



C-523-809  
Investigation  
**Public Document**  
E&C/IV: TT/DM

May 13, 2015

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Certain Steel Nails from  
the Sultanate of Oman

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## I. SUMMARY

The Department of Commerce (Department) determines that *de minimis* countervailable subsidies are being provided to producers and exporters of certain steel nails (nails) in the Sultanate of Oman, pursuant to section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are Oman Fasteners, LLC (Oman Fasteners) and the Government of the Sultanate of Oman (GSO). Petitioner in this investigation is Mid-Continent Steel & Wire, Inc. (petitioner).

## II. BACKGROUND

On November 3, 2014, we published our *Preliminary Determination*.<sup>1</sup> Between January 11 and January 15, 2015, we conducted verification of the questionnaire responses submitted by the GSO and Oman Fasteners. We released verification reports for the GSO and Oman Fasteners on February 9 and February 13, 2015, respectively.<sup>2</sup> Oman Fasteners, the GSO, and petitioner submitted case briefs on February 26, 2015.<sup>3</sup> Oman Fasteners, the GSO, petitioner, and

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<sup>1</sup> *Certain Steel Nails from the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 65178 (November 3, 2014) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum to the File, "Countervailing Duty Investigation: Certain Steel Nails from the Sultanate of Oman: Verification of the Questionnaire Responses of Oman Fasteners," dated February 13, 2015 (Oman Fasteners Verification Report); See Memorandum to the File, "Countervailing Duty Investigation: Certain Steel Nails from the Sultanate of Oman: Verification of the Questionnaire Responses of the Government of the Sultanate of Oman," dated February 9, 2015. (GSO Verification Report).

<sup>3</sup> See Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners' Case Brief," dated February 26, 2015 (Oman Fasteners Case Brief); see also Letter from the GSO, "Certain Steel Nails



Overseas International Steel Industry, LLC (OISI) submitted rebuttal briefs on March 3, 2015.<sup>4</sup>

The “Analysis of Programs” and “Subsidies Valuation” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the “Analysis of Comments” section below, which contains our responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each program. We recommend that you approve the positions described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

**Comment 1:** Whether the Tariff Exemptions on Imported Equipment, Machinery, Raw Materials, and Packaging Materials is Specific in Law or In Fact

**Comment 2:** Whether the Tariff Exemption Program is Countervailable Because the Imported Equipment is not Related to Production of Subject Merchandise During the POI

**Comment 3:** Whether the GSO’s Provision of Land to Oman Fasteners through a Private Entity Constitutes a Financial Contribution

**Comment 4:** Whether the Department Should Use an External Benchmark for Developed Land in Order to Calculate the Benefit for Land for Less Than Adequate Remuneration (LTAR)

**Comment 5:** Whether the LTAR Land Program is Specific

**Comment 6:** Whether Oman Fasteners is Currently Receiving an Income Tax Forgiveness

**Comment 7:** Whether the Provision of Electricity for LTAR at the Commercial Rate is Specific

**Comment 8:** Whether to Include Oman Fasteners’ Scrap Sales in the Total Sales Value

**Comment 9:** Whether the Department Should Deduct Marine Insurance from Oman Fasteners’ Total Sales Value

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from the Sultanate of Oman – Case Brief of the Government of the Sultanate of Oman,” dated February 26, 2015 (GSO Case Brief); *see also* Letter from Petitioner, “Countervailing Duty Investigation of Certain Steel Nails from the Sultanate of Oman: Petitioner’s Case Brief,” dated February 26, 2015 (Petitioner Case Brief).

<sup>4</sup> *See* Letter from the GSO, “Certain Steel Nails from the Sultanate of Oman – Rebuttal Brief of the Government of the Sultanate of Oman,” dated March 3, 2015 (GSO Rebuttal Brief); *see also* Letter from Oman Fasteners, “Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners’ Rebuttal Brief,” dated March 3, 2015 (Oman Fasteners Rebuttal Brief); *see also* Letter from Petitioner, “Countervailing Duty Investigation of Certain Steel Nails from the Sultanate of Oman: Petitioner’s Rebuttal Brief,” dated March 3, 2015 (Petitioner Rebuttal Brief); *see also* Letter from Overseas International Steel Industry, LLC, “Rebuttal Case Brief: Overseas International Steel Industry, LLC Steel Nails from Oman,” dated March 3, 2015 (OISI Rebuttal Brief).

### 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 COMMENTS<sup>5</sup>

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).

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.<sup>6</sup> 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

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.<sup>7</sup> 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.

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. SUBSIDIES VALUATION**

### **A. Period of Investigation**

The period for which we are measuring subsidies, the Period of Investigation (POI), is January 1, 2013, through December 31, 2013.

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<sup>7</sup> 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.

## B. Allocation Period

We normally allocate the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>8</sup> We find the AUL in this proceeding to be 15 years, pursuant to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>9</sup> We notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party to this proceeding objected to our use of this AUL.

For non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

## C. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), we normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-ownership. Subsidies to the following types of cross-owned companies are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of our regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

Our attribution methodology is unchanged from the *Preliminary Determination*.<sup>10</sup> In its July 29, 2014, August 15, 2014, and September 2, 2014 submissions, Oman Fasteners reported that it was affiliated with several companies, but that none of these affiliated companies were involved in the production of subject merchandise, supplied inputs into Oman Fasteners' production process, is a parent or holding company, or received a subsidy from the GSO and transferred it to Oman Fasteners.<sup>11</sup> No parties commented on these findings. Based upon our review and verification of

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<sup>8</sup> See 19 CFR 351.524(d)(2).

<sup>9</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>10</sup> See Preliminary Decision Memorandum at 7.

<sup>11</sup> See Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners' Cross Ownership /Affiliations Response," dated July 29, 2014; see also Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigations; Oman Fasteners' Supplemental Response – Affiliations," dated August 15, 2014;

Oman Fasteners' questionnaire responses, we continue to find that, during the POI, cross-ownership did not exist within the definition of 19 CFR 351.525(b)(6)(vi) between Oman Fasteners and any other companies. Therefore, for the final determination we are examining only subsidies provided to Oman Fasteners and have attributed subsidies received by Oman Fasteners to its own sales in accordance with 19 CFR 351.525(b)(6)(i).

#### **D. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Final Calculation Memorandum prepared for this investigation.<sup>12</sup> The issues that interested parties raised related to the denominators are discussed in Comments 8 and 9 below.

### **VI. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we have made the following determinations.

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

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

"Industrial enterprises" in Oman receive total or partial exemptions from customs duties on imports of machinery, equipment parts, raw materials, semi-manufactured materials and packing materials.<sup>13</sup> To be eligible for this exemption, Omani law requires companies to have an industrial license.<sup>14</sup>

Chapter 1, Article 1 of the SIMR defines the types of industrial enterprises that are eligible to receive industrial licenses: "any establishment whose basic objective is to convert raw material into fully-manufactured or semi-manufactured products or to convert semi-manufactured products to fully-manufactured products including the works of mixing, separation, shaping, assembly, filling, and packaging, provided all or most of these works are carried out

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*see also* Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigation; Reply to Petitioner Comments on Oman Fasteners' Supplemental Affiliations Response," dated September 2, 2014.

<sup>12</sup> *See* Memorandum to the File, "Countervailing Duty Investigation: Certain Steel Nails from the Sultanate of Oman: Final Determination Calculation Memorandum for Oman Fasteners," dated concurrently with this memorandum (Final Calculation Memorandum).

<sup>13</sup> *See* Letter from the GSO, "Certain Steel Nails from the Sultanate of Oman – Questionnaire Response of the Government of the Sultanate of Oman," dated October 3, 2014 (GQR) at Exhibit 4.

<sup>14</sup> The Standard Industrial Management Regulations Law (SIMR) of the Cooperation Council for the Arab States of the Gulf (GCC), promulgated in Oman by Royal Decree (RD) 61/2008, which supersedes the similar Organization and Promotion of Industry Law (RD 1/79) and the Foreign Investment Business Law (102/94); *see* GQR at 10-11.

mechanically.”<sup>15</sup> The Rules for Implementing the Common Industrial Regulatory Law for the GCC (GCC Industrial Rules), which describe the process for obtaining an industrial license, expressly exclude “projects engaged in the field of oil exploration and extraction, and projects engaged in the field of extraction of metal ores.”<sup>16</sup>

The Department previously found this program to be countervailable in *CWP from Oman*.<sup>17</sup> Consistent with our determination in *CWP from Oman*, we continue to determine that this program constitutes a financial contribution in the form of revenue foregone by the GSO, pursuant to section 771(5)(D)(ii) of the Act. Further, the program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is granted only to companies that hold an industrial license, and RD 61/2008 limits the types of companies eligible to receive industrial licenses. Furthermore, industrial license holders must separately apply for and be approved to import capital equipment, machinery, raw materials, and packaging materials duty free.<sup>18</sup> The application identifies the specific items for which the company is applying for duty exemptions and the yearly required quantities.<sup>19</sup> If the applicant meets the criteria, the Ministry of Commerce and Industry (MOCI) sends the application to the Ministry of Finance (MOF).<sup>20</sup> MOF officials review the application to verify that MOCI’s recommendation is in line with the SIMR, and if the recommendation is consistent with the SIMR, the MOF will approve the application and notify MOCI, the applicant, and the Customs Division of Royal Omani Police.<sup>21</sup> We further determine that the tariff exemption afforded under this program provides a benefit under 19 CFR 351.510(a)(1) in the amount of the reduced liability for customs duties.

Oman Fasteners received its industrial license in 2012, filed an application for the tariff exemption in 2012, and obtained approval from the MOF in 2013. Oman Fasteners began to receive the duty exemptions in 2013.<sup>22</sup> To calculate the benefit, we multiplied the applicable duty rate by the value of the raw materials or equipment imported duty-exempt to determine the value of the import duty savings.<sup>23</sup>

We have treated the tariff exemptions for capital equipment as non-recurring subsidies and the exemptions for raw materials as recurring subsidies pursuant to 19 CFR 351.524(c). Thus, for the tariff exemptions for capital equipment, we applied the “0.5 percent test” pursuant to 19 CFR 351.524(b)(2). The import duty exemption on equipment that Oman Fasteners received during

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<sup>15</sup> See GQR at Exhibit 4.

<sup>16</sup> *Id.* at Exhibit 7.

<sup>17</sup> See *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 77 FR 64473 (October 22, 2012) (“*CWP from Oman*”), and accompanying Issues and Decision Memorandum at 5-6.

<sup>18</sup> See GSO Verification Report at 4-5.

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> See Letter from Oman Fasteners, “Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners’ Initial CVD Response,” dated September 4, 2014 (OIQR) at 9, Exhibit 6; see also Letter from Oman Fasteners, “Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners’ First Supplemental Response,” dated September 29, 2014 (OSQR1) at 4, Exhibits S-2, S-3, and S-6; see also Letter from Oman Fasteners, “Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners’ First Supplemental Response,” dated October 1, 2014 (OSQR2).

<sup>23</sup> See Final Calculation Memorandum.

the POI was less than 0.5 percent of Oman Fasteners' total sales during the year in which the subsidy was approved. As a result, we expensed the benefit to the year of receipt, the POI. We summed the duty savings on raw materials and the duty savings on equipment during the POI, and we divided this total benefit by Oman Fasteners' total sales, on a Free on Board (FOB) basis, during the POI.

On this basis, we determine that Oman Fasteners received a countervailable subsidy of 0.24 percent *ad valorem* under this program.

## **B. Programs Determined To Be Not Used Or Not to Confer a Benefit During the POI**

### **1. Provision of Electricity for Less Than Adequate Remuneration (LTAR)**

In *CWP from Oman*, the Department determined that the electricity rate charged to commercial users provides a suitable benchmark for measuring the benefit under this program, pursuant to 19 CFR 351.511(a)(2)(iii).<sup>24</sup> There is no information in the record of this investigation that warrants reconsidering the identification of the commercial rate as a suitable benchmark. Because Oman Fasteners reported, and its electricity bills show, that it pays the commercial rate for its electricity usage,<sup>25</sup> there is no benefit to Oman Fasteners from the GSO provision of electricity.

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

Oman Fasteners reported that it subleases property for its factory and its warehouse from private companies and therefore it has not received land or land leases from the GSO at reduced rates based on its locations within a designated geographic area.<sup>26</sup> Oman Fasteners subleases from a private company the land for its factory at the Port of Sohar.<sup>27</sup> This company, in turn, directly leases the land from the Port of Sohar.<sup>28</sup> The Port of Sohar is owned by Sohar Industrial Port Company (SIPC), a joint venture between the GSO and the Port of Rotterdam.<sup>29</sup> Oman Fasteners subleases its warehouse from a private company in the Sohar Industrial Estate.<sup>30</sup> This company in turn directly leases the land from the Sohar Industrial Estate.<sup>31</sup> Sohar Industrial Estate is owned by the GSO and managed by the Public Establishment for Industrial Estate (PEIE).<sup>32</sup>

Information on the record shows that Oman Fasteners subleases the property for its factory and its warehouse from private companies. At verification, we discussed the private sublessors with the GSO and Oman Fasteners, the sublessors' leasing of land from the SIPC and the PEIE, and

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<sup>24</sup> See *CWP from Oman*, and accompanying Issues and Decision Memorandum at 7-8.

<sup>25</sup> See OIQR at Exhibit 11; see also OSQR1 at 6 and Exhibit S-7, S-12.

<sup>26</sup> See OIQR at 12-13.

<sup>27</sup> See OIQR3 at 9; see also GQR at 46-59.

<sup>28</sup> See GQR at 48.

<sup>29</sup> *Id.* at 46-47.

<sup>30</sup> See OIQR at 9; see also GQR at 46-59.

<sup>31</sup> See GQR at 49.

<sup>32</sup> *Id.* at 46-59.

the sublessors' leasing of land to Oman Fasteners.<sup>33</sup> We continue to find no evidence that these private companies are authorities. Furthermore, there is no indication that these companies are entrusted or directed by the GSO to provide a government financial contribution within the meaning of section 771(5)(B)(iii) of the Act.<sup>34</sup> Because Oman Fasteners is subleasing its factory and its warehouse from private parties that are not authorities and are not entrusted or directed by the GSO to bestow any financial contribution, we find that the record of this investigation demonstrates that there is no government financial contribution, and thus this program has not been used by respondent.

In addition to the above-listed program, we determine that Oman Fasteners did not apply for or did not receive any countervailable benefits during the POI under the following programs:

3. Income Tax and Other Tax Exemptions
4. Duty-Free Imports of All Raw Materials and Capital Goods
5. Extended Exemptions from Income Tax
6. Soft Loans for Industrial Projects
7. Pre-shipment Export Credit Guarantees
8. Post-Shipment Export Credit Guarantees
9. Domestic Credit Insurance

## VII. ANALYSIS OF COMMENTS

### **Comment 1: Whether the Tariff Exemptions on Imported Equipment, Machinery, Raw Materials, and Packaging Materials is Specific in Law or In Fact**

The GSO argues that the Department erred in concluding that the tariff exemption program is countervailable because the finding of *de jure* specificity in *CWP from Oman* is contrary to the language of section 771(5A)(D)(i) and (ii) of the Act.<sup>35</sup> The GSO and Oman Fasteners claim the program is widely available and is not expressly specific to an industry or group of industries.<sup>36</sup> Oman Fasteners further argues that the law does not expressly limit access to the subsidy to an industry or group of industries; rather this program is available to all industries with only a very limited exception for two activities: projects in oil extraction or exploration and extraction of metals.<sup>37</sup> The GSO underlines that the subsidy is available to all economic sectors without exception, including mining and petroleum companies that engage in an industrial activity. Thus, contends the GSO, the exclusion of companies not engaged in manufacturing, such as those whose activities are limited to extracting ores or petroleum from the ground without processing them, does not render the subsidy specific. Similarly, Oman Fasteners contends that the program was designed to be broadly available to “all industrial users” throughout the Gulf Cooperation Council (GCC) member states.<sup>38</sup> Oman Fasteners contends that the record

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<sup>33</sup> See GSO Verification Report at 7-15.

<sup>34</sup> See Letter from the GSO, “Certain Steel Nails from the Sultanate of Oman – Questionnaire Response of the Government of the Sultanate of Oman,” dated October 21, 2014 (GSQR) 1 at 8-14, 16-20, and Exhibits S1-S9.

<sup>35</sup> See GSO Case Brief at 6-10.

<sup>36</sup> *Id.* at 7; see also Oman Fasteners Case Brief at 2-8.

<sup>37</sup> See Oman Fasteners Case Brief at 4-8; see also OISI Rebuttal Brief at 6-7.

<sup>38</sup> See Oman Fasteners Case Brief at 3.

demonstrates that nearly the entire Omani economy benefits from the tariff exemption, and that the only activities for which industrial licenses will not be issued are projects in exploration and extraction of oil and the extraction of metal ores without transformation of their contents or shapes, which is an activity-based exclusion, not a company- or sector-based exclusion.<sup>39</sup>

The GSO and Oman Fasteners argue that the tariff exemption program is not specific under section 771(5A)(D)(ii) of the Act.<sup>40</sup> According to Oman Fasteners, the tariff exemption program falls within the exception for neutral subsidies.<sup>41</sup> Additionally, the GSO and Oman Fasteners argue that the legislation establishing the import duty exemption establishes objective criteria governing eligibility and that approval is automatic for companies meeting the eligibility criteria.<sup>42</sup> Oman Fasteners clarifies that the GSO has never rejected an applicant for access to the program, and that the only time an application would be declined is if it was missing certain information required by SIMR when sent from MOCI.<sup>43</sup> Oman Fasteners adds that the GSO strictly follows the minimal conditions for eligibility.<sup>44</sup>

The GSO argues that the Department incorrectly articulated the *de jure* specificity test in *CWP from Oman* in relation to the import tariff exemption on raw materials.<sup>45</sup> The GSO contends that the determination of whether a subsidy is *de jure* specific, *i.e.*, whether the legislation expressly limits access to the subsidy, requires an identification of the larger universe within which the subsidy could be found to be specific and that the test applied by the Department is misguided because companies that do not process raw or semi-finished materials to produce finished goods will not import inputs for the simple reason that they do not use inputs in their operations.<sup>46</sup> Similarly, Oman Fasteners contends that the SAA clarifies that the specificity element is satisfied if the foreign government “limits access to the subsidy to a *sufficiently small number of enterprises.*”<sup>47</sup> Oman Fasteners adds that a close reading of *CWP from Oman* shows that the record differs, namely, because in this investigation it shows that all industries have access to the subsidy, while there the Department found that the Omani law limits access to a specific subset of industrial establishments.<sup>48</sup>

The GSO also claims that the Department’s *de jure* specificity finding is contrary to Article 2.1(a) of the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement, as the meaning of that provision was clarified by the Panel in *US—Large Civil Aircraft (2<sup>nd</sup> Complaint)*.<sup>49</sup>

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<sup>39</sup> *Id.* at 5-6 (citing GSO IQR, Appendix 9).

<sup>40</sup> See GSO Case Brief at 8; see also Oman Fasteners Case Brief at 8-11; OISI Rebuttal Brief at 7.

<sup>41</sup> See Oman Fasteners Case Brief at 10.

<sup>42</sup> See GSO Case Brief at 8; see also Oman Fasteners Case Brief 10-11.

<sup>43</sup> See Oman Fasteners Case Brief at 4-5.

<sup>44</sup> *Id.* at 11.

<sup>45</sup> See GSO Case Brief at 8-10.

<sup>46</sup> *Id.*

<sup>47</sup> See Oman Fasteners Case Brief at 8 (quoting Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, at 930 (1994)) (emphasis added by Oman Fasteners).

<sup>48</sup> See Oman Fasteners Case Brief at 7 (citing *CWP from Oman*, and accompanying Issues and Decision Memorandum at 18; Preliminary Decision Memorandum at 7-8).

<sup>49</sup> See GSO Case Brief at 10-11 (citing WTO Panel Report, *US—Large Civil Aircraft (2<sup>nd</sup> Complaint)* (citing WTO Panel Report, *US—Upland Cotton*)).

According to Oman Fasteners, the program is not *de facto* specific under section 771(5A)(D)(iii) of the Act because the number of recipients is essentially unlimited and the record does not show that any enterprise or industry (or group thereof) receives either a predominant share<sup>50</sup> or a disproportionate amount<sup>51</sup> of the exemption.<sup>52</sup>

OISI agrees with the GSO and Oman Fasteners that the Department’s preliminary finding of *de jure* specificity was “misguided” because the program applies to all industrial users that are member states of the GCC and the program is not limited to a specific industry or enterprise.<sup>53</sup>

Petitioner responds by arguing that the Department’s analysis in the *Preliminary Determination* is fully supported by U.S. law.<sup>54</sup> Petitioner contends that, by limiting access to the program to “industrial enterprises” as defined in RD 61/2008, the GSO expressly limits the program to certain “establishments”—not projects—those whose objective is to engage in particular kinds of manufacturing activities and not other kinds of manufacturing activities (including but not limited to, oil and gas extraction, mining, and similar industries).<sup>55</sup> Petitioner argues that the GSO expressly limits access to the subsidy to an enterprise or industry and the subsidy is therefore specific as a matter of law.<sup>56</sup> Petitioner adds that a subsidy can be specific even if the “inherent characteristics” of the financial contribution are such that, in practice, only a limited group of enterprises or industries are likely to choose to avail themselves of it.<sup>57</sup> Finally, petitioner notes that the Department’s analysis in the *Preliminary Determination* is supported by WTO law, and, to the extent relevant, the WTO Agreements.<sup>58</sup> Petitioner adds that the Appellate Body, in *India—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products*, rejected the same argument that the GSO makes here.<sup>59</sup>

Department’s Position: The Department continues to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Section 771(5A)(D)(i) and (ii) of the Act provide that in determining whether a subsidy is a specific subsidy, in law or in fact, the following guidelines apply:

- (i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.
  
- (ii) Where the authority providing the subsidy, or the legislations pursuant to which the

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<sup>50</sup> See section 771(5A)(D)(iii)(II) of the Act.

<sup>51</sup> See section 771(5A)(D)(iii)(III) of the Act.

<sup>52</sup> See Oman Fasteners Case Brief at 11-12.

<sup>53</sup> See OISI Rebuttal Brief at 6-7.

<sup>54</sup> Petitioner Rebuttal Brief at 2.

<sup>55</sup> *Id.* at 2-3.

<sup>56</sup> *Id.* at 4.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 4 (citing Appellate Body Report, *India—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products*, WT/DS436/AB/R, adopted December 19, 2014).

authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if:

- (I) eligibility is automatic,
- (II) the criteria or conditions for eligibility are strictly followed, and
- (II) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term “objective criteria or conditions” means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

To be eligible for this tariff exemption in Oman, the SIMR requires companies to have an industrial license. Chapter 1, Article 1 of the SIMR defines the types of “industrial enterprise (industrial establishment)” that are eligible to receive industrial licenses: “any establishment whose basic objective is to convert raw material into fully-manufactured or semi-manufactured products or to convert semi-manufactured products to fully-manufactured products including the works of mixing, separation, shaping, assembly, filling, and packaging, provided all or most of these works are carried out mechanically.”<sup>60</sup> The GCC Industrial Rules expressly exclude certain enterprises or industries from obtaining industrial licenses and registrations such as those enterprises or industries engaged in the field of oil exploration and extraction, and enterprises engaged in the field of extraction of metal ores.<sup>61</sup> Therefore, we find that the GSO expressly limits access to the tariff exemption program to industrial license holders, which are “establishments” that convert raw materials into finished or semi-finished products or convert the latter into finished products. Companies that mine or extract raw materials but do not convert them into semi-finished or finished products are ineligible to receive the tariff exemptions which are conditioned on the holding of an industrial license. As such, consistent with *CWP from Oman*, we find that *de jure* specificity exists because an enterprise or industry or group of enterprises or industries in Oman is denied the tariff exemptions as a matter of law.<sup>62</sup>

Additionally, we disagree with the GSO’s and Oman Fasteners’ contention that the specificity element is not satisfied because the law does not limit access to the subsidy to a “sufficiently small number of enterprises.”<sup>63</sup> We find unpersuasive Oman Fasteners’ argument that the law is not specific because the law provides access to all industries with only a very limited exception for two activities.<sup>64</sup> As discussed above, our determination relies on the fact that other industries in Oman are expressly ineligible for the exemption as a matter of law. The SAA specifically

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<sup>60</sup> See GQR at Exhibit 4.

<sup>61</sup> *Id.* at Exhibit 7.

<sup>62</sup> See Oman Fasteners Case Brief at 7.

<sup>63</sup> The GSO cites to two WTO panel reports, *US-Large Civil Aircraft* and *US-Upland Cotton*, for the proposition that “where the subsidy is available to all companies engaged in industrial activities, a finding of specificity would be inconsistent with Article 2.1(a) of the WTO SCM Agreement.”

<sup>64</sup> See Oman Fasteners Case Brief at 2-8.

addresses this aspect of *de jure* specificity, and does not require the Department to determine whether the recipients of a subsidy constitute a “sufficiently small” group.<sup>65</sup>

As under existing law, clause (i) does not attempt to provide a precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small so as to properly be considered specific.<sup>66</sup>

As such, an assessment of whether the number of industries eligible for the exemption is “sufficiently small” is unnecessary due to the plain exclusionary language of the SIMR and GCC Industrial Rules. Consistent with *CWP from the UAE*, “[w]here there is an explicit exclusion of certain industries in the law itself, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.”<sup>67</sup>

We further disagree with the GSO’s and Oman Fasteners’ argument that the tariff exemption program is not *de jure* specific due to section 771(5A)(D)(ii) of the Act. Section 771(5A)(D)(ii) of the Act states that the term “objective criteria or conditions” indicates criteria or conditions that are neutral and that do not favor one enterprise or industry over another. We find that the SIMR and the GCC Industrial Rules are not neutral. The SIMR expressly limits the tariff exemption to “industrial establishments,” which are defined as enterprises that transform or convert raw materials into semi-finished goods or convert the latter into finished products, *i.e.*, manufacturing industries. Because enterprises that only produce raw materials but do not convert them into semi-finished or finished products are denied access to the tariff exemption program, the SIMR favors industrial establishments that produce semi-finished or finished products. Furthermore, the Department finds that eligibility is not automatic as contemplated under section 771(5A)(D)(ii) of the Act because the SIMR provides that companies that mine or extract raw materials but do not convert them into semi-finished or finished products are ineligible to receive an industrial license and therefore are also ineligible to receive the tariff exemptions, eligibility for which is conditioned on the holding of an industrial license.

Finally, we agree with petitioner that the GSO has not identified any record evidence to support its argument that enterprises that are not “industrial enterprises” and that are not eligible for this subsidy are unlikely to “use any significant volume of inputs in their operations,” and therefore would have little incentive to benefit from a subsidy taking the form of an exemption from duties on inputs. Moreover, this point is not relevant to an analysis of *de jure* specificity; it appears that the GSO has conflated this test with the *de facto* specificity test which, *inter alia*, looks at the actual recipients of the subsidy. However, because the Department finds this program to be *de jure* specific due to the expressed exclusionary language in the SIMR and the GCC Industrial Rules, we need not address Oman Fasteners’ claims regarding *de facto* specificity. Consequently, the Department’s position has not changed from *CWP from Oman*, and,

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<sup>65</sup> See, e.g., *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465, October 22, 2012 (*CWP from UAE*), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>66</sup> See SAA at 930.

<sup>67</sup> *CWP from the UAE*, and accompanying Issues and Decision Memorandum at Comment 1.

accordingly, for purposes of this final determination, we find that this program is *de jure* specific.

**Comment 2: Whether the Tariff Exemption Program is Countervailable Because the Imported Equipment is not Related to Production of Subject Merchandise During the POI**

Oman Fasteners argues that the tariff exemption program is not countervailable because the imported equipment is not related to production of subject merchandise during the POI.<sup>68</sup> Oman Fasteners contends that the facts here are similar to those in *PET Film from India*,<sup>69</sup> in which the Department did not countervail certain duty-free imports because the imports were unrelated to production of subject merchandise.<sup>70</sup> According to Oman Fasteners, because the equipment was imported very late in the POI, and was not operational until after the POI, the tariff exemption provided for the imported equipment does not relate to the production of subject merchandise, *i.e.*, merchandise produced during POI,<sup>71</sup> and therefore it provides no benefit during the POI.

Petitioner urges the Department to follow its normal practice and recognize the benefit of this subsidy at the time of its receipt.<sup>72</sup> Petitioner cites to the Department's regulations for the proposition that the benefit of the subsidy consists of the remission of the import duty which would otherwise be payable at the time of importation; the benefit does not arise from the use of the imported good.<sup>73</sup> According to petitioner, this is particularly the case where, as here, the Department found (pursuant to its standard 0.5 percent test) that the subsidy provides non-recurring benefits.<sup>74</sup>

According to petitioner, the facts here are clearly distinct from those in *PET Film from India*, because the benefit here is non-recurring and therefore it is not tied to the production of any particular merchandise produced in any particular period of time.<sup>75</sup> Petitioner agrees with Oman Fasteners that the Department did not countervail the duty-free importation of the metallizer that was exclusively used to produce non-subject merchandise in *PET Film from India*.<sup>76</sup> However, petitioner disagrees with Oman Fasteners that "the delay in producing subject merchandise until after the POI is congruent to production of non-subject merchandise during the POI."<sup>77</sup>

Department's Position: We agree with petitioner. As provided by section 351.510(b)(1) of the Department's regulations, "{i}n the case of a full or partial exemption or remission of an indirect tax or import charge," the Department "normally will consider the benefit as having

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<sup>68</sup> See Oman Fasteners Case Brief at 12-13.

<sup>69</sup> Oman Fasteners cites to *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004), and accompanying Issues and Decision Memorandum at Comment 8 (*PET Film from India*).

<sup>70</sup> See Oman Fasteners Case Brief at 13-14.

<sup>71</sup> *Id.* at 14.

<sup>72</sup> See Petitioner Rebuttal Brief at 5-6.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 6.

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

<sup>77</sup> *Id.*

been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge.” Here, Oman Fasteners received an exemption of an import charge at the time that it imported equipment; without the exemption, Oman Fasteners would have been required to pay the duty at that time.<sup>78</sup> As such, we consider the benefit as having been received at the time of importation.

Oman Fasteners claims that because this particular piece of equipment was not put into use until after the POI, the tariff exemption provided for the imported equipment does not relate to the production of subject merchandise during POI. We find this argument to be inapposite. The *Preamble* makes clear that, pursuant to 19 CFR 351.525(b)(6), we will:

...not trace the use of subsidies through a firm’s books and records. Rather we analyze the purpose of the subsidy based on the information available at the time of the bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.<sup>79</sup>

Our rule reflects the guidance provided in section 771(5)(C) of the Act, the SAA at 926, and 19 CFR 351.503(c), which provide that the effect of a subsidy on a firm is not considered in determining whether there is a benefit to the firm. In this instance, the time of bestowal for the tariff exemption is the point at which Oman Fasteners experiences the cash flow effect of the duty savings provided by the GSO. The Department does not consider whether Oman Fasteners used or did not use the imported equipment for the production of subject merchandise. To do so would require the Department to trace the use of Oman Fasteners’ tariff exemptions to determine whether the company used the subsidies as intended; this would violate the statute, Department’s regulations, and the well-established practice of not considering the use and effect of subsidies.<sup>80</sup>

Further, we agree with petitioner that Oman Fasteners’ reliance on *PET Film from India* is misplaced because the delay in rendering the equipment operational until after the POI, which is the case here, is different from the duty exemption benefits related to equipment that can only be used to produce non-subject merchandise. In *PET Film from India*, the issue was whether the benefit was related exclusively to the production of non-subject merchandise.<sup>81</sup> In that case, the Department determined that the imported equipment, a metallizer, could only be used to produce non-subject merchandise, and, therefore, the benefit the respondent received was tied at the time

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<sup>78</sup> See OIQR at Exhibit 7; see also OSQR3 at Exhibit S3-5.

<sup>79</sup> See *Countervailing Duties*, 63 FR 65348, 65403 (November 25, 1998) (*Preamble*); see also *Certain Oil Country Tubular Goods From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 11; *Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 10 (*Citric Acid from China 2011*).

<sup>80</sup> See *Citric Acid from China 2011*, and accompanying Issues and Decision Memorandum at Comment 1; see also *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying Issues and Decision Memorandum at Comment 18 (*Citric Acid from China 2012*).

<sup>81</sup> See *PET Film from India*, and accompanying Issues and Decision Memorandum at Comment 8.

of bestowal to non-subject merchandise. Here, the issue is the timing of the benefit of the subsidy and whether Oman Fasteners received a benefit at the time of bestowal. Record evidence indicates that Oman Fasteners received the benefit (*i.e.*, the duty exemption) at the time it imported its capital equipment during the POI.<sup>82</sup> Accordingly, consistent with 19 CFR 351.510(b)(1), we find that Oman Fasteners received the benefit of the import duty exemption at the time the import duties would have otherwise been due, *i.e.*, at the time the capital equipment was imported, which was during the POI; thus, the duty exemption gives rise to a countervailable subsidy during the POI.<sup>83</sup>

### **Comment 3: Whether the GSO’s Provision of Land to Oman Fasteners through a Private Entity Constitutes a Financial Contribution**

Petitioner contends that the GSO’s provision of land to a private entity constitutes a financial contribution. According to petitioner, the Department erroneously found, in the *Preliminary Determination*, that there is no indication that these private landlords (*i.e.*, C. Steinweg Oman LLC (Steinweg) and Amit Warehouse and Logistics Services LLC (Amit)) are entrusted or directed by the GSO to provide a government financial contribution. Petitioner argues that the Department rejected the approach it applied in the *Preliminary Determination* in *AK Steel Corp. v. United States*,<sup>84</sup> and in a recently completed administrative review of the countervailing duty order on *Citric Acid from China 2011*.<sup>85</sup> Petitioner asserts that, in those cases, the Department determined that whether the private landlords are entrusted or directed by the GSO is not relevant in determining whether there is a countervailable subsidy. Petitioner argues that there is no question that the GSO has provided a good here – land – and therefore there is a financial contribution to private companies within the meaning of section 771(5)(D)(iii) of the Act.<sup>86</sup> Petitioner asserts that the correct legal standard for determining whether these programs “constitute a countervailable subsidy hinges on whether the prices they charged conferred a benefit upon” Oman Fasteners.<sup>87</sup> Petitioner argues that the agency’s practice in this regard had been affirmed by the Court of International Trade (CIT) in *Guangdong Wireking*.<sup>88</sup>

Although petitioner contends that it is not necessary to show that the GSO entrusts or directs Oman Fasteners’ lessors to provide land for LTAR, petitioner argues that the verification report indicates that the GSO entrusts or directs the private companies to make a financial contribution through their provision of land to Oman Fasteners via sublease. In particular, petitioner points to the section of the verification report regarding the factory and SIPC. Steinweg officials noted that “SIPC is responsible for the administrative role of the port in relations with the GSO,” and Steinweg had been granted a similar role to run “actual day-to-day commercial activities of the port.” Petitioner also argues that Steinweg was “required to obtain a letter of no objection from

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<sup>82</sup> See OIQR at Exhibit 7; see also OSQR3 at Exhibit S3-5.

<sup>83</sup> For a more detailed discussion, see Final Calculation Memorandum.

<sup>84</sup> Petitioner cites to *AK Steel Corp. v. United States*, 192 F.3d 1367 (Fed.Cir.1999).

<sup>85</sup> Petitioner cites to *Citric Acid from China 2011* and accompanying Issues and Decision Memorandum at Comment 5.

<sup>86</sup> See Petitioner Case Brief at 6.

<sup>87</sup> *Id.*

<sup>88</sup> Petitioner cites to *Guangdong Wireking Housewares & Hardware Co. v. United States*, 92 F.3d 1367 (Fed. Cir. 1999).

the SIPC,” showing that the GSO retained some discretion with regard to the subleasing of government land, but also entrusted the private company to set the actual terms.

With respect to the sublease for the factory, petitioner cites to *DRAMS from Korea*<sup>89</sup> to illustrate the Department’s approach to the “entrusts or directs” element of an indirect subsidy under section 771(5)(B)(iii) of the Act. To determine whether the financial restructuring of the respondent in that case involved a financial contribution by the Government of Korea, as an indirect subsidy through private lenders, petitioner argues the Department employed a two-part test: first, the Department examined whether the government had a policy in place during the relevant period to support the respondent; second, the Department considered whether record evidence establishes a pattern of practices by the government to entrust or direct decisions in support of the policy. According to petitioner, in *DRAMS from Korea*, the Department found that in the case of an indirect subsidy, “{w}hether the terms are sufficiently affected by government action so as to make the provision actionable is a factual element that is relevant to the measure of ‘benefit,’ not ‘financial contribution.’”<sup>90</sup> Also according to petitioner, Article 18 of the SIMR, which provides “{l}easing of the industrial premises required for the industrial enterprise at competitive rates in industrial estates set up by the government,” supports Oman Fasteners, an industrial enterprise, thereby satisfying part one of the Department’s analysis. Petitioner adds that the Department already found this legal provision of land or leases of land by the GSO to be countervailable in *CWP from Oman*. For the second part of the analysis, in *DRAMS from Korea*, the Department focused on the “government involvement in the restructuring” process and affirmative evidence that the “government took steps to direct the lending decision of the private bank participants.” Petitioner contends that the phrase “less participation” in the GSO’s admission that “{t}he SIPC exercises significant oversight of what companies they will lease to, but has less participation in the subleasing process”<sup>91</sup> indicates that there is some level of control by the public entities over subleasing of an area, where they already occupy a “significant” degree of control. Petitioner contends that this is indicative of the same level of involvement by the GSO as was apparent in *DRAMS from Korea*.

Similarly, with respect to the warehouse, petitioner applied the two-part test in *DRAMS from Korea* and argues there is clear “government involvement” in the sub-leasing process, through which the GSO is entrusting or directing the private landlord (*i.e.*, Amit) to conduct subleasing on its behalf, and at the same time is retaining a degree of control over directing the recipients of the land in the designated areas through PEIE.<sup>92</sup> During verification, PEIE officials confirmed that “if a leaseholder in an {industrial estate} wishes to sub-lease its land in an {industrial estate} to another company, they must inform PEIE.”<sup>93</sup> In addition, regarding the eligibility of the party subleasing, “PEIE officials stated that companies that wish to sub-lease must meet the same

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<sup>89</sup> See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at 46-47 (*DRAMS from Korea*).

<sup>90</sup> See Petitioner Case Brief at 10-11 (citing *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at 46-47).

<sup>91</sup> Letter from GSO, “Certain Steel Nails from the Sultanate of Oman – Questionnaire Response of the Government of the Sultanate of Oman,” dated October 3, 2014 (“GQR1”) at 46-47.

<sup>92</sup> See Petitioner Case Brief at 12.

<sup>93</sup> *Id.*

requirements as companies that lease directly from PEIE.”<sup>94</sup> Finally, the GSO has previously reported that PEIE exercises control and oversight over the activities of entities holding sub-leases through the ostensibly private entity: “PEIE carries out visits to ensure that they are complying with the relevant rules and regulations laid down in the leasing contracts...”<sup>95</sup>

Petitioner concludes by stating that if the Department were to find that the GSO provides land for LTAR to land management companies without intending that any benefit be passed through to the sublessees, it would essentially be concluding that the GSO intends to subsidize the land management companies in its industrial estates but not its own industrial enterprises. Petitioner contends that this is illogical and contrary to Article 18 of the SIMR that industrial licensees be afforded “[e]asing of the industrial premises required for the industrial estate at competitive rates in industrial estates set up by the government.”<sup>96</sup>

Oman Fasteners responds by arguing that its landlords are private companies and the rates between Oman Fasteners and its landlords were negotiated at arm’s-length without any GSO direction relating to the subleases in question. Oman Fasteners points out that petitioner has not relied on any past determinations involving land for LTAR.<sup>97</sup> Furthermore, Oman Fasteners cites to *Retail Carrier Bags from Vietnam*<sup>98</sup> for its position that when a private entity is involved, such as a private commercial landlord, the Department first has to determine that the GSO entrusted or directed the landlords to provide a subsidy to Oman Fasteners under section 771(5)(B)(iii) of the Act.<sup>99</sup> Oman Fasteners argues that, as the Department found in *Retail Carrier Bags from Vietnam*, there is no evidence here to indicate that the private landlords were obligated or expected to pass whatever savings they enjoyed along to their tenants.<sup>100</sup> Further, where the private companies were free to negotiate prices with their tenants without government interference or restrictions, and were not obligated or expected to pass whatever savings they enjoyed on to their tenants, there cannot be a “financial contribution” from a government by virtue of a private lease transaction.<sup>101</sup> Oman Fasteners argues that the Department cannot simply presume that a financial contribution from the GSO to private landlords was passed on to Oman Fasteners.<sup>102</sup> Oman Fasteners adds that there is no evidence of entrustment or direction on the record of this investigation and that the landlords acted independently in subleasing property to the respondent.<sup>103</sup>

Oman Fasteners contends that in *DRAMS from Korea*, the Department found that the Government of Korea adopted a policy of supporting the semiconductor industry in general and

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

<sup>95</sup> *Id.* at 12-13 (citing Letter from GSO, “Certain Steel Nails from the Sultanate of Oman – Second Supplemental Questionnaire Response of the Government of the Sultanate of Oman,” dated November 25, 2014 (“GQR3”) at 3).

<sup>96</sup> See Petitioner Case Brief at 13.

<sup>97</sup> See Oman Fasteners Rebuttal Brief at 9.

<sup>98</sup> See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010), and accompanying Issues and Decision Memorandum at Comment 8 (*Retailer Carrier Bags from Vietnam*).

<sup>99</sup> See Oman Fasteners Rebuttal Brief at 9-12.

<sup>100</sup> *Id.* at 10.

<sup>101</sup> *Id.* at 10, 12.

<sup>102</sup> *Id.* at 11.

<sup>103</sup> *Id.* at 12-14.

prevented the failure of a respondent. Unlike *DRAMS from Korea*, Oman Fasteners argues, petitioner has failed to identify any GSO policy or action that resulted in or encouraged the leases in question. In any event, Oman Fasteners points out that the CIT reviewed *DRAMS from Korea* and held that, in considering an entrustment or direction claim, “Commerce must consider counterevidence indicating that the transactions making up the alleged program were formulated by an independent commercial actor (not a government) and motivated by commercial considerations.”<sup>104</sup>

Oman Fasteners also cites to *Shrimp from Indonesia*<sup>105</sup> in which the Department found the lease from a state-owned entity to the respondent was not countervailable, in part, because the “lease shows no indication that it is associated with the {Government of Indonesia} programs alleged to be countervailable subsidies.”<sup>106</sup> Oman Fasteners argues that, similarly, the GSO has no policy, and has taken no action, to support or assist Oman Fasteners.<sup>107</sup> There is no GSO policy relating to the land owned by the SIPC and PEIE.<sup>108</sup> Further, there is no connection between the landlords’ transactions with the SIPC and the PEIE, and their subleases with Oman Fasteners.<sup>109</sup>

OISI argues that petitioner’s claims that the Department must follow its recent findings in *Citric Acid from China* are misguided, as the factual situation under consideration in that case differs from the one at hand.<sup>110</sup> In *Citric Acid from China*, the government provided goods for LTAR to a trading company who in turn sold the goods for less than benchmark prices (*i.e.*, LTAR).<sup>111</sup> This was also the case in *Guangdong Wireking*, where a trading company provided goods for less than benchmark prices. OISI contends that this case does not involve the sale of commodity goods through a middleman.<sup>112</sup>

Oman Fasteners, OISI, and the GSO argue that there is no evidence on the record to suggest that Oman Fasteners received any indirect financial contribution or that Oman Fasteners was thereby provided with land at LTAR.<sup>113</sup> The rates of Oman Fasteners’ subleases were set at arm’s-length and on the basis of commercial considerations.<sup>114</sup> Even if it were the case that Oman Fasteners’ landlords received a government financial contribution, the sublease rates paid by Oman Fasteners bear no direct relationship to the lease rates paid by Oman Fasteners’ landlords.<sup>115</sup>

Department’s Position: Consistent with section 771(5)(B) of the Act, we continue to find that the record of this investigation demonstrates that there is no countervailable financial

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<sup>104</sup> Oman Fasteners cites to *Hynix Semiconductor Inc. v. United States*, Slip Op. 05-106 (CIT 2005).

<sup>105</sup> Petitioner cites to *See Certain Frozen Warmwater Shrimp From the Republic of Indonesia: Final Negative Countervailing Duty Determination*, 78 FR 50383 (April 19, 2013), and accompanying Issues and Decision Memorandum at Comment 19 (*Shrimp from Indonesia*).

<sup>106</sup> *See* Oman Fasteners Rebuttal Brief at 16-17.

<sup>107</sup> *Id.* 17.

<sup>108</sup> *Id.* at 15.

<sup>109</sup> *Id.*

<sup>110</sup> *See* OISI Rebuttal Brief at 3.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 5; *see also* Oman Fasteners Rebuttal Brief at 3-7; GSO Rebuttal Brief at 5.

<sup>114</sup> *See* OISI Rebuttal Brief at 5; *see also* Oman Fasteners Rebuttal Brief at 3-7; GSO Rebuttal Brief at 5.

<sup>115</sup> *See* GSO Rebuttal Brief at 5.

contribution. Oman Fasteners acquired the land-use rights to its factory and warehouse from private parties that are not public authorities by virtue of government ownership and control and are not entrusted or directed by the GSO to provide a financial contribution. According to section 771(5)(B)(iii) of the Act, a subsidy takes place when, *inter alia*, a public authority “makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practice normally followed by government.” The Department applied this analysis in *Retail Carrier Bags from Vietnam*, a case involving whether a private landlord provided a financial contribution to the respondent. In that case, the Department did not presume that a financial contribution from the Government of Vietnam (GOV) to the private landlord was passed on to the respondent.<sup>116</sup> Because the Department determined that the landlord was not a public authority,<sup>117</sup> the Department assessed whether entrustment or direction could be discerned from the relationship between the GOV and the private landlord, and found that mere “{e}ncouragement” to pass along the savings from low-priced land is too tenuous a link between the GOV and the private IDCs to establish a financial contribution.”<sup>118</sup> As such, contrary to petitioner’s claim that a financial contribution analysis is not required, the statute makes clear that the Department must consider whether the GSO entrusts or directs the private landlords to pass along the financial contribution. Consistent with section 771(5)(B)(iii) of the Act and *Retail Carrier Bags from Vietnam*, we have applied the same analysis to this investigation involving land for LTAR.

As noted by petitioner, in cases involving the provision of commodity goods manufactured and produced by authorities to respondents through intermediary trading companies, the Department has a practice of finding that a financial contribution exists by virtue of the provision of the good to the trading company by an authority, and measuring the benefit by comparing the benchmark to the price paid by the respondent to the trading company.<sup>119</sup> The Department has developed this practice due to the nature of commodity goods and trading companies’ limited role in their purchase and resale, and the resulting policy concerns surrounding the ability of respondents to circumvent an investigation of the provision of commodity goods if the Department were to have to trace subsidy pass-through in commodity goods transactions through trading companies. However, these concerns with input commodity goods do not arise in the context of land and land-use rights. Each parcel of land is unique, unlike often-fungible commodity inputs. Land cannot be moved or transported. Indeed, in the Department’s experience, in many countries’ legal regimes, land itself cannot even be owned, and private parties may only acquire land-use rights. This is the case in Oman, and was also the case in Vietnam. Land transactions are highly documented, and therefore investigable, in almost all legal regimes. Because of such factors, we

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<sup>116</sup> See *Retail Carrier Bags from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 8.

<sup>117</sup> See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 45811, 45817-18 (September 4, 2009) (referring to two of Fotai’s tract leases as being from “private companies,” as opposed to a third tract being leased from a “provincial government”), *unchanged in Retail Carrier Bags from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 8.

<sup>118</sup> See *Retail Carrier Bags from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 8.

<sup>119</sup> See *Citric Acid from China 2011*, and accompanying Issues and Decision Memorandum at Comment 3.

determine that the policy behind the Department’s practice with regard to commodity input goods and trading companies is not applicable to land and land-use rights. Instead, we determine that we should apply our normal analysis of investigating whether the respondent’s land provider was an authority or was entrusted or directed by an authority to provide the land to respondent.

### *Public Authority*

According to section 771(5)(B) of the Act, the term “authority” means a government of a country or a public entity within the territory of the country. To determine whether an entity is an “authority” under the Act, the Department has sometimes applied a five-factor test: (1) government ownership; (2) government’s presence on the entity’s board of directors; (3) government’s control over the entity’s activities; (4) the entity’s pursuit of governmental policies or interests; and (5) whether the entity is created by statute.<sup>120</sup> Although we make no finding as to whether we are required to apply the five-factor test in these circumstances, we nevertheless address petitioner’s comments regarding Steinweg and Amit as follows.

According to the GSO’s initial response, Oman Fasteners subleases a manufacturing facility in the Port of Sohar and a warehouse in the Sohar Industrial Estate and that land in both the Sohar Industrial Estate and in the Port of Sohar are government-owned lands.<sup>121</sup> Land in the Port of Sohar is managed by the SIPC, and the PEIE manages land in the Sohar Industrial Estate.<sup>122</sup> According to the GSO’s and Oman Fasteners’ responses, Oman Fasteners did not lease this government-owned land directly from the SIPC or PEIE, but rather subleased the facilities from two private entities: Amit and Steinweg.<sup>123</sup> Steinweg subleases the factory to Oman Fasteners in the Port of Sohar; Amit subleases the warehouse to Oman Fasteners in the Sohar Industrial Estate.<sup>124</sup>

Steinweg is a subsidiary of the Steinweg-Handelsveem Group which operates terminals and warehouses all around the world.<sup>125</sup> The branch operating in Oman was established in 2004 and its parent company is located in the Kingdom of Netherlands.<sup>126</sup> Steinweg’s business license indicates that the majority of Steinweg’s shares are owned by its parent company and that the GSO has no role in the company’s operations as an authorized manager or signatory; therefore, there is no evidence that the GSO exercises any control over the company’s operations.<sup>127</sup> Steinweg’s commercial registration also indicates that the company is a limited liability company subject to the foreign investment law.<sup>128</sup> Additionally, record evidence indicates that Steinweg has not received any direct or indirect funding, financing or support from the GSO since its

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<sup>120</sup> See *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at 16.

<sup>121</sup> See GQR 46-60.

<sup>122</sup> *Id.*

<sup>123</sup> See GSQR1 at 9-20.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 14.

<sup>126</sup> See GSO Verification Report at 10.

<sup>127</sup> See GSQR1 at Appendix S-6.

<sup>128</sup> See GSO Verification Report at VE-8.

inception.<sup>129</sup> As such, the Department finds that Steinweg is not a public authority by virtue of government ownership and control under section 771(5)(B) of the Act.

Record evidence also indicates that Amit is a private entity that operates independent of the GSO.<sup>130</sup> The business license indicates that the GSO does not own any shares in the company and has no role in the company's operations.<sup>131</sup> Amit's commercial registration indicates that its business activities involve "storage, export and import, and cargo."<sup>132</sup> Additionally, record evidence indicates that the GSO has not provided any direct or indirect support to Amit under this land program.<sup>133</sup> As such, the Department finds that Amit is not a public authority by virtue of government ownership and control under section 771(5)(B) of the Act.

Because record evidence indicates that Steinweg and Amit are not GSO authorities by virtue of government ownership or control of their operations, consistent with section 771(5)(B)(iii) of the Act, we next examine whether these private landlords are entrusted or directed by the GSO to provide a financial contribution to the respondent during the POI.

### *Entrustment and Direction*

In *DRAMS from Korea*, the Department articulated an approach to the "entrusts or directs" element of the indirect subsidy under section 771(5)(B)(iii) of the Act. To determine whether the financial restructuring of the respondent in *DRAMS from Korea* involved a financial contribution by the Government of Korea (GOK), the Department employed a two-part test.<sup>134</sup> First, the Department examined whether the GOK had in place during the relevant period a governmental policy to support the respondent's restructuring to keep it in operation.<sup>135</sup> Second, the Department considered whether evidence on the record established a pattern of practice on the part of the GOK to act upon that policy to entrust or direct lending decisions as part of the restructuring.<sup>136</sup> We have applied the two-part test below and find that information on the record does not indicate that Steinweg or Amit were entrusted or directed by the GSO to provide a financial contribution.<sup>137</sup>

#### 1. GSO Policy Toward Oman Fasteners

The Department issued several supplemental questionnaires and examined at verification the GSO policies with regard to the subleasing of its land through private entities and found that

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<sup>129</sup> *Id.* at 11; *see* GSQR1 at 14.

<sup>130</sup> *See* GSQR1 at 15-20.

<sup>131</sup> *Id.* at Appendix S-7.

<sup>132</sup> *See* GSO Verification Report at 2.

<sup>133</sup> *See* GSQR1 at 19.

<sup>134</sup> *See* *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at 49.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> The Department notes that *DRAMS from Korea* was reviewed and remanded by the CIT for the Department to consider evidence that an independent third party orchestrated Hynix's restructuring and was motivated by commercial considerations. *Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337, 1350-52 (Ct. Int'l Trade 2005). However, on remand the CIT sustained Commerce's explanation dismissing such evidence. *See Hynix Semiconductor Inc. v. United States*, 425 F. Supp. 2d 1287, 1301-05 (Ct. Int'l Trade 2006).

there is no GSO policy to support Oman Fasteners in place during the POI. Petitioner asserts that Article 18 of the Standard Industrial Management Regulations Law provides industrial enterprises certain “privileges,” including the “[a]llocation of a suitable plot of land” or “[l]easing of the industrial premises required for the industrial estate at competitive rates in industrial estates set up by the government.”<sup>138</sup> According to petitioner, the fact that the Department has already found this legal provision of land or leases of land by the GSO to be countervailable in *CWP from Oman* and, because Oman Fasteners is an industrial enterprise, the government policy supports Oman Fasteners which is evidence that part one of the Department’s analysis is satisfied.<sup>139</sup> We disagree with petitioner’s claim that the Department’s finding in *CWP Oman*, wherein the respondent leased land directly from the PEIE, is indicative of a GSO policy relating to Oman Fasteners’ subleases. In that case, the PEIE leased directly to a respondent, which is appropriately examined under section 771(5)(B)(i) of the Act. In contrast, in this investigation, the respondent leased land directly from private landlords and there is no record evidence indicating that the GSO had a policy of entrusting or directing the private companies to provide a financial contribution or pass along any savings to Oman Fasteners under section 771(5)(B)(iii) of the Act. In *DRAMS from Korea*, the Department examined whether record evidence showed that the GOK had a policy to assist the respondent. In its determination, the Department cited to evidence that demonstrated such government support:

Explicit support for Hynix was reflected at the highest levels of the GOK. In January 2001, a Blue House official was quoted as stating that “Hyundai is different from Daewoo. Its semiconductors and construction are {the GOK’s} backbone industries. These firms hold large market shares of their industries, and these businesses are deeply-linked with other domestic companies. Thus, these firms should not be sold off just to follow market principles.”<sup>140</sup>

In the instant case, record evidence does not indicate that the GSO had a similar policy to assist Oman Fasteners. Additionally, there is no record evidence of explicit support for Oman Fasteners by the GSO as there was in *DRAMS from Korea*. For instance, with respect to Oman Fasteners’ warehouse, there is no specific evidence that Amit was required to sublease its property to Oman Fasteners and to pass along any savings because Oman Fasteners possessed an industrial license under Article 18 of the SIMR.<sup>141</sup> Additionally, Oman Fasteners’ sublease did not indicate that Amit was expected to charge a specific rate to Oman Fasteners because Oman Fasteners possessed an industrial license.<sup>142</sup> Record evidence indicates that the renting of subleased land is not governed by established criteria found in laws, regulations, and other official documents and that the PEIE does not intervene in the setting of prices for subleases.<sup>143</sup> Instead of explicit government policies toward Oman Fasteners that would assist the company,

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<sup>138</sup> See Petitioner Case Brief at 11.

<sup>139</sup> *Id.*

<sup>140</sup> See *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at 50.

<sup>141</sup> See GSO Verification Report at 8 (sublease between Oman Fasteners and Amit); see also Oman Fasteners’ Verification Report at 13 (“Company officials stated that PEIE was neither directly nor indirectly involved with the negotiations of the contract terms and lease rates.”) and 10c (email regarding negotiations with Amit); see also GSQR2 at Appendix S-9 (leasing rights were assigned to Amit).

<sup>142</sup> See GSO Verification Report at 8 (sublease between Oman Fasteners and Amit).

<sup>143</sup> See GSQR1 at 18.

such as a maximum rental rate or a preferential rate, PEIE officials stated that the only rent control in the sublease is a *minimum* rental rate of 150 OMR per year.<sup>144</sup> PEIE officials also explained that the only internal directive from the Board of Directors of PEIE regarding rental rates for subleases is that three percent of the sub-lease fee must be remitted back to PEIE.<sup>145</sup>

Similarly, there is no specific evidence of any GSO or SIPC policy to assist Oman Fasteners through Steinweg. Record evidence does not demonstrate that Steinweg was obligated to sublease its factory to Oman Fasteners or to provide any savings to Oman Fasteners because of its industrial license under Article 18 of the SIMR or any other GSO policy.<sup>146</sup> According to Steinweg, subleasing of land by Steinweg is atypical and the arrangement with Oman Fasteners was “simply a business opportunity.”<sup>147</sup> Additionally, according to SIPC, subleasing of land is atypical in the Sohar Industrial Port and SIPC policies regarding subleasing do not restrict Steinweg to sublease only to companies with an industrial license or to charge specific rates.<sup>148</sup> According to Oman Fasteners and SIPC, SIPC does not have any say in the setting of the rates.<sup>149</sup> Record evidence indicates that the sublease agreement is a commercial agreement between Steinweg and Oman Fasteners and that the setting of the subleasing rates is not determined by established criteria found in law, regulations, and other official documents.<sup>150</sup> Further, record evidence indicates that there are no rent controls (*i.e.*, maximum rental rate) within the Sohar Industrial Port regarding the subleasing of land.<sup>151</sup> Accordingly, the Department finds that there is no evidence that there are any particular GSO policies or affirmative steps by the GSO to explicitly support Oman Fasteners or to demonstrate that Steinweg and Amit are obligated to sublease their land to Oman Fasteners pursuant to any specific GSO policy.

## 2. GSO Pattern of Practices

In *DRAMS from Korea*, the Department determined that:

{b}ased upon our review of the record, there are two types of evidence that support the conclusion that, pursuant to its policy objective to help Hynix, the GOK guided lending decisions as part of the restructuring process. First, there is evidence of government involvement in the restructuring, particularly through the government-owned or controlled banks that led the creditors committee and provided the vast bulk of financing.

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<sup>144</sup> See GSO Verification Report at 9.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 12 and VE-10 (email negotiations documented that Steinweg’s offer was greater than the sub-lease rates and that there was no evidence of any correspondence to or from SIPC in this email exchange); see GSQR1 at Appendix S-3(Steinweg Letter of No Objection), Appendix S-4 (letter concerning the extension of sublease); see also OIQR at Exhibit 9 (sublease with Steinweg).

<sup>147</sup> See GSO Verification Report at 11.

<sup>148</sup> *Id.* at 14-15.

<sup>149</sup> *Id.* at 11-12 (Steinweg noted that they did not, have not, and are under no obligations to SIPC to detail the contents of its sub-leasing contract with Oman Fasteners. And that there was no evidence of any correspondence to or from SIPC negotiations regarding rates.); see also GSQR1 at 11-12.

<sup>150</sup> See GSQR at 12.

<sup>151</sup> See GSO Verification Report at 15. For an elaboration of the record facts supporting this finding, which involves business proprietary information, see Final Calculation Memorandum.

Second, there is additional evidence that the government took steps to direct the lending decisions of the private bank participants.<sup>152</sup>

Based upon the types of evidence referred to in *DRAMS from Korea*, the Department does not find here a pattern of GSO practices that demonstrates government involvement in the private landlords' subleasing process or that the GSO took steps to direct the subleasing decisions of Steinweg and Amit. Petitioner argues that the GSO exerts some degree of control over the subleases because both the private landlords need approval from the SIPC and PEIE to sublease property to Oman Fasteners and that PEIE "carries out visits" to ensure compliance with the terms of the lease with PEIE.<sup>153</sup> We find, however, that these rights and duties were not necessitated by any government policy or initiative related to assisting Oman Fasteners. Rather, we agree with Oman Fasteners that these rights and obligations are consistent with general landlord rights and obligations in many landlord/tenant agreements, public and private, and that these actions do not demonstrate meaningful government involvement to entrust or direct the carrying out of particular government policies; furthermore, there is no evidence of government interference or restriction on Amit's and Steinweg's efforts to identify potential tenants or to negotiate prices with those prospective tenants.

In *Retail Carrier Bags from Vietnam*, in the context of addressing whether the government's provision of land provided a countervailable subsidy because the landlord was a private company, the Department determined that "entrustment and direction" under section 771(5)(B)(iii) of the Act did not exist between the GOV and the private company because record evidence did not indicate that the private company was obligated or even expected to pass whatever savings they enjoy along to their tenants.<sup>154</sup> Additionally, the extent of the GOV's involvement in industrial zone planning, approval of Infrastructure Development Company (IDC) applications, *etc.*, could not overcome the lack of any evidence that private IDCs are not free to negotiate prices with their tenants without government interference or restrictions.<sup>155</sup>

Similar to *Retail Carrier Bags from Vietnam*, information examined at verification does not demonstrate that Amit and Steinweg were obligated or even expected to sublease land to any party, much less any particular party, or to charge rental rates that passed along whatever savings they enjoyed.<sup>156</sup> Further, the GSO's minimal involvement in the subleasing process does not overcome the lack of evidence that the private landlords were not free to negotiate prices without government interference or restriction. Unlike leases directly with PEIE which have standard lease terms of 25 years with a rate of 500 baiza per square meter for companies with industrial licenses,<sup>157</sup> subleases with private landlords do not have standard subleasing terms or general directives that require private landlords to sublease land to companies with industrial licenses.<sup>158</sup> With respect to Steinweg and Amit, correspondence with Oman Fasteners demonstrates that there were negotiations between the two parties that reflect each party's effort to reach an

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<sup>152</sup> See *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at 50.

<sup>153</sup> See Petitioner Case Brief at 11-13.

<sup>154</sup> See *Retail Carrier Bags from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 8.

<sup>155</sup> *Id.*

<sup>156</sup> See GSO Verification Report at 8-15.

<sup>157</sup> *Id.* at 7.

<sup>158</sup> *Id.* at 9.

agreement that served its interests.<sup>159</sup> As such, the record shows that Amit and Steinweg were able to freely negotiate prices without government interference and restriction, as reflected in the negotiations, which are indicative of arm's-length commercial negotiations.<sup>160</sup> Additionally, record evidence indicates that Amit and Steinweg were able to act independently of the GSO. For instance, there is no indication Steinweg was required to obtain approval from SIPC for the terms of the agreements, including the rates, it reached with Oman Fasteners.<sup>161</sup>

Petitioner argues that SIPC admitted that it has “less participation in the subleasing process” and that it is reasonable to infer that less participation indicates some level of control.<sup>162</sup> We are not persuaded by this argument because record evidence indicates that Steinweg is not required to disclose or provide the sublease agreements to SIPC. According to Steinweg, “they did not, have not, and are under no obligation to SIPC to detail the contents of its sub-leasing contracts with Oman Fasteners.”<sup>163</sup> Thus, we find that the record does not demonstrate a pattern of sufficient GSO involvement or control in Amit and Steinweg’s subleasing process or that the GSO took steps to direct the subleasing decisions of Steinweg and Amit.

Based on the foregoing, we continue to find that there is no financial contribution with respect to the provision of land in this case.

#### **Comment 4: Whether the Department Should Use an External Benchmark for Developed Land in Order to Calculate the Benefit for Land for LTAR**

Petitioner argues there is no Tier 1 benchmark or equivalent “market” rate for privately owned land and warehouses that are suitable for use by an industrial enterprise needing access to the port.<sup>164</sup> Petitioner states the Department must rely on an external benchmark because, by the GSO’s own admission, all industrial land in Oman is government-owned.<sup>165</sup> Petitioner further states that there is information in the record about warehouse rental prices in a number of Asian and Pacific countries, from sources that are consistent with sources for external land benchmarks used by the Department in prior investigations.<sup>166</sup> Petitioner urges the Department to rely on

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<sup>159</sup> *Id.* at 12 and VE-10; *see also* Oman Fasteners Verification Report at 10c.

<sup>160</sup> *See* GSO Verification Report at 8 (sublease with Amit); *see also* Oman Fasteners Verification Report at 13 (“Company officials stated that PEIE was neither directly or indirectly involved with the negotiations of the contract terms and lease rates.”) and 10c (email regarding negotiations with Amit); *see also* GSQR2 at Appendix S-9 (leasing rights were assigned to Amit); *see also* GSO Verification Report at 12 and VE-10 (email negotiations documented that Steinweg’s offer was greater than the sub-lease rates and that there was no evidence of any correspondence to or from SIPC in this email exchange); *see also* OIQR at Exhibit 9 (sublease with Steinweg). For an elaboration of the record facts supporting this finding, which involves business proprietary information, *see* Final Calculation Memorandum.

<sup>161</sup> *See* GSQR1 at 11-12; *See* GSO Verification Report at 11-12 (Steinweg noted that they did not, have not, and are under no obligations to SIPC to detail the contents of its sub-leasing contract with Oman Fasteners. And that there was no evidence of any correspondence to or from SIPC negotiations regarding rates).

<sup>162</sup> *See* Petitioner Case Brief at 12.

<sup>163</sup> *See* GSO Verification Report at 11-12.

<sup>164</sup> *See* Petitioner Case Brief at 15.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

such information for New Zealand, because World Bank data indicates that the per capita GNI of New Zealand is closest to that of Oman.<sup>167</sup>

In rebuttal, Oman Fasteners contends that the statute, the Department's regulations, and case precedent would require the Department to use an Omani benchmark.<sup>168</sup> In *CWP from Oman*, for example, where the respondent directly leased land in the PEIE, the Department applied an in-country benchmark of 0.5 OMR per square meter.<sup>169</sup> Oman Fasteners argues that the GSO has confirmed on the record that this rate reflects market conditions for industrial land outside of the PEIE in this investigation.<sup>170</sup> Measured against the requisite benchmark, Oman Fasteners claims the record shows that Oman Fasteners received no benefit.<sup>171</sup>

Department's Position: As explained in Comment 3 above, the Department has determined that the Provision of Land for LTAR does not provide a financial contribution. Therefore, the issue of the appropriate benchmark for measuring a benefit to Oman Fasteners is moot.

### **Comment 5: Whether the LTAR Land Program is Specific**

Petitioner argues this program is specific because only companies that possess an industrial license are eligible to participate.<sup>172</sup> Despite the GSO's attempts to describe the process as "automatic" for companies with an industrial license, petitioner maintains that the Department has already determined that tariff exemptions are *de jure* specific on this basis, as "they are expressly limited to certain enterprises or industries, 'industrial enterprises', and not included, for example, are enterprises that mined or extracted raw materials but did not convert them into semi-finished or finished products."<sup>173</sup> As such, on the same basis, the Department must determine that the Provision of Land for LTAR is *de jure* specific.

In rebuttal, Oman Fasteners argues that the alleged land program is not specific under U.S. countervailing duty law because leases are available to all industries.<sup>174</sup>

Department's Position: As explained in Comment 3 above, the Department has determined that the Provision of Land for LTAR does not provide a financial contribution. Therefore, the issue of whether this program is specific is moot.

### **Comment 6: Whether Oman Fasteners is Currently Receiving an Income Tax Forgiveness**

Petitioner claims that Oman Fasteners received an exemption of its income tax due for tax year 2013, and that good cause exists for the Department to include in this final determination Oman

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<sup>167</sup> *Id.* at 15-16.

<sup>168</sup> *See* Oman Fasteners' Rebuttal Brief at 18.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 19-20.

<sup>172</sup> *See* Petitioner Case Brief at 16.

<sup>173</sup> *Id.* (quoting *CWP from Oman*, and accompanying Issues and Decision Memorandum at 8).

<sup>174</sup> *See* Oman Fasteners Rebuttal Brief at 25.

Fasteners' 2013 income tax exemption.<sup>175</sup> According to petitioner, three reasons support the Department's exercise of discretion in this regard:

First, the company was formed just months before the start of the POI, and so it was eligible for only a small subsidy during the POI {i.e., because its taxable income for tax year 2012, its first year of operation, was small, the exemption of the applicable tax would provide only a small subsidy}. However, income from its production during 2013, the POI, and afterwards would be much larger, and the exemption of the tax would provide a larger subsidy. According to petitioner, this unusual circumstance counsels against a blind application of the "normal" rules.<sup>176</sup>

Second, Oman Fasteners' business activities in 2013 were conducted in light of the subsidy that the company knew it would be eligible to receive based on those activities.<sup>177</sup>

Third, the countervailing duty law is framed in the present tense; if a government "is providing" subsidies, and injury is found, then a countervailable duty must be imposed. In this case, the record establishes that countervailable subsidies are being provided to Oman Fasteners.<sup>178</sup>

On this latter point, petitioner contends that the "wrinkle" in this case is that a subsidy is being provided and has been provided to Oman Fasteners that is attributable to production of subject merchandise during the POI, but it "normally" would be considered to have been received after the POI. Petitioner contends that if the Department fails to take this into account, the result will be a negative final determination, notwithstanding a record that clearly establishes the *current* provision of countervailable subsidies above a *de minimis* level; petitioner opines that it would contravene the statute if the Department did not take this program into account, even if doing so requires a deviation from the "normal" approach the Department takes to recognizing the timing of the receipt of a benefit.

In rebuttal, Oman Fasteners contends that the Department has consistently rejected arguments to ignore the clear regulatory basis for determining the timing of a tax exemption benefit (*i.e.*, the year such taxes are due and payable) regardless of the alleged "extraordinary circumstances."<sup>179</sup> Oman Fasteners cites to *Warmwater Shrimp from China*<sup>180</sup> and *Drill Pipe from China*<sup>181</sup> as examples of the Department's practice and rejection of arguments that the practice regarding the

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<sup>175</sup> See Petitioner Case Brief at 18-21.

<sup>176</sup> *Id.* at 19.

<sup>177</sup> *Id.* at 19-20.

<sup>178</sup> *Id.* at 20.

<sup>179</sup> See Oman Fasteners Rebuttal Brief at 22-23.

<sup>180</sup> See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum at Comment 12 (*Warmwater Shrimp from China*).

<sup>181</sup> See *Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 12 (*Drill Pipe from China*).

timing of a tax exemption benefit should be ignored because of alleged “extraordinary” circumstances.<sup>182</sup> Moreover, Oman Fasteners contends that the record demonstrates that Oman Fasteners in fact neither applied for nor received any tax exemption during the POI.<sup>183</sup> Furthermore, Oman Fasteners claims that petitioner’s interpretation of the “temporal” aspect of the statute would render the Department’s investigation of a particular time period meaningless, a position it contends is supported by the *Preamble* and by 19 CFR 351.509(b)(1).<sup>184</sup> Finally, Oman Fasteners and the GSO argue that the alleged subsidy is not specific,<sup>185</sup> as demonstrated by Article 118 of the Income Tax Law which shows that the following are eligible for an income tax exemption: industrial companies, mining companies, hotels and tourist villages, farming, fishing, education, and medical care.<sup>186</sup>

OISI argues that, contrary to petitioner’s claim, the situation at hand does not warrant recognizing an income tax exemption subsidy.<sup>187</sup> The fact that Oman Fasteners is a fairly new company and paid a small amount of taxes is not relevant to the Department’s subsidy analysis. Nor is the fact that Oman Fasteners chose not to receive an income tax exemption.<sup>188</sup> The fact that a subsidy may be provided on a date outside of the POI is not relevant because the Department conducts its analysis and develops an administrative record based upon a specific POI.<sup>189</sup>

**Department’s Position:** There is no evidence that Oman Fasteners received an income tax exemption during the POI. Under 19 CFR 351.509(b)(1), the Department will consider the benefit of a tax exemption or remission as having been received:

normally ...on the date on which the firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

As further discussed in the *Preamble*,<sup>190</sup> the Department’s goal is to equate the timing of receipt of the benefit with the date the firm knew the amount of its tax liability, and for this reason the Department decided that it will “consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission, which is usually the date it files its tax return.”<sup>191</sup> In *Wire Decking from China*, the Department further explained that, based on its experience, the date on which a firm knows its tax liability is normally the day on which its files its tax return:

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<sup>182</sup> See Oman Fasteners Rebuttal Brief at 22-23.

<sup>183</sup> *Id.* at 22.

<sup>184</sup> *Id.* at 24-25.

<sup>185</sup> *Id.* at 22; see also GSO Rebuttal Brief at 7.

<sup>186</sup> See GSO Rebuttal Brief at 7.

<sup>187</sup> See OISI Rebuttal Brief at 5-7.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> See *Preamble*, 63 FR at 65376.

<sup>191</sup> Further, section 351.509(c) of the regulations indicates that, for purposes of expensing the tax benefit, the Department will expense the tax exemption, remission, or deferral to the year in which the benefit is considered to have been received, which is the date on which the firm filed its tax return during the period of review or investigation.

...tax savings that DHMP ultimately realizes under the two free, three half program for tax year 2009, will not be finalized until the firm files its 2009 tax return, which will occur during calendar year 2010. It is for this reason that the Department normally equates the timing of receipt of income tax benefits with the date on which the recipient firm files its tax return because it is at that time that savings under income tax subsidy programs are definitively known.<sup>192</sup>

The Department recently applied this same approach in *Warmwater Shrimp from China* despite the respondent's similar arguments that the Department should revise its methodology to calculate the benefit related to tax exemptions based upon respondent's quarterly tax filings made during the POI, even though the final tax liability on the profit generated during the POI was not known and finalized until the annual tax return was filed the year after the POI.<sup>193</sup> Thus, we find that the Department's decision in the *Preliminary Determination*, that Oman Fasteners did not receive an income tax exemption during the POI, is consistent with the *Preamble*, 19 CFR 351.509(b)(1), and our previous practice.

We disagree with petitioner that the company's "unusual" status as a newly-formed company warrants a deviation from the consistency and predictability of our regulations and longstanding practice. In *Drill Pipe from China*, for instance, the respondent suggested that the Department modify its practice because of a significant fluctuation in sales and taxes owed due to severe market changes. According to the respondent, the standard calculation methodology did not take into consideration market conditions and it produced a skewed net subsidy rate. However, the Department continued to apply the approach described under 19 CFR 351.509(b)(1) because the Department's goal is to equate the timing of receipt of the benefit with the date the firm knew the amount of its tax liability.<sup>194</sup>

We recognize that Oman Fasteners did not pay the income tax that was due during the POI. However, Oman Fasteners was not granted an exemption from paying its income tax that was due during the POI. Oman Fasteners had incorrectly assumed that the income tax exemption available under this program was automatic, and that companies eligible for the exemption are not required to file a tax return.<sup>195</sup> At the time that Oman Fasteners' audited financial statements were being prepared, Oman Fasteners learned that in order to be granted a tax exemption it must apply for and obtain a certificate from the GSO granting the income tax exemption.<sup>196</sup> As such, Oman Fasteners' audited financial statements report "income tax" expenses on its income statement for tax year 2012 and 2013.<sup>197</sup>

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<sup>192</sup> See *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 21 (*Wire Decking from China*).

<sup>193</sup> See *Warmwater Shrimp from China*, and accompanying Issues and Decision Memorandum at Comment 12.

<sup>194</sup> See *Drill Pipe from China*, and accompanying Issues and Decision Memorandum at Comment 12.

<sup>195</sup> See Oman Fasteners Verification Report at 15-16.

<sup>196</sup> *Id.* at 16.

<sup>197</sup> See Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners' 2013 Audited Financial Statements," dated September 18, 2014 (Oman Fasteners 2013 Audited FS).

With regard to the income tax that was otherwise due during the POI (for tax year 2012), Oman Fasteners did prepare and file a return during 2014, which had been due on June 30, 2013.<sup>198</sup> Because the tax return and the associated tax payment were late, Oman Fasteners was subject to an additional tax.<sup>199</sup> We reviewed documents at verification showing that Oman Fasteners filed its return for tax year 2012 and paid an additional tax.<sup>200</sup> Therefore, the record shows that Oman Fasteners did not receive an exemption from income tax during the POI.

Petitioner argues that the statute requires the Department to find that a countervailable subsidy was provided to Oman Fasteners in the form of future income tax exemptions. Petitioner's interpretation of the statute is misplaced on two bases. First, petitioner mistakenly contends that if a government *is* (emphasis added) providing a countervailable subsidy, a countervailable duty must be imposed, regardless of whether there is evidence that the respondent actually received a benefit during the POI. In the instant case, we find that no tax exemption was provided to Oman Fasteners during the POI, the necessary focus of our investigation. Thus, Oman Fasteners did not receive a benefit during the POI and there is no basis for imposing a duty. Petitioner relies on a narrow subsection of the statute, but the statute must be read as a whole and together as interpreted by the Department's regulations; the Department's regulations explicitly direct the Department to identify a tax subsidy during a particular period.<sup>201</sup> We agree with Oman Fasteners that petitioner's interpretation would render the Department's investigation of a particular time period meaningless. As stated in the *Preamble*:

It has been our longstanding practice to impose (or not to impose) a CVD order based exclusively on the subsidy rate in effect during the period of investigation. In *Pipe and Tube from Malaysia*, where the period of investigation rate was zero, we rendered a negative determination, even though we knew other benefits existed after the period of investigation.<sup>202</sup>

While this discussion in the *Preamble* relates to 19 CFR 351.526 regarding program-wide changes, this rationale applies equally here, where petitioner is urging the Department to investigate a "theoretical possibility that Oman Fasteners may *at some future time* apply for and receive benefits under that regime."<sup>203</sup>

The second basis on which petitioner's interpretation of the statute is misplaced is in urging the Department to impose a duty based on the possibility that Oman Fasteners will receive a countervailable tax exemption in the future. The company established that it did not receive an exemption for tax year 2012 and its audited financial statements and prepared tax documents for 2013 indicated that Oman Fasteners will not be exempt from tax for 2013. The audited financial

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<sup>198</sup> See Oman Fasteners Verification Report at 15-16; see also OSQR1 at S-1.

<sup>199</sup> See Oman Fasteners Verification Report at 15-16; see also OSQR1 at S-1.

<sup>200</sup> See Oman Fasteners Verification Report at 15-16.

<sup>201</sup> 19 CFR 351.509(b)(1).

<sup>202</sup> See *Preamble*, 63 FR at 65404 (citing *Final Negative Countervailing Duty Determinations; Standard Pipe, Line Pipe, Light-walled Rectangular Tubing and Heavy-walled Rectangular Tubing From Malaysia*, 53 FR 46904, 46906 (November 21, 1988)).

<sup>203</sup> See Oman Fasteners Rebuttal Brief at 24.

statements show a line item for “taxes payable,”<sup>204</sup> and the prepared tax documents for tax year 2013 that we reviewed at verification indicate that Oman Fasteners will pay income tax for its earnings during 2013. Whether Oman Fasteners will enjoy an income tax exemption in future years is not an issue before the Department. We cannot identify or measure a subsidy that has not yet been bestowed. Moreover, even if we can anticipate that the GSO will, in the future, confer a benefit on Oman Fasteners, any analysis of the financial contribution or specificity of that benefit would be purely speculative at this time. Therefore, we cannot calculate a CVD rate or impose a countervailing duty for an alleged subsidy that may occur after the POI.

### **Comment 7: Whether the Provision of Electricity for LTAR at the Commercial Rate is Specific**

Oman Fasteners argues that, in addition to preliminarily finding that the Provision of Electricity for LTAR did not provide a benefit to the company because Oman Fasteners is paying a rate equal to the benchmark used in *CWP from Oman*, the Department should also find that the provision of electricity at the commercial rate is not specific because it is available to any business in Oman.

No other interested party commented on this issue.

Department’s Position: As explained above under “Provision of Electricity for LTAR,” we have determined that Oman Fasteners, the only respondent, did not receive a benefit during the POI from the GSO provision of electricity for LTAR. Consequently, the issue of whether the program is specific is moot.

### **Comment 8: Whether to Include Oman Fasteners’ Scrap Sales in the Total Sales Value**

Oman Fasteners and OISI argue that the Department should revise Oman Fasteners’ sales denominator to include sales of scrap.<sup>205</sup> According to Oman Fasteners, because all of Oman Fasteners’ scrap sales relate to the production of steel nails, the Department is required by 19 CFR 351.525(b)(3) to include in the sales denominator for domestic subsidies “all products sold by a firm, including products that are exported.”<sup>206</sup> Further, in *OCTG from China*,<sup>207</sup> the Department found that scrap sales should be included in the sales denominator.<sup>208</sup>

Petitioner contends that the Department correctly excluded the value of steel scrap.<sup>209</sup> According to petitioner, 19 CFR 351.525(b)(3)<sup>210</sup> requires the denominator to include the sales of “all products sold by a firm, including products that are exported,” and because Oman Fasteners is

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<sup>204</sup> See Oman Fasteners 2013 Audited FS.

<sup>205</sup> See Oman Fasteners Case Brief at 14-15; see also OISI Rebuttal Brief at 4.

<sup>206</sup> See Oman Fasteners Case Brief at 14-15; see also OISI Rebuttal Brief at 4.

<sup>207</sup> See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances*, 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at Comment 36 (*OCTG from China*).

<sup>208</sup> See Oman Fasteners Case Brief at 15; see also OISI Rebuttal Brief at 4.

<sup>209</sup> See Petitioner Rebuttal Brief at 7.

<sup>210</sup> *Id.* The Department notes that petitioner cited to 19 CFR 351.210(b)(3) in its rebuttal brief, but based on its quoted language, the Department understands that petitioner intended to cite to 19 CFR 351.525(b)(3).

not in the business of selling scrap as a product or coproduct of steel nail production, such sales should not be included in the denominator.<sup>211</sup> Petitioner contends that any revenue that is generated by sales of scrap is properly considered to be a reduction in the cost of producing steel nails rather than sales revenue from a coproduct of steel nails.<sup>212</sup>

Department's Position: We disagree with petitioner's claim that revenue obtained from steel scrap should be excluded from the sales denominator because Oman Fasteners is not in the business of selling scrap as a product or coproduct of steel nail production. As provided by 19 CFR 351.525(b)(3), in attributing a subsidy to one or more products, "{t}he Secretary will attribute a domestic subsidy to all products sold by a firm, including products that are exported." In *OCTG from China*, the Department determined that steel scrap sales should be included in the total sales figure according to 19 CFR 351.525. In *OCTG from China*, the respondent was not in the business of selling scrap and the total sales figure was inclusive of "other business income," which included sales of scrap, coal sales, processing fees and other income. Similar to *OCTG from China*, Oman Fasteners is not in the business of selling steel scrap and its "other income" consists of steel scrap sales. Furthermore, the regulations require us to include "all products sold by a firm," and, as such, we include the scrap sales regardless of whether they relate to the production of subject merchandise. It is circumstantial that Oman Fasteners produces only subject merchandise. Consistent with 19 CFR 351.525(b)(3) and *OCTG from China*,<sup>213</sup> for the final determination, we are attributing subsidies to all products (nails and steel scrap) sold by Oman Fasteners and we have included scrap sales in the sales denominator used to calculate the subsidy rate.<sup>214</sup>

#### **Comment 9: Whether the Department Should Deduct Marine Insurance from Oman Fasteners' Total Sales Value**

Petitioner argues that the Department should recalculate the FOB value of Oman Fasteners' sales to remove the value of marine insurance. Further, the Department should use this corrected value as the denominator to calculate the subsidy rates for any programs found countervailable in the final determination.<sup>215</sup>

No other interested party commented on this issue.

Department's Position: As provided in 19 CFR 351.525(a), when calculating the *ad valorem* countervailable subsidy rate for a respondent: "{n}ormally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption)." In the *Preliminary Determination*, the Department calculated Oman Fasteners' *ad valorem* countervailable subsidy rate using the value that Oman Fasteners reported as the FOB (port) value for its export sales.<sup>216</sup>

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See *OCTG from China* at Comment 36.

<sup>214</sup> For a more detailed discussion, see Final Calculation Memorandum.

<sup>215</sup> See Petitioner Case Brief 1-2.

<sup>216</sup> See Letter from Oman Fasteners, "Certain Steel Nails from Oman; CVD Investigation; Oman Fasteners' Third Supplemental Response," dated October 21, 2014 (OSQR3) at Exhibit S3-1; see also Preliminary Decision Memorandum at 7.

