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

FROM: Howard Smith
Acting Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Nails from the Sultanate of Oman: Issues and
Decision Memorandum for the Final Determination of Sales at
Less Than Fair Value

I. SUMMARY

The Department of Commerce (“the Department”) finds 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 735 of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is April 1, 2013, through March 31, 2014.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondent, Oman Fasteners, LLC (“Oman Fasteners”). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1: Constructed Value Profit and Selling Expenses
- Comment 2: Affiliation with U.S. Customer
- Comment 3: Error in the Calculation of Freight Revenue Cap
- Comment 4: Date of Shipment
- Comment 5: Treatment of a Sale Shipped Prior to the POI
- Comment 6: Costs to Establish Wire Drawing Line
- Comment 7: Indirect Selling Expenses
- Comment 8: Scrap Offset
- Comment 9: Differential Pricing Analysis

II. BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on December 29, 2014.¹ Between January 19, 2015 and January 29, 2015, the Department verified the information provided by Oman Fasteners.²

On March 10, 2015, Mid Continent Steel & Wire, Inc. (“Petitioner”), Oman Fasteners, and Overseas International Steel Industry, LLC (“OISI”), an interested party, submitted case briefs.³ On March 18, 2015, Petitioner, Oman Fasteners, and OISI submitted rebuttal briefs.⁴ On March 23, 2015, Oman Fasteners requested that the Department reject Petitioner’s rebuttal brief because it contains factual information not on the record of this investigation. On March 25, 2015, Petitioner responded to Oman Fasteners rejection request by pointing out that the information referenced by Oman Fasteners is on the record of this investigation. We agreed with Petitioner and did not reject its rebuttal brief. On January 28, 2015, Oman Fasteners requested a hearing and we held a public hearing on April 16, 2015.

III. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the “SCOPE COMMENTS” section, below, appears in Appendix I of the *Final Determination*.

IV. SCOPE COMMENTS⁵

On March 17, 2015, the Department invited interested parties to submit additional comments on certain scope issues that had been raised on the record of this and the concurrent antidumping and countervailing investigations of certain steel nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam (All Nails Investigations).

¹ See *Certain Steel Nails from the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 78034 (December 29, 2014) (“*Preliminary Determination*”), and accompanying Preliminary Issues and Decision Memorandum (“PDM”).

² See Memorandum to the File, from Lilit Astvatsatrian and Trisha Tran, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, regarding “Verification of the Sales Questionnaire Responses of Oman Fasteners, LLC: Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman” (February 27, 2015) (“Sales Verification Report”); see also Memorandum to the File from Robert B. Greger, Senior Accountant, through Peter S. Scholl, Lead Accountant, and Neal M. Halper, Office Director, regarding “Verification of Oman Fasteners LLC in the Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman” (February 18, 2015) (“Cost Verification Report”).

³ See Letter from Oman Fasteners, “Re: Certain Steel Nails from Oman; AD Investigation; Oman Fasteners’ Case Brief,” dated March 10, 2015, Letter from OISI, “Re: Case Brief: Overseas International Steel Industry, LLC: Steel Nails from Oman,” dated March 10, 2015, and Letter from Petitioner, “Re: Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman” Petitioner’s Case Brief,” dated March 10, 2015.

⁴ See Letter from Oman Fasteners, “Re: Certain Steel Nails from Oman; AD Investigation; Oman Fasteners’ Rebuttal Brief,” dated March 18, 2015, Letter from OISI, “Re: Rebuttal Brief: Overseas International Steel Industry, LLC: Steel Nails from Oman,” dated March 18, 2015, and Letter from Petitioner, “Re: Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman” Petitioner’s Rebuttal Brief,” dated March 18, 2015.

⁵ In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties’ requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

On March 23, 2015, two interested parties, The Home Depot (Home Depot) and Target Corporation (Target) requested in a joint submission that the Department exclude certain nails from the scope of All Nails Investigations. On that same day, another interested party, IKEA Supply AG (IKEA), made the very same request, using identical language to that in the Home Depot/Target submission. On March 26, 2015, Petitioner submitted a response that agreed with the exact scope exclusion language proposed by the aforementioned parties in their March 23, 2015 submissions. The exclusion language proposed by those parties and Petitioner is referenced below as “Interested Parties’ Proposed Exclusion.” That language reads as follows:

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article is described in one of the following current HTSUS subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties’ Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the merchandise referenced in the HTSUS subheadings identified in Interested Parties’ Proposed Exclusion, and which altered the reference to “described in one of the following current HTSUS subheadings” to “currently classified under the following HTSUS subheadings.” The Department proposal also contained two other revisions.⁶ In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit (“mixed media and kits”) analysis criteria.

On April 15, 2015, Home Depot, Target, IKEA, and Petitioner submitted comments objecting to the Department’s proposed modification to Interested Parties’ Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.⁷ Those parties also commented that language related to “mixed media and kits” analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and Petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

No parties provided rebuttal comments to those submitted by Home Depot, Target, IKEA, and Petitioner.

⁶ The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

⁷ Home Depot and Target also noted that use of “described in one of the following current HTSUS subheadings” ties the complete language of the HTSUS regarding those subheadings to the scope, while use of “currently classified under the following HTSUS subheadings” fails to achieve that goal.

The Department has determined that inclusion of language from the HTSUS for the additional exclusion is appropriate, as modified in the Department's April 10, 2015 memorandum to incorporate narrative from the HTSUS. The Department notes it is important for such exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department's preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.

As noted, the April 10, 2015 version proposed by the Department incorporates two other modifications. No parties have raised objections to those other modifications, and the Department determines they are appropriate for clarification purposes.

The Department also determines that it would not be appropriate to introduce language into the scope to address "mixed media and kits." We note no interested parties have requested such language, and those that commented in fact opposed such language.

V. DISCUSSION OF THE ISSUES

Comment 1: Constructed Value Profit and Selling Expenses

Background:

Oman Fasteners does not have a viable home or third country market, and, thus, normal value ("NV") must be based on constructed value ("CV"). For the *Preliminary Determination*, we calculated Oman Fasteners' CV profit and selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act, using information from the fiscal year 2012 audited financial statements of Hitech Fastener Manufacture (Thailand) Co., Ltd. ("Hitech"), a third country producer of comparable merchandise.⁸

Oman Fasteners' Arguments:

- The Department erred in the *Preliminary Determination* when it based CV profit on a third country producer in Thailand because the statute, regulations and the Department's longstanding practice require that the Department calculate CV profit that specifically reflects the home market (*i.e.*, Oman).
- The Court of International Trade ("CIT") clarified that the purpose of Section 773(e) of the Act is to approximate the home market profit and expense experience.⁹ Further, the Department's regulations define "foreign country" under section 773(e)(2)(B) of the Act (which describes using amounts for profit and selling expenses that are incurred in

⁸ See PDM at 10-11.

⁹ See *Geum Poong Corp. v. United States*, 193 F. Supp. 2d 1363, 1370 (CIT 2002); see also *Thai I-Mei Frozen Foods Co. v. United States*, 572 F. Supp. 2d 1353, 1368 (CIT 2008).

connection with production and sales of merchandise for consumption in the foreign country) to mean the country in which the foreign merchandise is produced.¹⁰

- In its regulatory preamble, the Department explicitly rejected defining foreign country in section 773(e)(2)(B) of the Act as including third-country markets.¹¹ Nowhere in the statute is the use of data unrelated to the foreign market under investigation authorized for calculating CV profit.
- Prior to its recent determinations in *OCTG from Korea* and *OCTG from Turkey*,¹² the Department consistently relied upon financial data from home market producers to calculate CV profit and selling expenses in compliance with the requirements of the statute.
- Prior case precedent demonstrates that each time a party has argued for the use of third country financial data as a basis for CV profit and selling expenses, the Department has rejected this position.¹³ This practice extends to recent investigations concerning steel nails, the same merchandise that is under consideration in this proceeding.¹⁴
- In *OCTG from Korea* and *OCTG from Turkey*, the Department cited exceptional circumstances to rationalize abandoning its longstanding, consistent policy of using the financial data of a home market producer to calculate CV profit and selling expenses. The Department recognized the extraordinary and unprecedented nature of its decision by painstakingly detailing the specialized properties of the subject product and the reasons why the data of a third-country producer of identical merchandise were uniquely appropriate in that case.¹⁵ In *OCTG from Korea* and *OCTG from Turkey* the Department found it critical to select a producer of identical merchandise to calculate CV profit, but in the *Preliminary Determination* in this investigation the Department made the unprecedented decision to use a third-country source for CV profit that does not even produce the subject merchandise.

¹⁰ See 19 CFR 351.405(b)(2).

¹¹ See *Dept. of Commerce Final Rule 19 CFR Parts, 351, 353, 355, Antidumping Duties; Countervailing Duties*, 62 FR 27,296, 27,358 (May 19, 1997).

¹² See *Certain Oil Country Tubular Goods From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 1 (“OCTG from Korea”) and *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 3 (“OCTG from Turkey”).

¹³ See, e.g., *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment 2 (“SOBAs from Taiwan”); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 26 (“BMRF from Mexico”).

¹⁴ See, e.g., *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment 6 (“Nails from the UAE 2012”).

¹⁵ See *OCTG from Korea* at Comment 1.

- The record contains verified home market data meeting the criteria of section 773(e)(2)(A) of the Act, the statutorily preferred method for calculating CV profit and selling expenses. Therefore, the Department must use this information in its final determination.
- The Statement of Administrative Action (“SAA”) confirms that section 773(e)(2)(A) of the Act applies (which describes basing profit and selling expenses on amounts incurred by the exporter/producer being examined in the investigation) without resort to section 773(e)(2)(B) of the Act so long as there are above cost sales in the home market during the POI.¹⁶ Further, section 773(e)(2)(A) of the Act prescribes no minimum threshold for home market sales to be used as a basis for CV profit and selling expenses so long as those sales are made in the ordinary course of trade, which they are in this case.
- If the Department concludes that section 773(e)(2)(A) of the Act does not require the use of Oman Fasteners’ POI home market sales as a measure of CV profit and selling expenses, those sales are still the best evidence of the experience of a steel nail producer under sections 773(e)(2)(B)(i) and 773(e)(2)(B)(iii) of the Act. Specifically, under 773(e)(2)(B)(i) of the Act the Department has found that a respondent’s home market sales of the foreign like product are a proper and lawful basis for CV profit and selling expenses even where the respondent was found to have no viable home market.¹⁷ Moreover, the Department has similar authority to use the same home market sales as a “reasonable method” under section 773(e)(2)(B)(iii) of the Act. All of the factors applied by the Department in *CTVs from Malaysia*¹⁸ to judge the reasonableness of a potential calculation under 773(e)(2)(B)(iii) of the Act are met here: 1) the home market sales precisely match Oman Fasteners’ business, 2) they are exclusive to the Omani market, 3) they are fully contemporaneous with the POI and 4) they are made entirely to customers of the product under investigation.
- If the Department declines to use the POI home market sales data, it should then rely on the financial statements of an Omani producer (*i.e.*, Al Jazeera Steel Products SAOG Co. (“Al Jazeera”)¹⁹ or Larsen & Toubro²⁰) to determine CV profit and selling expenses consistent with the Department’s preference for home market data. Like Oman Fasteners, both companies are involved in the construction and steel industries, their data reflect sales in the region and not the United States, and both financial statements cover a period that is contemporaneous with the POI. With regard to Al Jazeera, petitioner itself has advocated that this company’s financial statement is an appropriate basis to calculate CV profit and

¹⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) at 839-40.

¹⁷ See, *e.g.*, *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 16 (“*Nails from the UAE 2008*”).

¹⁸ See *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 26 (“*CTVs from Malaysia*”).

¹⁹ See *Petition for the Imposition of Antidumping and Countervailing Duties, Certain Steel Nails from India, Korea, Malaysia, Oman, Taiwan, Turkey and Vietnam*, Volume V (May 29, 2014) at exhibit Oman AD-18 (“*Petition*”).

²⁰ See Letter to the Department, *Certain Steel Nails from Oman; Antidumping Investigation: Submission of Factual Information for CV Profit and Selling Expenses*, dated October 31, 2014 at exhibit SCV-6 (“*Supplemental CV Submission*”).

selling expenses.²¹ In *Nails from the UAE 2012*, the Department placed great importance on BILDCO's involvement in the steel and construction industries and the fact that BILDCO's customer base was similar to the respondent's.²²

- If the Department continues to believe that it must resort to a third-country data source for CV profit and selling expenses, it must use a source that is a producer of steel nails, *i.e.*, the merchandise under consideration ("MUC"). Failing to do so would result in reliance on financial data that has no relationship to Oman or to the production of steel nails and would thus contravene section 773(e)(2)(B)(iii) of the Act and the Department's longstanding practice.
- The Department has on the record of this investigation a complete financial statement for Thai L.S. Industry Co. Ltd. ("LSI"), a producer of steel nails, and a sufficiently translated English language version of that statement. The Department has relied on these exact same partially translated financial statements in recent proceedings involving steel nails from China as the best and most probative third-country evidence to measure the profit and selling expense for a producer of steel nails.²³ The Department's decision in the *Preliminary Determination* not to use LSI's financial statements is inconsistent with the decision in *China Nails AR4* and *China Nails AR5*. Further, this decision is also inconsistent with other proceedings where full translations of financial statements were not required under Department practice.²⁴
- All of the third-country financial statements submitted by petitioner, including the Hitech financials statements used in the *Preliminary Determination*, are flawed and cannot be used in the final determination to calculate CV profit and selling expenses.²⁵
- None of the financial statements offered by petitioner represent a producer of the merchandise under consideration. They all operate in starkly different businesses than does a nail producer such as Oman Fasteners. Rather than conduct business in the construction industry like Oman Fasteners, these producers largely conduct business in the automobile

²¹ See Petition at 19-20.

²² BILDCO was the company whose financial statements were used for the calculation of CV profit. See *Nails from the UAE 2012* at Comment 6.

²³ See *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum at Comment 2 ("*China Nails AR4*") and *Certain Steel Nails From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2013*, 79 FR 58744 (September 30, 2014) and accompanying Issues and Decision Memorandum at 24 ("*China Nails AR5*").

²⁴ See, *e.g.*, *Preliminary Results of Antidumping Duty Administrative Review: Helical Spring Lock Washers from the People's Republic of China*, 79 FR 66356 (November 7, 2014) and accompanying Issues and Decision Memorandum at 20 ("HSLWs from China Preliminary Results").

²⁵ The third country financial statements submitted by Petitioner include Hitech, a Thai producer of screws and rivets, Sundram Fasteners Limited ("Sundram"), an Indian producer of auto parts, and two Taiwanese manufacturers of screws and rivets, Chun Yu Works & Co., Ltd. ("Chun Yu") and Sumeeko Industry Co., Ltd. ("Sumeeko"). See Letter to the Department, *Certain Steel Nails from the Sultanate of Oman; Submission of Factual Information on Constructed Value Profit and Selling Expenses*, dated October 31, 2014 at exhibits 4, 8, 10a and 11c ("Petitioner's CV Submission").

sector, and other diverse sectors such as aerospace, electronics and wind power.²⁶ None of these producers' financial statements show any connection to Oman²⁷ and they reflect significant sales to the United States. Two of the producers (*i.e.*, Sundram and Hitech) have been found in other recent proceedings to benefit from the receipt of countervailable subsidies.²⁸

- The LSI financial statements represent the only useable third-country data for a producer of identical merchandise on the record of this proceeding. In *China Nails AR4* and *China Nails AR5*, the Department determined that LSI's financial statements were preferable to Hitech's financial statements because Hitech does not produce any steel nails.²⁹
- If the Department continues to believe that it must use third-country data but continues to reject the LSI financial statements as not sufficiently translated, it must place a fully translated version of these statements on the record in accordance with its statutory authority. The Department has recognized that it has the authority to permit supplementing the record where it concludes that a full English translation of highly probative financial statements is available but not yet on the record. For example, the Department took steps on its own initiative to ensure that a full English translation was placed on the record in *China Nails AR5*.³⁰ Similarly, the Department sought and received public treatment for financial statements deemed probative for purposes of calculating CV profit and selling expenses in *Certain Steel Nails from Korea*.³¹ Moreover, in *OCTG from Turkey* the Department placed financial statements on the record that it had obtained from other proceedings.
- If the Department continues to apply section 773(e)(2)(B)(iii) of the Act to calculate CV profit and selling expenses, it must calculate a profit cap as required by the statute. The CIT made clear that the Department must calculate a home market profit cap even where no data exists from home market producers of comparable merchandise.³²
- The record plainly demonstrates that the Hitech profit rate used at the *Preliminary Determination* leads to irrational and unrepresentative results when compared to the record profit rates applicable to steel nails, *i.e.*, the product under investigation, and Oman, *i.e.*, the country under investigation. For example, the Hitech's profit rate is 19.74 percent while the

²⁶ See Letter to the Department, *Certain Steel Nails from Oman; Antidumping Investigation: Factual Information to Rebut, Clarify or Correct CV Profit and Selling Expense Information Submitted by Petitioner*, dated November 10, 2014 at exhibits RCV-1, RCV-3 and RCV-4.

²⁷ See *Preliminary Determination* at 11.

²⁸ See *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65616, 65618 (November 5, 2014) (Hitech) and *Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

²⁹ See *China Nails AR4* at Comment 2; *China Nails AR5* at 24.

³⁰ See Oman Fastener's Case Brief (*citing* Letter from Scot T. Fullerton, Fifth Administrative Review of Certain Steel Nails from China (A-570-909), dated January 8, 2015). Oman Fasteners notes that the Department later retracted this letter.

³¹ See Oman Fastener's Case Brief (*citing* Letter to the Secretary, Certain Steel Nails from the Republic of Korea (A-580-874): Ministerial Error Comments on Behalf of Daejin Steel Company, dated December 29, 2014).

³² See, *e.g.*, *Atar S.R.L. v. United States*, 703 F. Supp. 2d 1359, 1364 (CIT 2010).

profit rate for market economy producers of steel nails in recent reviews of *China Nails AR5* was 2.75 percent³³ and the average profit rate for producers in Oman based on the record of this investigation, *i.e.* Al Jazeera and Larsen & Toubro, is 4.29 percent.

- Lastly, Petitioner’s proposed calculations of CV profit and selling expenses for Al Jazeera, Chun Yu and Sundram are flawed. These calculations improperly rely on the methodology used for financial ratio calculations in non-market economy (“NME”) proceedings and they include investment activity that should not be included in a CV profit calculation.

OISI’s Arguments:

- The financial statements of LSI are the most appropriate basis for the calculation of CV profit on the record of this proceeding. The Department’s decision to ignore LSI and instead choose Hitech as a source for CV profit inflates the dumping margin and is inconsistent with the Department’s mandate to fairly and accurately apply the antidumping law.³⁴
- The Department itself acknowledged in the Chinese nails proceedings that LSI’s financial statements are preferable to those of Hitech because LSI produces identical merchandise (*i.e.*, nails) and Hitech does not.³⁵ Nothing has changed since *China Nails AR4*, as the exact same LSI and Hitech financial statements are on the record of this proceeding. The Department’s refusal to consider LSI’s financial statements for CV profit in this proceeding because they are not fully translated is thus flatly inconsistent with *China Nails AR4*.
- The Department is obligated to place a full English translation of LSI’s financial statements on the record of this proceeding. Such an action is consistent with the other nails proceedings and also complies with the Department’s obligation to place meaningful additional information on the record if it deems certain information to be incomplete.
- The Department’s complete reversal of practice subsequent to *China Nails AR4* results in arbitrary decision making that is contrary to law. In light of this change in practice and the fact that Oman Fasteners had no notice that the Department would now strictly enforce its requirement for full translations when it had not done so just a few months earlier, the Department should have issued a request for a full translation of LSI’s financial statements.
- The Department cannot selectively enforce its regulations or change the way it looks at the very same documents in different proceedings without prior notice to the interested parties.

Petitioner’s Arguments:

- The Department’s decision to use Hitech’s financial statements for the calculation of CV profit and selling expenses was consistent with the statute and also consistent with the decisions in the recent determinations of *OCTG from Korea* and *OCTG from Turkey* where the data of a third-country producer was selected over the data of a home-country producer.³⁶

³³ See Supplemental CV Submission at exhibit SCV-6.

³⁴ See *Rhone Poulenc, Inc. v. United States*, 899 F. Supp. 2d 1185 (Fed. Cir. 1990).

³⁵ See *China Nails AR4* at Comment 2.

³⁶ See *OCTG from Korea* at Comment 1 and *OCTG from Turkey* at Comment 3.

- Because no viable sources of home-country CV profit and selling expense data exist on the record of this proceeding, the Department should continue to calculate CV profit and selling expenses based on Hitech’s financial statements at the final determination.
- The statute explicitly allows the Department to use “any other reasonable method” to select sources for CV profit and selling expenses and provides a measure of flexibility in cases where home market data sources fail to sufficiently reflect the MUC. Further, while the goal in calculating CV is to approximate the home market profit and selling experience, the statute contains no prohibition to doing so by reference to a producer outside the country under investigation.
- The SAA recognizes the need for flexibility when resorting to section 773(e)(2)(B) of the Act and specifically states that when using alternative (iii) it was not appropriate to establish particular methods and benchmarks.³⁷
- While Oman Fasteners argues that the Department should be bound by a historical practice of declining to use third-country sources for CV profit and selling expenses, it fails to acknowledge that the Department is permitted to refine its practice when necessary as long as it provides a reasoned analysis. Similar to *OCTG from Korea* and *OCTG from Turkey*, good cause exists to depart from this historical practice and to use a third-country data source.
- The differences between the Omani sources for CV profit and selling expenses on the record of this case and a nail producer are far greater than the differences between line pipe and OCTG that supported the use of third-country financial statements in *OCTG from Korea* and *OCTG from Turkey*.³⁸ The exceptional circumstances in the OCTG decisions are not only present here but rather more starkly illustrated.
- Oman Fasteners’ home market sales data do not constitute a viable source of CV profit and selling expenses. The lack of home market viability in this case demonstrates the impropriety of this approach because such sales are necessarily below the regulatory five percent threshold.³⁹
- Basing CV profit on such a small quantity of home market sales during the POI is unreliable as the Department has recognized in other proceedings.⁴⁰ This logic applies whether considering Oman Fasteners’ home market sales as a potential source of CV profit and selling expenses under sections 773(e)(2)(A), 773(e)(2)(B)(i) or 773(e)(2)(B)(iii) of the Act. As discussed by the Department in *Nails from the UAE 2012*, very small sales volumes often reflect aberrational circumstances and cannot represent a meaningful home market profit rate.

³⁷ See SAA at 840-841.

³⁸ See *OCTG from Korea* at Comment 1 and *OCTG from Turkey* at Comment 3.

³⁹ See 19 CFR 351.404(b)(2).

⁴⁰ See, e.g., *Nails from the UAE 2012* at Comment 6.

- Al Jazeera and Larsen & Toubro are too dissimilar from Oman Fasteners to serve as a proper basis of CV profit and selling expenses. As the Department previously explained, the greater the similarity in business operations and products, the more likely there is a greater correlation in the profit experience of two companies.⁴¹ The business operations of Al Jazeera and Larsen & Toubro have nothing in common with the manufacture of steel nails and their products cannot even be considered as merchandise in the same general category of products as the subject merchandise.
- Regardless of any supposed similarity claimed by Oman Fasteners, neither company's operations are as specific and similar as those of Hitech, which produces fasteners that are specifically comparable to steel nails. Additionally, Al Jazeera's and Larsen & Toubro's sales are regional in nature and the record fails to establish their degree of sales in Oman. Finally, Al Jazeera's and Larsen & Toubro's customer bases are wholly dissimilar to that of Oman Fasteners.
- Oman Fasteners chose the factual record that it developed and it failed to submit any third-country financial statements for consideration in the calculation of CV profit and selling expenses.
- Oman Fasteners' consistent position has been that the Department must use an Omani data source but it never suggested that the LSI financial statements could possibly be used for calculating CV profit.
- The LSI financial statements are not sufficiently translated to be used in this proceeding. The importance of adequately translated financial statements has been recognized by the Department in prior proceedings and the lack thereof has been the basis for declining to use a particular statement as a source for CV profit and selling expenses.⁴²
- Oman Fasteners has made no attempt to explain why a full translation of the LSI financial statements was not available for timely submission in accordance with the Department's new regulation on factual information.⁴³ Oman Fasteners had ample opportunity to provide the Department with a full translation in a timely manner.
- The Department cannot be responsible for the respondent's due diligence. If a party elects not to submit documents to which it has access, the Department is not responsible for developing a new factual record at its behest.

⁴¹ See *SOBAs from Taiwan* at Comment 2.

⁴² See, e.g., *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012) and accompanying Issues and Decision Memorandum at Comment 2 ("Ironing Tables").

⁴³ See *Definition of Factual Information and Time Limits for Submission of New Factual Information*, 78 FR 21246, 21248 (April 10, 2013).

- Hitech and Sundram’s financial statements are not distorted by subsidies as Oman Fasteners has alleged. With regard to Sundram, the Department has repeatedly rejected requests to reject the financial statements on the suspicion of countervailable subsidies.⁴⁴
- With regard to Hitech, the Department recently used Hitech’s financial data to calculate surrogate financial ratios in *Steel Threaded Rod*.⁴⁵ Further, in *China Nails AR4* the Department declined to use Hitech in favor of a company that specifically produces nails but found that its financial statements were otherwise completely useable, *i.e.*, not tainted by subsidization.
- The Department is not required to calculate a profit cap under section 773(e)(2)(B)(iii) of the Act. Oman Fasteners’ analysis ignores the critical point that Hitech’s profit is clearly within the range of profit rates on the record of this proceeding for producers of comparable merchandise.
- The record evidence indicates that Oman Fasteners’ profit rate on its own home market sales is not a viable basis for comparison. Moreover, there is no basis to conclude that Hitech’s profit rate is aberrational compared to profit experienced by Omani companies in wholly unrelated industries. Thus, record information does not permit the quantification of a profit cap under section 773(e)(2)(B)(iii) of the Act and, similar to past cases, the Department must calculate CV profit without quantifying a profit cap.⁴⁶
- Oman Fasteners arguments concerning the specific calculations of CV profit and selling expenses for Chun Yu, Al Jazeera and Sundram are without merit. All of Oman Fasteners proposed calculations rely on denominators that include selling expenses, which is not an appropriate methodology in a market economy case. Further, all of the necessary adjustments for items unrelated to production activity were made in petitioner’s calculations.

Department’s Position: For the *Preliminary Determination*, in calculating CV profit and selling expenses for Oman Fasteners under section 773(e)(2)(B)(iii) of the Act, we used Hitech’s 2012 financial statements. After considering the record evidence and all of the arguments in the parties’ case briefs and rebuttal briefs, for the final determination, we continue to find that Hitech’s financial statements constitute the best source of CV profit and selling expense data on the record of this proceeding.

As noted above, Oman Fasteners did not have a viable home or third-country market during the POI. Thus, because it did not have home or third-country market sales to serve as a basis for NV, NV must be based on CV. Likewise, absent a viable home or third-country market, we are

⁴⁴ See, e.g., *Certain Steel Nails from the People’s Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 2 (“China Nails AR2”).

⁴⁵ See *Certain Steel Threaded Rod from the People’s Republic of China*, 79 FR 71743 (December 3, 2014) and accompanying Issues and Decision Memorandum at Comment 3 (“Steel Threaded Rod”).

⁴⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 8 (“Magnesium from Israel”) and *Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012) and accompanying Issues and Decision Memorandum at Comment 3 (“SSPC from Belgium”).

unable to calculate CV profit and selling expenses 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. While Oman Fasteners asserts that section 773(e)(2)(A) of the Act prescribes no minimum threshold, we find that because Oman Fasteners did not have a viable home or third-country market, its volume of home market sales during the POI is too insignificant to reflect a meaningful home market profit rate. In situations where we cannot calculate CV profit under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act sets forth three alternatives:

- (i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review . . . for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise;
- (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) . . . for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or
- (iii) the amounts incurred and realized . . . for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) 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").

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit.⁴⁷ Moreover, as noted in the SAA, "the selection of an alternative will be made on a case by-case basis, and will depend, to an extent, on available data."⁴⁸ Thus, the Department has discretion to select from any of the three alternative methods, depending on the information available on the record.

While the statute does not establish a hierarchy among the three alternatives of section 773(e)(2)(B) of the Act, we note that with regard to section 773(e)(2)(B)(i) of the Act, Oman Fasteners sold only a small amount of steel nails and an equally small amount of non-subject roofing nails in the home market during the POI.⁴⁹ No record information exists related to Oman Fasteners' sales of roofing nails, and no party has argued for the use of these sales to calculate CV profit and selling expenses in this proceeding. However, Oman Fasteners continues to argue that its own home market sales of subject merchandise (*i.e.*, steel nails) constitute the best source of data from which to calculate CV profit and selling expenses under section 773(e)(2)(B)(i) of

⁴⁷ See SAA at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").

⁴⁸ See SAA at 840.

⁴⁹ See Cost Verification Exhibits at CVE 12.

the Act. We disagree with Oman Fasteners, and contend that its own home market sales of steel nails do not constitute a proper basis for CV profit and selling expenses.

While the general category of merchandise contemplated under section 773(e)(2)(B)(i) of the Act reasonably includes the merchandise under consideration,⁵⁰ we do not find it reasonable to base CV profit and selling expenses on the respondent's extremely low volume of home market sales in this case because such sales are not significant enough to represent a meaningful home market profit rate. Our finding follows the reasoning of *Nails from the UAE 2012*, where we also determined that the respondent's home market sales of subject merchandise were not significant enough to be representative of a home market profit rate.⁵¹ Thus, we are unable to calculate CV profit and selling expenses under section 773(e)(2)(B)(i) of the Act. Further, we find that we cannot calculate CV profit and selling expenses based on alternative (ii) of section 773(e)(2)(B) of the Act (*i.e.*, the profit for other exporters or producers subject to the investigation), because Oman Fasteners is the only respondent in this proceeding. Thus, based on the information on the record, we determined CV profit and selling expenses under section 773(e)(2)(B)(iii) of the Act (*i.e.*, any other reasonable method).

Specifically, on the record of this proceeding, there are several alternative sources for CV profit and selling expenses under section 773(e)(2)(B)(iii) of the Act. Those sources are: 1) the 2013 financial statements of Al Jazeera, an Omani producer of steel bars and pipes; 2) the 2012 financial statements of Larsen & Toubro, an Omani construction conglomerate; 3) the 2013 financial statements for two Omani producers of corrugated cartons; 4) the 2012 financial statements of Hitech, a Thai producer of screws and rivets; 5) the 2012 financial statements of LSI, a Thai producer of nails; 6) the financial statements for the fiscal year ending March 31, 2014, of Sundram, an Indian producer of auto parts and fasteners; and 7) the 2013 financial statements of Chun Yu and Sumeeko, two Taiwanese producers of screws and fasteners. While Oman Fasteners argues that we should also consider its own home market sales under section 773(e)(2)(B)(iii) of the Act for determining CV profit and selling expenses if we do not accept such sales for use in calculating those items under section 773(e)(2)(B)(i) of the Act, we find, for the reasons elaborated above, that the use of this extremely small quantity of sales would not constitute a "reasonable method" as envisioned by the statute.

In evaluating each of the available alternatives under section 773(e)(2)(B)(iii) of the Act, we followed the analysis established in *Pure Magnesium from Israel*.⁵² In *Pure Magnesium from Israel*, the Department set out three criteria for choosing among surrogate data under section 773(e)(2)(B)(iii) of the Act: 1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; 2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; and, 3) the contemporaneity of the data to the POI. In *CTVs from Malaysia*, the Department added a fourth criterion which is the extent to which the customer base of the surrogate company and the respondent are similar (*e.g.*, original equipment

⁵⁰ See *Nails from the UAE 2008* at Comment 16.

⁵¹ See *Nails from the UAE 2012* at Comment 6.

⁵² See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (Sept. 27, 2001) (*Pure Magnesium from Israel*) and accompanying decision memorandum at Comment 8.

manufacturers versus retailers).⁵³ These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case to determine CV profit and selling expenses under section 773(e)(2)(B)(iii) of the Act.⁵⁴

In weighing the available information and determining which source of information to use under alternative (iii), we first considered which of the proposed companies produces products that are in the same general category of products as the subject merchandise (*i.e.*, comparable merchandise). With regard to the Omani companies on the record, we find that Al Jazeera manufactures and sells steel products such as pipes, hollow sections and bar mill products using hot-rolled coils and billets. Such products are not comparable merchandise because they bear no relation to the production of steel nails using drawn wire.⁵⁵ These products are produced using completely different equipment than steel nails (*e.g.*, beam furnaces, cooling beds, and straightening machines used in a bar mill⁵⁶ rather than the nail forming and collation machines used in Oman Fasteners' nail production), and are used by customers in completely different applications (*e.g.*, large scale infrastructure projects versus the fastening of wood in the building of homes). Further, the Larsen & Toubro companies are engaged in executing construction projects related to the oil and gas industries.⁵⁷ None of the services provided by Larsen & Toubro can be considered to be in the same general category as steel nails. Moreover, the corrugated cartons produced by the two Omani packaging companies⁵⁸ cannot be considered even remotely comparable to steel nails. Corrugated cartons are made from paper products, whereas steel nails are made from drawn wire. The Omani packaging companies do not share production processes that can be considered similar to producing steel nails from drawn wire like Oman Fasteners. Therefore, because none of the Omani companies on the record can reasonably be considered to produce or sell merchandise identical or comparable to subject merchandise, we excluded those companies from consideration as a data source for the calculation of CV profit and selling expenses.

While we would prefer to use the financial statements of a producer of steel nails that primarily produces and sells steel nails in Oman, such information is not available on the record of this proceeding. As stated above, none of the Omani producers on the record produces steel nails or any type of merchandise that can be considered comparable to steel nails, and Oman Fasteners' home market sales of steel nails do not constitute a proper basis for CV profit and selling expenses. As we found in *OCTG from Korea*, the Department is not obligated under the statute or the regulations to use a home market profit when no suitable information exists on the record.⁵⁹ On the contrary, the Department is given the discretion to use any reasonable method under section 773(e)(2)(B)(iii) of the Act to properly determine a profit that reasonably reflects the MUC.

As noted above, in addition to the aforementioned Omani sources, we have on the record of this proceeding various third-country financial statements, including financial statements from LSI, a

⁵³ See CTVs from Malaysia Decision Memorandum at Comment 26.

⁵⁴ See, *e.g.*, *OCTG from Korea* at Comment 1.

⁵⁵ See Petition at exhibit AD-18.

⁵⁶ See Supplemental CV Submission at exhibit SCV-4.

⁵⁷ See CV submission at exhibits CV-2 through CV-4.

⁵⁸ See Supplemental CV Submission at exhibits SCV-2 and SCV-3.

⁵⁹ See *OCTG from Korea* at Comment 1.

producer of merchandise identical to subject merchandise (*i.e.*, steel nails). Specifically, we have on the record third-country financial statements of Hitech, Chun Yu and Sumeeko, all of which produce screws and fasteners, products which the Department has repeatedly found in other proceedings to be comparable to steel nails.⁶⁰ With regards to Sundram, we find that the majority of its production consists of various automotive products that cannot be considered comparable to steel nails.⁶¹ As with the Omani companies discussed above, we have therefore excluded Sundram from consideration as a data source for the calculation of CV profit and selling expenses.

Further, we excluded the financial statements of LSI, Chun Yu and Sumeeko from consideration due to the fact that they are all only partially translated.⁶² Contrary to Oman Fasteners' assertion, the Department does have an established practice of not considering financial statements unless they are completely translated.⁶³ The absence of complete translations precludes the Department from fully evaluating the appropriateness of the financial information set forth in these financial statements. For example, in *Xanthan Gum*, the Department rejected a proposed financial statement where only two paragraphs were left untranslated.⁶⁴ In *Ironing Tables*, the Department rejected one financial statement because it was missing a translation of all of the auditor's notes, and another because it was missing a translation of only a few auditors' notes.⁶⁵ In the case of LSI, Chun Yu and Sumeeko, only selected sections of the financial statements were translated, with significant portions of the financial statements left completely untranslated. Specifically, for LSI, the audit report was left untranslated, as well as several financial statements and all footnotes with the exception of a note related to income taxes.⁶⁶ For Chun Yu, the audit report, balance sheet, statement of changes in equity, cash flow statement, and all footnotes with the exception of one (*i.e.*, footnote 6) were left untranslated.⁶⁷ For Sumeeko, the audit report and a majority of the footnotes (*i.e.*, pages 12-24, 29, 31-34, and 38-53) were left untranslated.⁶⁸

Parties to a proceeding cannot be allowed to selectively decide which portions of a financial statement to translate based on whether or not the translation benefits their position. Typically, the footnotes and disclosures included in a company's financial statements are required by the company's home country generally accepted accounting principles ("GAAP"), and are all deemed vital to the users of those financial statements. If any part of that information is left untranslated, it results in vital information not being available. Moreover, we equate leaving any footnotes or disclosures untranslated to omitting them completely, as in either case they are unavailable for either the Department or the parties to a proceeding to review or comment on.

⁶⁰ See, *e.g.*, *Nails from the UAE 2012*; see also, *China Nails AR2* at Comment 2 and *China Nails AR4* at Comment 2; see also Supplemental CV Submission at exhibit SCV-5.

⁶¹ See Petitioner's CV Submission at exhibit 10a.

⁶² We note that no party to this proceeding has argued that the Department should accept the partially translated financial statements of Chun Yu or Sumeeko as a source for CV profit and selling expenses.

⁶³ See, *e.g.*, *Ironing Tables* at Comment 2 and *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 2 ("*Xanthan Gum*").

⁶⁴ See *Xanthan Gum* at Comment 2, footnote 70.

⁶⁵ See *Ironing Tables* at Comment 2 at 11.

⁶⁶ See Supplemental CV Submission at exhibit SCV-5.

⁶⁷ See Petitioner's CV Submission at exhibits 1b and 2b.

⁶⁸ *Id.* at exhibit 11c.

Thus, consistent with our practice, we excluded the LSI, Chun Yu and Sumeeko financial statements from consideration for calculating CV profit and selling expenses.

Oman Fastener and OISI argue that the Department should accept the partially-translated LSI financial statements simply because we accepted the same statements in *China Nails AR4*. We recognize, however, that our use of partially translated financial statements in *China Nails AR4* was contrary to our established practice. Each proceeding is independent of others, and must be decided based on the record developed in that specific proceeding.⁶⁹ The Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a previous proceeding.⁷⁰ Accordingly, the Department must continue follow its established practice in this case and reject the LSI financial statements.

Further, we disagree with Oman Fasteners and OISI's assertion that the Department is somehow responsible for rectifying Oman Fasteners' failure to provide translated financial statements for LSI. Oman Fasteners was afforded ample opportunity to file fully translated LSI financial statements on the record of this proceeding within the deadlines specified by the Department's regulations. The Department established a deadline of October 31, 2014, for all parties to submit CV profit and selling expense information.⁷¹ Oman Fasteners itself acknowledged this deadline in a letter to the Department, as it specifically cited to it as a reason to reject factual information regarding CV profit and selling expenses submitted by the Petitioner after the deadline.⁷² Further, under the Department's regulations, all parties were permitted to file new factual information up to 30 days prior to the preliminary determination (in this case, November 17, 2014) provided that they explained why that information did not meet the definition of the information provided in response to the Department's specific request for CV profit information.⁷³ Oman Fasteners failed to timely submit fully translated financial statements within either of these deadlines even though evidence on the record indicates that it had access to a full translation of the LSI financial statements well before the established deadlines. It was not until February 12, 2015, several months after the deadline for CV profit and selling expense information, that Oman Fasteners attempted to file a fully translated version of the LSI financial statements.⁷⁴ As such, the Department rejected the submission as untimely.⁷⁵

⁶⁹ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum at Comment 10.

⁷⁰ See, e.g., *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Antidumping Duty Administrative Review*, 75 FR 64250 (October 19, 2010) and accompanying Issues and Decision Memorandum at Comment 3.

⁷¹ See Antidumping Duty Investigation of Certain Steel Nails from Oman: Request for Constructed Value Profit and Selling Expense Comments and Information, dated October 17, 2014.

⁷² See Letter from Perkins Coie to the Department, "Certain Steel Nails from Oman; Antidumping Investigation; Request to Reject Petitioner's Submission of New Factual Information," dated November 21, 2014. We note that the Department agreed with Oman Fasteners and ultimately rejected the petitioner's submission.

⁷³ See 19 CFR 351.301(c)(5).

⁷⁴ See Letter from Perkins Coie to the Department, "Certain Steel Nails from Oman; Antidumping Investigation; Request to Permit New Factual Information Relating to Constructed Value Profit and Selling Expenses," dated February 12, 2015.

⁷⁵ See Memorandum to the File from Lilit Astvatsatrian, "Removal of Document from the Record," dated February 13, 2015.

In contrast to the financial statements of LSI, Chun Yu and Sumeeko, the financial statements of which are partially translated and thus not useable, Hitech's financial statements are fully translated. Further, as noted above, none of the Omani companies for which we have financial statements on the record of this proceeding produce merchandise that can be considered comparable to steel nails. Record evidence shows, however, that Hitech produces comparable merchandise, *i.e.*, screws and other fasteners. Both nails and screws share a similar production process whereby wire is drawn, heat treated and galvanized. Further, both may undergo threading and both may be collated for use in gun applications.⁷⁶ Nails and screws are both within the same family of fasteners, and they both can be used in the same applications, *i.e.*, fastening surfaces together. In many applications where a nail can be used, a screw could be used as well. Accordingly, Hitech's financial statements reflect comparable merchandise and are the only useable financial statements of a producer of merchandise identical or comparable to subject merchandise available on the record for the calculation of CV profit and selling expenses.

Oman Fasteners asserts that the Department found Hitech to be a recipient of countervailable subsidies in a prior NME proceeding, and that we should therefore exclude its financial statements from consideration on that basis. We disagree. The Department's practice with regard to financial statements with evidence of countervailable subsidies relates solely to NME proceedings. In an NME proceeding, we exclude purchases from countries known to provide countervailable subsidies from the amounts used to calculate surrogate values. In the same way, we exclude financial statements that include countervailable subsidies from the calculation of surrogate financial ratios. By contrast, in market economy proceedings, we use a respondent's normal books and records even if they reflect lower costs due to countervailable subsidies.⁷⁷ The Department's established practice with regard to market economy proceedings is to include in the cost calculation, amounts actually paid for raw material inputs, even if they reflect countervailable subsidies, and to allow income from subsidies as an offset to a respondent's general & administrative ("G&A") expenses.⁷⁸ As such, relying on a financial statement for CV profit that may include countervailable subsidies is consistent with how the Department calculates the cost of production to which it applies the profit rate. Accordingly, contrary to Oman Fasteners' assertion, the receipt of countervailable subsidies by a company in a market economy proceeding does not preclude the use of that company's financial statements for the calculation of CV profit.

While Oman Fasteners also asserts that the Department is required by the statute to calculate a profit cap, we note that the SAA makes clear that the Department may calculate CV profit without a profit cap, particularly, as is the case here, where there is no viable domestic market in the exporting country for merchandise that is in the same general category of products as the subject merchandise. In numerous previous cases, the Department calculated CV profit under

⁷⁶ See Petitioner's CV Submission at exhibit 4.

⁷⁷ See, *e.g.*, *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010) and accompanying Issues and Decision Memorandum at Comment 9 and *Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995, July 14, 2009 and accompanying Issues and Decision Memorandum at Comment 3.

⁷⁸ *Id.*

section 773(e)(2)(B)(iii) of the Act without quantifying the profit cap, as facts available.⁷⁹ The legislative history indicates that Congress recognized that there may be instances where, due to a lack of data, the Department would need to use facts available and calculate a CV profit rate pursuant to section (iii) of the Act without quantifying a profit cap.⁸⁰ With respect to this provision of the statute, Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the subject merchandise, (2) non-aberrational to the industry under consideration (*i.e.*, “the amount normally realized”), and (3) not based on the data of the respondent for which the Department is calculating CV.⁸¹ Accordingly, we have examined the available data in this case and conclude that there is no information that would meet these standards. As such, we are unable to calculate the profit normally realized by producers other than Oman Fasteners in connection with domestic market sales of merchandise in the same general category as the subject merchandise. Consequently, in accordance with the statute, we have not quantified a profit cap in applying the statutory alternative to determine CV profit for Oman Fasteners.

Lastly, with regard to both parties’ arguments concerning the specific calculation of CV profit and selling expenses for Chun Yu, Al Jazeera and Sundram, we find that the issue is moot, as we found that none of these companies’ financial statements is suitable for use in the final determination as explained above.

In sum, we find that Hitech’s financial statements are the only useable financial statements of a producer of identical or comparable merchandise available on the record for the calculation of CV profit and selling expenses for the final determination. We analyzed all of the possible sources for CV profit and selling expenses, as discussed above, and the record shows that the non-selected sources do not provide a reasonable basis for our calculations. Thus, for the final determination, we have continued to calculate CV profit and selling expenses using the 2012 audited financial statements of Hitech.⁸²

Comment 2: Affiliation with U.S. Customer

Petitioner’s Arguments:

- Oman Fasteners is affiliated with its largest U.S. customer as defined by section 771(33)(G) of the Act, which states that “affiliated persons” may be “{a}ny person who controls any other person and such other person.” According to 19 C.F.R. 351.102(b)(3), any such relationship must have the potential to impact decisions related to production, pricing, or cost of the subject merchandise or foreign like product. The SAA defines a close supplier relationship as one “in which the supplier or buyer becomes reliant upon the other.”

⁷⁹ See, *e.g.*, *SSPC from Belgium* at Comment 3; *Lined Paper from India*, and accompanying Issues and Decision Memorandum at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 26.

⁸⁰ See SAA at 841.

⁸¹ See *SSPC from Belgium* at Comment 3.

⁸² See Memorandum from Robert B. Greger to Neal M. Halper, “Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Oman Fasteners LLC,” dated December 17, 2014.

- Record evidence indicates that Oman Fasteners is reliant on its U.S. customer and that there is a potential for control by the customer over Oman Fasteners.⁸³ Based on the value and the volume of sales to its U.S. customer, record evidence substantiates the U.S. customer's control over Oman Fasteners.
- Oman Fasteners has been reliant on its U.S. customer since its inception vis-à-vis the supply agreement between Oman Fasteners and its U.S. customer.⁸⁴ While acknowledging the supplier agreement, Oman Fasteners' email exchange with its customer, contrary to Oman Fasteners' claim, does not refute aspects of the U.S. customer's control over Oman Fasteners.⁸⁵
- The Department should reverse its preliminary finding of no affiliation between Oman Fasteners and its U.S. customer and collect data required to conduct a constructed export price ("CEP") dumping analysis.

Oman Fasteners' and OISI's Arguments:

- Substantial verified record evidence confirms that Oman Fasteners and its U.S. customer are unaffiliated. The companies do not share any common ownership, operational structure, common officers, employees, or members of board of directors.⁸⁶ Oman Fasteners sold merchandise to different U.S. customers during the POI.
- The Department verified that the relationship between the two parties is at arm's length and market-driven.⁸⁷ At verification, the Department observed that Oman Fasteners has multiple production lines.⁸⁸
- The Department's "close supplier" relationship practice confirms that the Department's *Preliminary Determination* was correct, *i.e.*, that Oman Fasteners is not affiliated with its U.S. customer. In past cases, the Department found that even where all of the supplier sales are to one buyer, this fact does not establish affiliation.⁸⁹

Department's Position: We agree with respondent. We continue to determine that Oman Fasteners and its U.S. customer are unaffiliated for the final determination and therefore, the

⁸³ See Oman Fasteners' September 15, 2014, section C response ("CQR"), at 34-35 and Exhibit C-4; Exhibit 1 and page 2 of Verification of the Sales Questionnaire Responses of Oman Fasteners, LLC: Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman, dated February 27, 2015 ("Sales Verification Report").

⁸⁴ See Oman Fasteners' October 7, 2014, supplemental section A response ("SAQR"), at Exhibit SA-6.

⁸⁵ See Sales Verification Report, at 4-5 and VE-II.C.

⁸⁶ See Oman Fasteners' November 20, 2014, second supplemental sections A and C response ("SSAQR, SSCQR"), at 6-7 and Exhibit S2C-5.

⁸⁷ See Sales Verification Report, at 4-5 and VE-II.C.

⁸⁸ *Id.* at Exhibit VE-VI.B.

⁸⁹ See *Petroleum Wax Candles from the People's Republic of China: Notice of Final Results of New Shipper Review*, 67 FR 41395 (June 18, 2002) and accompanying Issues and Decision Memorandum, at Comment 1 ("*Candles from China*"); *Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.

Department has not obtained or used a CEP database from Oman Fasteners. Due to the proprietary nature of this issue, we included the proprietary portion of the arguments and the Department's position in a separate affiliation memorandum.⁹⁰

Comment 3: Error in the Calculation of Freight Revenue Cap

Petitioner's Arguments:

- The Department misspelled the variable name in the computer programming calculating the freight revenue cap.⁹¹

Oman Fasteners did not submit comments on this issue.

Department's Position: We agree with Petitioner that we misspelled the name of one of the variables to which the freight revenue cap was applied. As a result, the variable remained uninitialized in the margin calculation program. Therefore, for the final determination, we corrected this error by correctly spelling the name of this variable.⁹²

Comment 4: Date of Shipment

Petitioner's Arguments:

- The Department should apply partial adverse facts available ("AFA") to Oman Fasteners' reported date of shipment for all U.S. sales. Throughout its responses, Oman Fasteners reported the date of invoice as the shipment date for a portion of its U.S. sales because it was unable to obtain the shipment information from its carriers for these sales.⁹³
- At verification, the Department found that the shipment date was incorrect, based on the date on the bill of lading, for all preselected sales and two on-site selected sales.⁹⁴ Oman Fasteners admitted that for many sales observations the shipment date needed to be changed from the invoice date.⁹⁵ Although at verification Oman Fasteners attempted to introduce a list of all U.S. sales with the actual date of shipment, because Oman Fasteners did not present this information before the start of the verification, the Department rejected it, recognizing that it constituted new factual information.

⁹⁰ See Memorandum to the File, from Lilit Astvatsatrian, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, regarding "Certain Steel Nails from the Sultanate of Oman: Affiliation Status of Oman Fasteners, LLC and Its U.S. Customer" (May 13, 2015).

⁹¹ See Memorandum to the File, from Lilit Astvatsatrian, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, 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" (December 17, 2014)("Preliminary Analysis Memorandum"), at Attachment 1.

⁹² See Memorandum to the File, from Lilit Astvatsatrian, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, regarding "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman: Oman Fasteners, LLC" (May 13, 2015)("Final Analysis Memorandum"), at page 2 and Attachment 1.

⁹³ See Oman Fasteners' October 27, 2014, supplemental section C response ("SCQR"), at 3.

⁹⁴ See Sales Verification Report, at 2.

⁹⁵ *Id.* at 15.

- The Department should not reward Oman Fasteners for its failure to report the actual date of shipment by calculating a lower U.S. credit expense. Oman Fasteners had an ample opportunity to provide the requested dates of shipments. Instead Oman Fasteners misstated that the “vast majority of shipment dates are the same as the invoice date.”⁹⁶ At verification, Oman Fasteners admitted that “for many observations the shipment date changes from the invoice date.”⁹⁷ Because of Oman Fasteners’ misrepresentation of the facts surrounding the shipment date (misstating that most of the sales had shipment dates that are the same as the invoice date) and its failure to act to the best of its ability by not disclosing the shipment date information and refusing to report the shipment dates when requested, the Department should apply partial AFA to Oman Fasteners’ shipment date. As partial AFA, the Department should apply the highest number of credit days for all transactions reported in the U.S. sales file.

Oman Fasteners’ Arguments:

- The Department should adjust Oman Fasteners’ shipment date to avoid overstating its U.S. credit expense. Oman Fasteners does not record actual shipment dates and, thus, it conservatively reported the invoice date as the date of shipment, as the shipment date is routinely later than the invoice date. In order to provide the exact shipment dates, Oman Fasteners had to obtain shipment information from an unaffiliated carrier. Throughout the investigation, Oman Fasteners attempted to obtain the actual ship dates from its carrier. Due to the volume and age of the shipments, this information was not available for the *Preliminary Determination*. Because Oman Fasteners was unable to obtain the needed shipment information it reported the invoice date as the shipment date even though it was adverse to its own interests.
- By verification, Oman Fasteners obtained the precise shipment dates from one of its carriers (these dates were verified for the sales traces examined at verification). Thus, the Department should add an additional 8 days to the reported shipment dates, which reflects the average change to the shipment dates at verification for the preselected and on-site selected sales traces. These shipment dates were based on the shipment date information Oman Fasteners was able to obtain from its carriers.⁹⁸
- Application of AFA has no basis here and would be unlawfully punitive. Oman Fasteners has never been uncooperative as it disclosed that it was reporting the invoice date as the date of shipment, which was unfavorable, as invoice date is either earlier or the same as the date of shipment.

Department’s Position: We agree with Oman Fasteners and OISI that partial AFA is unwarranted. Oman Fasteners did not “fail to cooperate by not acting to the best of its ability to comply with a request for information.”⁹⁹ Oman Fasteners’ date of shipment comes from documentation provided by the freight carrier.¹⁰⁰ Oman Fasteners does not maintain the actual

⁹⁶ See SCQR, at 3.

⁹⁷ See Sales Verification Report, at 15.

⁹⁸ See Sales Verification Report, at Exhibits VE-VIII.A-H.

⁹⁹ See 776(b) of the Act.

¹⁰⁰ See Sales Verification Report, at 15.

shipment date in its accounting books and records as part of the normal course of business.¹⁰¹ Therefore, Oman Fasteners did not report the actual shipment date in its responses before the *Preliminary Determination*.¹⁰² Instead, Oman Fasteners reported the invoice date as a proxy for the shipment date before it was able to obtain the actual shipment date information. As Oman Fasteners explained, the invoice date is either earlier or occurs on the shipment date, but not after the shipment date.¹⁰³ As such, Oman Fasteners' use of the invoice date did not result in an underreporting of its U.S. credit expense and, thus, did not favor Oman Fasteners' position.¹⁰⁴ Therefore, because Oman Fasteners properly disclosed its methodology for substituting the invoice date in place of shipment date, and we do not believe the record indicates Oman Fasteners failed to cooperate by not acting to the best of its ability to comply with a request for information, we are accepting the reported proxy for the information that Oman Fasteners was attempting to obtain.

We disagree with Oman Fasteners' position that we should adjust its substitute shipment dates by adding the average change to shipment date (in terms of number of days) obtained from the sales traces examined at verification.¹⁰⁵ Throughout verification, Oman Fasteners never stated that it was able to obtain the missing shipment dates. Such a fact only became apparent when the Department began the sales trace portion of verification. During this portion of verification, the Department only accepted the updated shipment dates for the specific sales traces examined, but did not accept the database that company officials offered for updating the remaining missing shipment dates. Oman Fasteners never attempted to disclose or provide the missing shipment dates prior to the start of the verification. The burden is on the respondent to substantiate such a beneficial adjustment (*i.e.*, the addition of 8 days to the reported shipment dates) and we do not believe the respondent provided sufficient evidence to warrant such an adjustment. Accordingly, for the final determination, we corrected the shipment dates for the preselected and on-site selected sales traces based on our verification findings but limited our correction of shipment dates and credit expense to the sales observations affected by the sales traces, (*see* Verification Exhibits VE-VIII.A-D and VE-VIII.F-G).¹⁰⁶

Comment 5: Treatment of a Sale Shipped Prior to the POI

Petitioner's Arguments:

- Oman Fasteners' date of shipment for one sale is incorrect. As a result of this error, the calculated credit expense is also incorrect as it is based on the number of days between the shipment and payment dates. The Department should correct the shipment date.

Oman Fasteners' Arguments:

- The actual shipment date for the sale at issue was in February 2013, which is prior to the beginning of the POI. The Department's questionnaire states that if the date of invoice is after the shipment date, the Department will use the shipment date as the date of sale.

¹⁰¹ See CQR, at 15.

¹⁰² *Id.* at 15 and SCQR, at 3

¹⁰³ See, *e.g.*, Sales Verification Report, at Exhibits VE-VIII.A-C.

¹⁰⁴ See CQR, at 33 and Exhibit C-9.

¹⁰⁵ See Sales Verification Report, at Exhibits VE-VIII.A-C.

¹⁰⁶ See Final Analysis Memorandum, at 2.

Therefore, the Department should find that the date of sale is the date of shipment and exclude this sale from the margin calculation.

Department's Position: We examined this issue in the *Preliminary Determination* and stated:

The Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. 19 CFR 351.401(i) provides, however, that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. Based on record evidence, where shipment date occurs before the invoice date, all material terms of sale are set and do not change in the subsequent time, including the invoice date. Therefore, for the sale shipped in February 2013 (prior to the POI) but invoiced in July 2013 (during the POI), we used the earlier of shipment date or invoice date as the date of sale and did not include this sale in Oman Fasteners' margin calculation.¹⁰⁷

However, we inadvertently failed to exclude the sale at issue from Oman Fasteners' dumping margin calculation in the *Preliminary Determination*. As Oman Fasteners explained, the issuance of the invoice in July 2013 occurred as a result of a formality rather than an actual sale on that date.¹⁰⁸ Record evidence indicates that the actual sale and shipment dates were prior to the POI, *i.e.*, in February 2013.¹⁰⁹ Therefore, for the final determination, we have excluded this sale from the margin calculation.¹¹⁰

Comment 6: Costs to Establish Wire Drawing Line

Oman Fasteners' Arguments:

- The G&A expense ratio calculation should exclude the labor, overhead, and maintenance costs associated with setting up the wire drawing line. These costs represent one-time non-recurring expenses associated with preparing to begin the production of drawn wire.
- Because the company did not actually draw wire during the POI, these expenses cannot relate to the production of subject merchandise during the POI.
- The Department has previously stated that non-recurring costs that are unrelated to POI production should not be included in a respondent's G&A expense ratio.¹¹¹
- In other cases, the Department has similarly distinguished between income and expenses related to routine transactions and those related to non-routine transactions that do not support ongoing production when it excluded expenses for closing entire facilities from a respondent's costs.¹¹²

¹⁰⁷ See Preliminary Analysis Memorandum, at 4 (*citing* Exhibit SC-15 of the SCQR).

¹⁰⁸ See page 9 of the SCQR.

¹⁰⁹ See Exhibit SC-15 of the SCQR.

¹¹⁰ See Final Analysis Memorandum, at 2.

¹¹¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 10 ("Wire Rod from Mexico")

¹¹² See, e.g., *OCTG from Korea* at Comment 34.

- Accordingly, the wire drawing costs should not be included in G&A expenses at the final determination.

Petitioner's Arguments:

- The Department should continue to include the costs associated with setting up the wire drawing line in the G&A expense ratio calculation at the final determination. Oman Fasteners' characterization of these costs as non-recurring is arbitrary and self-serving.
- These costs are general in nature and not specific to products or markets. Further, the wire drawing costs are period expenses which relate to the general operation of the company as a whole rather than to a particular product or division. Thus, these costs are properly included as part of G&A expenses as the Department recognized at the *Preliminary Determination*.
- Oman Fasteners' reliance on *Wire Rod from Mexico* and *OCTG from Korea* is misplaced. Specifically, in *Wire Rod from Mexico* the issue at hand was related to import duties paid on purchases in a prior year that had no relationship to the cost of producing subject merchandise during the POI.¹¹³ In *OCTG from Korea*, the issue was whether the gains or losses from the sale of a production facility were part of a company's general operations.¹¹⁴ As such, neither of these cases dealt with the issue at hand, *i.e.*, the proper treatment of start-up costs for which no start-up adjustment has been claimed.
- If Oman Fasteners believed it was appropriate to adjust its reported cost of production for these costs, it should have requested a start-up adjustment under section 773(f)(1)(C)(ii) of the Act. It failed to do so, and now it seeks to eliminate these costs by characterizing them as non-recurring and unrelated to production.
- When a start-up adjustment has not been requested, the Department captures a company's costs as they are incurred and recognized in the normal books and records in accordance with section 773(f)(1)(A) of the Act.¹¹⁵ The wire drawing costs at issue here were recorded in Oman Fastener's audited financial statements as a current expense in accordance with home market GAAP. Thus, in line with *CTL Plate from Korea*, the Department appropriately followed Oman Fasteners' normal books and records in this proceeding.

Department's Position: We disagree with Oman Fasteners position that we should exclude the labor, overhead, and maintenance costs associated with the wire drawing line from the G&A expense ratio calculation. We find that these costs are related to the normal expansion and diversification of the company's production operations, and that such costs, including the replacement or installation of production equipment, are a normal part of doing business. Further, we find that all of these costs were recorded as current year expenses in Oman Fasteners' audited financial statements prepared in accordance with the home country's GAAP.

Similar to the routine disposition and replacement of fixed assets, we consider that these costs are associated with the general operations of the company as a whole because they relate to activities that occur to support on-going operations. Further, we note that these costs are not directly related to the production of the MUC during the POI. The Department's approach for these types of costs is to spread them across the entire operations of the producer. Accordingly,

¹¹³ See *Wire Rod from Mexico* at Comment 10.

¹¹⁴ See *OCTG from Korea* at Comment 34.

¹¹⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73207 (December 29, 1999).

it is our practice to include such routine costs that do not benefit the production of a particular product or division in a respondent's G&A expenses.¹¹⁶

With regard to Oman Fastener's reference to *Wire Rod from Mexico*, we agree with Petitioner that this proceeding is distinguishable from the instant proceeding. As Petitioner commented, the issue in *Wire Rod from Mexico* was related to import duties paid on purchases in a prior year, not whether costs incurred in the current year should be included or excluded from the G&A expense ratio. In this case, as noted above, we find that the costs of the wire drawing line are current year expenses related to general operations and we have therefore continued to include them in the G&A expense ratio calculation at the final determination.

Comment 7: Indirect Selling Expenses

Petitioner's Arguments:

- The Department should reclassify certain indirect selling expenses and include these amounts in the G&A expense ratio calculation. The Department incorrectly excluded these amounts from the reported G&A expense at the *Preliminary Determination*.
- The Department accepted Oman Fasteners' claim that these are selling expenses without sufficient evidence to establish that this classification is correct.
- Oman Fasteners had many opportunities to establish that these administrative expenses should be classified as indirect selling expenses, including both the sales and cost verifications, but it failed to do so.¹¹⁷
- Record evidence indicates that these expenses are actually administrative in nature.¹¹⁸ These expenses are administrative because they are classified as such in Oman Fasteners' financial statements.
- Because Oman Fasteners failed to establish the propriety of its classifications and the record evidence indicates that they are not selling related, these amounts should be included in the G&A expense ratio calculation at the final determination.

Oman Fasteners' Arguments:

- Oman Fasteners correctly reported its G&A expenses exclusive of properly identified selling expenses.
- Oman Fasteners provided support for how it allocated the expenses in question between G&A and indirect selling expenses, and the Department tested and confirmed the accuracy of this allocation.¹¹⁹
- All of the amounts classified and reported as indirect selling expenses precisely match the definition of indirect selling expenses as described in the Department's initial questionnaire.¹²⁰ The fact that these expenses may have been included in the line item for

¹¹⁶ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011) and accompanying Issues and Decision Memorandum at Comment 7.

¹¹⁷ See, e.g., Cost Verification Report at 18.

¹¹⁸ See Cost Verification Exhibits at CVE 12.

¹¹⁹ See Cost Verification Report at 18.

¹²⁰ See Letter from the Department to Perkins Coie, LLP, *Certain Steel Nails from Oman: Antidumping Duty Questionnaire*, dated July 29, 2014 at B27-28.

“administrative expenses” in the financial statements, has no bearing on their true nature as being clearly related to sales, as documented by the record evidence. Accordingly, these expenses have been properly classified as indirect selling expenses and they should not be included as G&A expenses at the final determination.

Department’s Position: We disagree with Petitioner that the Department should reclassify Oman Fasteners’ indirect selling expenses and include them in the G&A expense ratio calculation. Contrary to Petitioner’s assertion, the fact that these expenses were classified as G&A expenses in Oman Fastener’s financial statements does not inevitably lead to the conclusion that they must be G&A expenses for the purposes of reporting costs to the Department. Respondent companies often capture both G&A and selling-related expenses under the same financial statement line items and must devise a methodology to allocate them to each respective category in order to report G&A and selling expenses to the Department. In this case, Oman Fasteners provided worksheets in its questionnaire responses that show how it allocated the financial statement G&A expenses.¹²¹ The Department tested these worksheets at the cost verification and reviewed additional evidence that showed to its satisfaction that these expenses were allocated and classified appropriately.¹²² Accordingly, we find no reason to adjust the reported G&A expense ratio calculation to reflect the items classified as indirect selling expenses for the final determination.

Comment 8: Scrap Offset

Petitioner’s Arguments:

- The Department should revise the reported per-unit scrap offset to reflect the overstatement found at the cost verification.

No other party commented on this issue.

Department’s Position: We agree with petitioner and have revised Oman Fasteners’ reported scrap offset at the final determination.

Comment 9: Differential Pricing Analysis

Oman Fasteners’ Arguments:

- While the Department’s average-to-average comparison used in the *Preliminary Determination* is correct, its differential pricing analysis is flawed. Specifically, the Cohen’s *d* test employed does not measure the pattern of differential pricing. In other words, the Cohen’s *d* test as applied by the Department improperly treats U.S. sales with relatively higher-prices as evidence of targeted dumping. Furthermore, the Cohen’s *d* test does not measure significance. The Department incorrectly excluded the test sales from the base sales and improperly aggregated the separate results of the differential pricing analysis. Furthermore, the Cohen’s *d* test fails to account for circumstances of sale.

¹²¹ See Oman Fasteners’ September 8, 2014 section D response at exhibit D-11.

¹²² See Cost Verification Report at 18 and Cost Verification Exhibits at CVE 12.

- Zeroing is unlawful when used in any “alternative methodology.”¹²³ If the Department applies any alternative methodology to determine the dumping margin in the final determination, it should eliminate the use of zeroing in any calculations made in connection with that methodology.

Petitioner’s Arguments:

- The Department properly employed its differential pricing analysis. The differential pricing analysis using the Cohen’s *d* test to which Oman Fasteners objects was developed over an extended period of time with extensive comment from interested parties.¹²⁴ The Department already rejected Oman Fasteners’ specific objections to the Department’s differential pricing analysis.¹²⁵ The Department’s use of the Cohen’s *d* test is based on the entire population of U.S. sales by Oman Fasteners; there are no estimates involved in the results and accordingly statistical significance is not a relevant consideration. Oman Fasteners fails to demonstrate that the reliance on the Cohen’s *d* test is unreasonable and that some higher threshold must be satisfied. Lastly, circumstances of sale are accounted for as the Department uses the adjusted U.S. price, net of all circumstances of sale adjustments, in the Cohen’s *d* test.

OISI’s Arguments:

- The Department should refuse to undertake any differential pricing analysis for the final determination because the Department is not authorized to apply the targeted dumping methodology since it unlawfully withdrew its targeted dumping regulation.

Department’s Position: As in the *Preliminary Determination*, the Department has continued to use the standard average-to-average method to calculate the estimated weighted-average dumping margin for Oman Fasteners.¹²⁶ Therefore, Oman Fasteners’ arguments are moot.

¹²³ See *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011).

¹²⁴ See *Differential Pricing Analysis: Request for Comments*, 79 FR 26720 (May 9, 2014).

¹²⁵ See, e.g., *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM, at 25-26; *Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM, at 29-30; *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 33351 (June 4, 2013), and accompanying IDM, at Comment 4; *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 13, 2013), and accompanying IDM, at 38-39.

¹²⁶ See PDM at 13-15.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date