



A-520-804  
Administrative Review  
POR: 05/01/2014 - 04/30/2015  
Public Document  
AD/CVD I: BH

June 3, 2016

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

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

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review; 2014-2015: Certain Steel Nails from  
the United Arab Emirates

---

## **SUMMARY**

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the United Arab Emirates (UAE). The review covers five producers/exporters of the subject merchandise, Dubai Wire FZE (Dubai Wire), Oman Fasteners LLC (Oman Fasteners), Overseas Distribution Services Inc. (ODS), Overseas International Steel Industry LLC (OISI), and Precision Fasteners LLC (Precision). The period of review (POR) is May 1, 2014, through April 30, 2015. We preliminarily find that ODS and Dubai Wire sold subject merchandise at less than normal value in the United States and that Oman Fasteners, OISI, and Precision had no shipments during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue the final results within 120 days from the date of publication of these preliminary results, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

## **BACKGROUND**

On May 1, 2015, the Department published a notice of opportunity to request an administrative review of the order.<sup>1</sup> On May 29, 2015, pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b), Mid Continent Steel & Wire, Inc. (the petitioner), as an interested party within the

---

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 24898 (May 1, 2015).



meaning of section 771(9) of the Act, filed a request for an administrative review of the AD order on nails from the UAE with respect to five companies.<sup>2</sup> On July 1, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the AD order on nails from the UAE.<sup>3</sup> On July 24, 2015, pursuant to section 777A(c)(2) of the Act, we selected ODS for individual examination in this administrative review.<sup>4</sup>

We extended the original deadline for these preliminary results until May 31, 2016.<sup>5</sup> As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review is now June 3, 2016.<sup>6</sup>

## **SCOPE OF THE ORDER**

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75. On April 16, 2012, the Department added classification number 7806.00.80.00 and 7907.00.60.00 to the customs case reference file pursuant to a request by U.S. Customs and Border Protection (CBP).

---

<sup>2</sup> See Letter to the Secretary of Commerce, regarding “Certain Steel Nails from the United Arab Emirates: Request for Third Administrative Review (2014-2015)” dated May 29, 2015.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015).

<sup>4</sup> See Memorandum to James Maeder, Senior Director, AD/CVD Operations, “Certain Steel Nails from the United Arab Emirates: Selection of Respondents for Individual Examination; 2014-2015” dated July 24, 2015.

<sup>5</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Maeder, Senior Director, Antidumping and Countervailing Duty Operations, Office I, “Certain Steel Nails from the United Arab Emirates: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015” dated January 5, 2016.

<sup>6</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas” dated January 27, 2016.

Excluded from the scope of this order are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this order are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.<sup>7</sup>

---

<sup>7</sup>The HTSUS numbers provided in the scope changed since the publication of the *Order*.

## PRELIMINARY DETERMINATION OF NO SHIPMENTS

The Department received timely submissions from Oman Fasteners, OISI, and Precision, each reporting to the Department that it did not sell or export the subject merchandise to the United States during the POR.<sup>8</sup> CBP data for the POR corroborated the no-shipments claims of these companies.<sup>9</sup> Additionally, we requested that CBP report any contrary information.<sup>10</sup> To date, CBP has not responded to our inquiry with any contrary information and we have not received any evidence that these companies had any shipments of the subject merchandise sold to the United States during the POR.<sup>11</sup> Consistent with the Department's practice regarding no shipment claims, we are completing the review with respect to these companies and will issue appropriate instructions to CBP based on the final results of the review.<sup>12</sup>

## RATE FOR RESPONDENT NOT SELECTED FOR INDIVIDUAL EXAMINATION

Dubai Wire was not selected for individual examination in this review and did not submit a no shipment letter. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.<sup>13</sup>

In this review, we calculated a weighted-average dumping margin above zero or *de minimis* for the sole respondent selected for individual examination. Based on this, and analogous to the statutory provision concerning investigations, we determine that a reasonable method for determining the weighted-average dumping margin for Dubai Wire in this review is to assign the rate calculated for ODS.

---

<sup>8</sup> See letters filed by Oman, OISI, and Precision to the Secretary of Commerce, regarding "Certain Steel Nails from the United Arab Emirates; 3rd AD Review; Oman Fasteners Notice of No Sales," regarding "Certain Steel Nails from the United Arab Emirates: 3<sup>rd</sup> AD Review," and regarding "Certain Steel Nails from the United Arab Emirates; 3rd AD Review; Precision Notice of No Sales," respectively, dated July 31, 2015.

<sup>9</sup> See the CBP data attached to the memorandum to the file, "Certain Steel Nails from the United Arab Emirates – placing CBP Data on the record of this review" dated July 9, 2015.

<sup>10</sup> See CBP message numbers 6012303, 6012304, and 6012305 dated January 12, 2016, available at <http://adcvd.cbp.dhs.gov/adcvdweb/>.

<sup>11</sup> CBP only responds to the Department's inquiry when there are records of shipments from the company in question. See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 65453, 65454 (October 25, 2010).

<sup>12</sup> See, e.g., *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

<sup>13</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and the accompanying Issues and Decision Memorandum at Comment 16.

## DISCUSSION OF THE METHODOLOGY

### A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether ODS' sales of the subject merchandise from the UAE to the United States were made at less than normal value (NV), the Department compared the export price (EP) to the NV as described in the "U.S. Price" and "Normal Value" sections of this memorandum.

#### 1. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>14</sup>

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>15</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or constructed export prices (CEPs)) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all EPs by purchaser, region and time period to determine whether a pattern of prices that differ

---

<sup>14</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

<sup>15</sup> See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should

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

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

## 2. *Results of the Differential Pricing Analysis*

For ODS, based on the results of the differential pricing analysis, the Department preliminarily finds that 75.06 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>16</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.<sup>17</sup> Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for ODS.<sup>18</sup>

### B. Product Comparisons

Because ODS had no viable comparison market, we made product comparisons using constructed value (CV), as discussed in the "Calculation of Normal Value Based on Constructed Value" section of this memorandum, below.

---

<sup>16</sup> See Memorandum to the File "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates; 2014-2015 – Preliminary Results Analysis Memorandum for Overseas Distribution Services Inc." dated concurrently with and hereby incorporated by this memorandum (Preliminary Analysis Memorandum).

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

<sup>18</sup> *Id.*

### C. Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, we will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

With respect to its U.S. EP sales, ODS reported invoice date as the date of sale because the invoice contains the final terms of sale, and it is used in the normal course of business in ODS's accounting records and in its financial statements.<sup>19</sup> ODS further reported that, because nails are a made-to-order, the material terms of sale did not normally change beyond the receipt of the purchase order from the customer and that, if any changes are made, a new purchase order is issued.<sup>20</sup> Because such facts suggest that the material terms of sale (*i.e.* quantity and/or value) were established between ODS and its customer on the date of the purchase order, prior to the invoice date, the Department requested that ODS provide copies of the revised purchase orders, for instances where changes to the material terms of sale were made after receipt of the original purchase order, which reflect the final material terms of sale.<sup>21</sup> In response, ODS confirmed that there are, indeed, instances of changes to the material terms of sale; it does not keep track of the date when a change occurs to the original purchase order and provided example documentation which confirmed that purchase order records retain the original purchase order date, even when the material terms changed after that date.<sup>22</sup>

Thus, because record evidence does not demonstrate definitively that the material terms of sale were established on another date, ODS' commercial invoice contains the final terms of sale for sales, is used in the normal course of business in ODS's accounting records and in its financial statements, and we found that there were instances where the material terms changed after receipt of the original purchase order, we used invoice date as the date of sale for all U.S. EP sales, which is consistent with our regulatory presumption for invoice date as the date of sale.<sup>23</sup>

### D. U.S. Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)" of section 772 of the Act.

---

<sup>19</sup> See ODS' section A questionnaire response dated September 10, 2015 at A-16 and A-17, section C questionnaire response dated September 28, 2015, at 18, and the ODS sales and cost verification report dated April 13, 2016, and ODS' letter to the Secretary of Commerce regarding "Certain Steel Nails from the United Arab Emirates: Verification Exhibits" dated March 19, 2016 (collectively, Verification Report) at 6-7; *see also* Preliminary Analysis Memorandum.

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

<sup>21</sup> See the Department's 3rd supplemental questionnaire dated April 13, 2016.

<sup>22</sup> See ODS' response to the Department's 3<sup>rd</sup> supplemental questionnaire dated April 20, 2016, at 8-9.

<sup>23</sup> See 19 CFR 351.401(i).

We calculated EP for purposes of these preliminary results, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was first sold in the country of manufacture (*i.e.*, UAE) to an unaffiliated purchaser prior to importation and CEP was not otherwise warranted based on the facts of record. Therefore, with respect to ODS' reported EP sales, we calculated EP based on the price to unaffiliated purchasers in the United States, taking into account the reported terms of delivery. We made adjustments for certain bank charges, quality returns, and credit expenses, as appropriate. We also made deductions for certain foreign inland freight, foreign brokerage and handling, international freight, and U.S. customs fees for customs clearance, merchandise processing, and harbor maintenance, in accordance with section 772(c)(2)(A) of the Act.<sup>24</sup>

## E. Normal Value

### 1. *Home Market Viability and Comparison Market*

Section 773(a)(1) of the Act and 19 CFR 351.404(b)(2) state that a home market (HM) is viable if the aggregate quantity of HM sales of the foreign like product is equal to five percent or more of the aggregate quantity of U.S. sales of subject merchandise. Also, pursuant to section 773(a)(1)(B)(i) of the Act, the Department may base NV on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, is in the usual commercial quantities and in the ordinary course of trade. ODS reported that it had no sales of the foreign like product in its HM or sales of comparable merchandise in a third country during the POR.<sup>25</sup> We preliminarily determined that ODS has no viable comparison markets. As such, we preliminarily based NV for ODS on CV.<sup>26</sup>

### 2. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>27</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>28</sup> To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether HM sales are at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

---

<sup>24</sup> See Preliminary Analysis Memorandum.

<sup>25</sup> See ODS' Section A questionnaire response dated September 10, 2015, at A-2.

<sup>26</sup> See 773(a)(4) of the Act.

<sup>27</sup> See 19 CFR 351.412(c)(2).

<sup>28</sup> *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>29</sup> When we are unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, we may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different LOTs in the market in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, we grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>30</sup>

Because ODS had no viable home or third-country market during the POR, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general and administrative expenses (G&A) and profit. In accordance with 19 CFR 351.412(d), where possible the Department will make its LOT determination under paragraph (d)(1) of that section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in this case to make an LOT determination on the basis of sales of the foreign like product in the home or third-country market, the Department may use sales of different or broader product lines, sales by other companies, or any other reasonable basis. Because we based the selling expenses and profit for ODS on selling expenses incurred and profits earned by ODS' affiliate, OISI, and another nail producer L.S. Industry Co., Ltd. (L.S. Industry), as discussed further below in section entitled "Calculation of Normal Value Based on Constructed Value," record evidence indicates that OISI's selling activities with respect to its sales of nails is almost identical to that of ODS, and we could not determine the LOT of the sales from which we derived selling expenses and profit from L.S. Industry for CV. Therefore, we did not make a LOT adjustment to CV in these preliminary results.<sup>31</sup>

### 3. *Calculation of Normal Value Based on Constructed Value*

In accordance with section 773(a)(4) of the Act, we based ODS' NV on CV because ODS had no viable home or third-country markets.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of ODS' cost of materials and fabrication employed in producing the subject merchandise, plus amounts for G&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on information submitted by ODS in its original and supplemental questionnaire responses.

Because ODS does not have a comparison market, the Department cannot determine selling expenses and profit under section 773(e)(2)(A) of the Act, which requires sales by the

---

<sup>29</sup> See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

<sup>30</sup> See *Plate from South Africa*, 62 FR at 61732-33.

<sup>31</sup> See Preliminary Analysis Memorandum.

respondent in question in the ordinary course of trade in a comparison market. Therefore, we have relied on section 773(e)(2)(B) of the Act to determine ODS' selling expenses and profit. In situations where selling expenses and profit cannot be calculated under the preferred method, section 773(e)(2)(B) of the Act sets forth three alternatives. The statute does not establish a hierarchy for selecting among these alternative methodologies.<sup>32</sup> Nonetheless, we examined each alternative in searching for an appropriate method.

Section 773(e)(2)(B) of the Act specifies that selling expenses and profit may be calculated based on (i) the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country, or (iii) any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

The petitioner and ODS submitted seven third-party financial statements for us to consider to calculate CV selling expenses and profit for ODS.<sup>33</sup> Additionally, we have on the record the proprietary financial statements of OISI, ODS' affiliate in Oman.<sup>34</sup> None of the financial statements on the record reflect sales in the UAE of identical or comparable merchandise or demonstrate significant home-market sales of identical or comparable products in their respective third countries.

Because ODS did not have any comparable merchandise in the UAE, and there are no other respondents selected for examination in this review, we relied on alternative (iii) for the preliminary results to calculate ODS' selling expense and profit rates. Specifically, we calculated CV selling expenses and profit based on the selling expense and profit data for OISI,<sup>35</sup> and another nail producer, L.S. Industry. Both of the financial statements are contemporaneous with the POR and reflect the production and sale of identical merchandise and, therefore, the best comparison alternative on the record with respect to the selling experience of nails during the POR.<sup>36</sup> Furthermore, because the limited information contained in the financial statements does not allow us to select one financial statement as preferable over another, we find it reasonable to

---

<sup>32</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 840 (1994).

<sup>33</sup> See letters filed by the petitioner and ODS to the Secretary of Commerce dated January 19, 2016, and April 28, 2016, respectively.

<sup>34</sup> See ODS' response to the Department's supplemental questionnaire at Exhibit SI-1 (e) dated January 12, 2016.

<sup>35</sup> See ODS' response to the Department's supplemental questionnaire at Exhibit SI-1 (e) dated January 12, 2016; *see also, e.g.*, Verification Report at 3 and 8 and Exhibits 2, 3, and 5.

<sup>36</sup> See ODS' response to the Department's supplemental questionnaire at Exhibit SI-1 (e) dated January 12, 2016; *see also, e.g.*, Verification Report at 3 and 8 and Exhibits 2, 3, and 5.

calculate an average of the selling expense data and an average of the profit data derived from these two financial statements to use as CV selling expenses and profit for ODS.<sup>37</sup>

Likewise, for the same reason we decided to calculate CV profit under alternative (iii), the Department finds there is no information on the record to calculate a “profit cap” for the UAE under subsection (iii) because we do not have home market profit data for other exporters and producers of the same general category of products in the UAE. In numerous previous cases, the Department calculated CV profit under section 773(e)(2)(B)(iii) of the Act without quantifying the profit cap, as facts available.<sup>38</sup> The legislative history indicates that Congress recognized that there may be instances where, due to a lack of data, the Department would need to use facts available and calculate a CV profit rate pursuant to subsection (iii) without quantifying a profit cap.<sup>39</sup> With respect to this provision of the statute, Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the subject merchandise, (2) non-aberrational to the industry under consideration (*i.e.*, “the amount normally realized”), and (3) not based on the data of the respondent for which the Department is calculating CV.<sup>40</sup> Accordingly, we have examined the available data in this case and conclude that there is no information on the record that meets these standards. That is, there is no information on the record pertaining to the UAE market for nails or for merchandise within the same general category as nails; hence, there are no domestic sales upon which to calculate a profit cap.

#### 4. *Cost of Production*

We received cost of production (COP) information because ODS reported that it did not have HM sales of foreign like product or third country sales of comparable merchandise.<sup>41</sup> We relied on the COP data submitted by ODS in its questionnaire responses for the COP calculation.

---

<sup>37</sup> See Preliminary Analysis Memorandum.

<sup>38</sup> See, *e.g.*, *Certain Steel Nails From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 1; *Stainless Steel Plate from Belgium: Antidumping Duty Administrative Review*, 77 FR 73013 (December 7, 2012) and accompanying Issues and Decision Memorandum at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 26.

<sup>39</sup> See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, as reprinted in 1994 U.S.C.C.A.N. at 4177 at 841 (“where the method described in section 773(e)(2)(A) cannot be used...because there are no home market sales of the foreign like product...”).

<sup>40</sup> See section 773(e)(B)(iii) of the Act.

<sup>41</sup> See ODS’ Section D questionnaire response dated October 12, 2015.

F. Verification

As provided in section 782(i)(3) of the Act, the Department conducted sales and cost verifications in the UAE of the information reported by ODS using standard verification procedures, including examination of relevant COP, sales, and financial records, and selection of original documentation containing relevant information.<sup>42</sup>

G. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

\_\_\_\_\_  
<sup>42</sup> See Verification Report.