concerns it had expressed in its earlier submission. We are now evaluating the comments received but, for purposes of this preliminary determination, no change to the scope is being made at this time.

## **VIII. RESPONDENT SELECTION**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. As explained in the "Background" section above, we selected Oman Fasteners for individual examination in this investigation.<sup>14</sup>

## **IX. DISCUSSION OF METHODOLOGY**

### **A. Fair Value Comparisons**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of nails from Oman to the United States were made at LTFV, we compared the export prices ("EPs") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this memorandum.

#### *1) Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the EPs of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In order to determine which comparison method to apply, in recent proceedings, the Department applied a "differential pricing" analysis to determine whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1)

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<sup>14</sup> See Respondent Selection Memo.

and consistent with section 777A(d)(1)(B) of the Act.<sup>15</sup> The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Oman Fasteners. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarters within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least 5 percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the

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<sup>15</sup> See, *e.g.*, *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

identified pattern of constructed export prices (CEPs) and EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of CEPs and EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

## 2) Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department finds that more than 33 percent of Oman Fasteners' export sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>16</sup> Further, the Department determines that the average-to-average method can appropriately account for such differences because there is no meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the average-to-

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<sup>16</sup> See Memorandum to the File, Through Robert Bolling, AD/CVD Operations, Office IV, from Lilit Astvatsatryan, AD/CVD Operations, Office IV, Regarding "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman: Oman Fasteners, LLC" ("Analysis Memo"), dated concurrently with this memorandum.

average method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Oman Fasteners.

## **X. Product Comparisons**

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On July 8, 2014, Petitioner, IKEA, Overseas International Steel Industry, LLC, Target Corporation, and The Home Depot submitted comments on product characteristics. On July 18, 2014, Petitioner submitted rebuttal comments on the product characteristics.

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States. The Department identified the following eleven criteria for matching U.S. sales of subject merchandise to NV: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment. These criteria were included in the questionnaires issued to Oman Fasteners, as well as the questionnaires issued to the respondents in the concurrent investigation of nails from the Republic of Korea, Malaysia, Taiwan, and the Socialist Republic of Vietnam.

## **XI. Date of Sale**

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. Oman Fasteners reported the sale invoice date as the date of sale for its U.S. sales.<sup>17</sup> Oman Fasteners reported the sale invoice date because all material terms are set at the time of invoice. Consistent with our practice, the Department has preliminarily determined to use the invoice date, or shipment date, if the invoice date is after the shipment date, as the date of sale.

## **XII. Affiliation**

Petitioner alleged that Oman Fasteners is affiliated with its customer as defined by section 771(33)(G) of the Act, which states that “affiliated persons” may be “any person who control any other person.” Petitioner further cites to 19 CFR 351.102(b)(3), which provides that the Department consider “close supplier relationships” in making its determination regarding “control” and affiliation. According to Petitioner, such a close supplier relationship exists between Oman Fasteners and its customer such that the latter can control Oman Fasteners’ sales and production. The Department further pursued this line of questioning through a supplemental questionnaire<sup>18</sup> and determined that the relationship between the exporter and one of its

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<sup>17</sup> See Oman Fasteners’ section C questionnaire response, dated September 15, 2014, at 13.

<sup>18</sup> See Oman Fasteners’ supplemental section A questionnaire responses, dated October 7 and November 20, 2014.

customers did not meet the standard for a finding of affiliation between the two parties under the Act.<sup>19</sup>

### **XIII. Export Price**

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for Oman Fasteners because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States.

We based EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.<sup>20</sup>

### **XIV. Normal Value**

#### **A. Comparison Market Viability**

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared Oman Fasteners’ volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. Oman Fasteners’ aggregate volumes of sales of foreign like product in the home market or in third-country markets were not greater than five percent of the company’s sales of subject merchandise to the United States. Therefore, Oman Fasteners’ sales in the home market or in the third-country markets are not viable as a comparison market. Consequently, we based NV on CV for Oman Fasteners.

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<sup>19</sup> For further discussion, *see* Analysis Memo.

<sup>20</sup> *Id.*

## B. Calculation of Normal Value Based on CV

In accordance with section 773(a)(4) of the Act, we used CV as the basis for normal value because Oman Fasteners did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (“G&A”) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on Oman Fasteners’ submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs, except in instances where we determined that the information was not valued correctly, as described below. Based on our examination of the record evidence, Oman Fasteners did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on Oman Fasteners submitted cost data except that we adjusted Oman Fastener’s G&A expense ratio to include certain labor, overhead and maintenance costs that were included in the profit and loss accounts in the company’s financial accounting system but excluded from the reported costs, and the amortization of intangible assets, both of which are related to the general operations of the company.<sup>21</sup>

Because Oman Fasteners does not have a viable home or third-country market, we are unable to calculate a CV profit ratio using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent’s own home-market or third-country sales made in the ordinary course of trade. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

Because Oman Fasteners manufactures only nails and did not sell any non-subject comparable merchandise in the home market during the POI, we are unable to calculate profit under section 773(e)(2)(B)(i), *i.e.*, based on sales of the same general category of product. Further, as Oman Fasteners is the only respondent in this investigation, we are unable to calculate profit under 773(e)(2)(B)(ii), *i.e.*, based on the preferred method of averaging the profit ratios of the other exporters or producers being examined. Thus, we must calculate profit under section 773(e)(2)(B)(iii), *i.e.*, any other reasonable method.

We have considered six possible options for CV profit under section 773(e)(2)(B)(iii) based on the information on the record of this investigation: (1) the profit reflected in the audited financial

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<sup>21</sup> See Memorandum from Robert B. Greger to Neal M. Halper re: Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Oman Fasteners LLC, dated December 17, 2014.

statements for three Omani construction companies<sup>22</sup>; (2) the profit reflected in the audited financial statements for Al Jazeera Steel, a producer of steel bars and pipes<sup>23</sup>; (3) the profit reflected in the audited financial statements for two Omani producers of corrugated cartons<sup>24</sup>; (4) the profit reflected in the audited financial statements for two Taiwanese manufacturers of screws and fasteners<sup>25</sup>; (5) the profit reflected in the audited financial statements of Hitech Fastener Manufacture (Thailand) Co., Ltd. (“Hitech”), a Thai producer of screws and rivets<sup>26</sup>; (6) and the profit for Sundaram Fasteners Limited (“Sundaram”), an Indian producer of auto parts and fasteners.<sup>27</sup>

We acknowledge that each of these options has its limitations. The difficulty of this issue revolves around the conflict between the statutory preference that CV profit reflects the production and sale of merchandise in the market under consideration and the need for the profit to reasonably reflect the merchandise under investigation. With respect to each of the Omani companies (*i.e.*, the three construction companies, the two corrugated carton producers and Al Jazeera Steel), we note that none of these companies produces merchandise identical or comparable to the merchandise under investigation. With regard to the two Taiwanese producers, the Thai producer, Hitech, and the Indian producer, Sundaram, we note that although each of these companies produces comparable merchandise, none produces or sells in the market under consideration. Further, with specific regard to the two Taiwanese producers, we note that portions of the submitted financial statements lack English translations. Finally, although Sundaram does produce some comparable merchandise, a large proportion of its production consists of various automobile parts that are not comparable to nails.

Thus, in selecting a reasonable source for CV profit data amongst the available options before us, we have preliminarily determined to use the profit earned by Hitech Fastener Manufacture (Thailand) Co., Ltd., a producer of comparable merchandise, in accordance with section 773(e)(2)(B)(iii) of the Act. However, we have been unable to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category, because the record does not contain public information for making such calculation. Therefore, because there is no other information available on the record, as facts available, we are applying option (iii) of section 773(e)(2)(B) of the Act, without quantifying a profit cap.

With respect to indirect selling expenses, because Oman Fasteners does not have a viable home market or third-country market, the Department does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As an alternative, to

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<sup>22</sup> See Oman Fasteners’ Submission of Factual Information for CV Profit and Selling Expenses, dated October 6, 2014.

<sup>23</sup> See *Petition for the Imposition of Antidumping and Countervailing Duties: Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam, Volume V.*, dated May 29, 2014 at exhibit AD-18.

<sup>24</sup> See Oman Fasteners’ Submission of Factual Information for CV Profit and Selling Expenses, dated October 31, 2014.

<sup>25</sup> See Petitioner’s Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014 at Exhibits 2A, 2B and 11C.

<sup>26</sup> *Id.* at Exhibit 7B.

<sup>27</sup> *Id.* at Exhibit 10A.

calculate selling expenses the Department has used the same financial statements that it used to calculate CV profit, in accordance with section 773(e)(2)(B)(iii) of the Act.<sup>28</sup>

## **XV. Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

## **XVI. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION**

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission (“ITC”) of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of nails from Oman before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

## **XVII. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>29</sup> Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>30</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>31</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal*

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<sup>28</sup> See Analysis Memo, at Exhibit I and Petitioner’s Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014 at Exhibit 7B.

<sup>29</sup> See 19 CFR 351.224(b).

<sup>30</sup> See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

<sup>31</sup> See 19 CFR 351.309(c)(2) and (d)(2).

*Register*.<sup>32</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>33</sup> Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,<sup>34</sup> on the due dates established above.

## **XVIII. VERIFICATION**

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

## **XIX. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
(Date)

<sup>32</sup> See 19 CFR 351.310(c).

<sup>33</sup> See 19 CFR 351.303(b)(2)(i).

<sup>34</sup> See 19 CFR 351.303(b)(1).