

Oman Fasteners, LLC v. United States
Court No. 22-00348, Slip Op. 23-17 (CIT February 15, 2023)
Certain Steel Nails from the Sultanate of Oman

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (the Court or CIT) issued in *Oman Fasteners, LLC v. United States*, Slip Op. 23-17, Court No. 22-00348 (CIT February 15, 2023) (*Remand Order*). This action arises out of the final results of the sixth administrative review (AR) of the antidumping duty (AD) order on certain steel nails (steel nails) from the Sultanate of Oman (Oman). Oman Fasteners, LLC (Oman Fasteners) was the sole mandatory respondent in the AR and the period of review (POR) is July 1, 2020, through June 30, 2021.

The Court remanded to Commerce to determine a new estimated dumping margin for Oman Fasteners without relying on section 776 of the Tariff Act of 1930, as amended (the Act), with respect to the filing of Oman Fasteners' response to Commerce's supplemental questions regarding the U.S. market sections (*i.e.*, section C) of Commerce's AD questionnaire. After reopening the record for Oman Fasteners to submit its supplemental section C response, on April 26, 2023, Commerce released its draft results of redetermination, in which Commerce re-calculated Oman Fasteners' weighted-average dumping margin, in compliance with the Court's

Remand Order. As a result, Oman Fasteners' revised weighted-average dumping margin is 0.00 percent. Commerce requested comments on its draft results of redetermination and received comments from both Oman Fasteners and the petitioner.¹

II. BACKGROUND

Commerce published the *Final Results* of this administrative review on December 22, 2022.² As discussed in the *Final Results*, because Oman Fasteners did not submit all portions of its response to Commerce's section C supplemental questionnaire by the established deadline, Commerce concluded that the use of facts available was warranted, pursuant to section 776(a) of the Act, and that Oman Fasteners failed to cooperate to the best of its ability to comply with a request for information, within the meaning of section 776(b)(1) of the Act. Consequently, Commerce assigned Oman Fasteners the only margin alleged in the Petition (*i.e.*, 154.33 percent), in accordance with section 776(b) of the Act and 19 CFR 351.308(a). In its February 15, 2023, opinion and *Remand Order*, the Court remanded the *Final Results* to Commerce, concluding that Commerce's rejection of Oman Fasteners' supplemental questionnaire response was an abuse of discretion and instructed Commerce to determine a new estimated dumping margin for Oman Fasteners that does not resort to section 776 of the Act with respect to the filing of the company's response to the section C supplemental questionnaire.³ On February 21, 2023, we reopened the administrative record to permit Oman Fasteners to re-file its response to the section C supplemental questionnaire.⁴ On February 27, 2023, we issued a supplemental questionnaire⁵ regarding Oman Fasteners' section D supplemental questionnaire response, dated

¹ The petitioner is Mid Continent Steel & Wire, Inc.

² See *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2020-2021*, 87 FR 78639 (December 22, 2022) (*Final Results*).

³ See *Remand Order* at 1-2.

⁴ See Commerce's Letter, "Remand Redetermination," dated February 21, 2023.

⁵ See Commerce's Letter, "Remand Redetermination: Second Section D Supplemental Questionnaire," dated February 27, 2023.

February 25, 2022,⁶ and on March 1, 2023, we issued a supplemental questionnaire regarding Oman Fasteners' response to the section C supplemental questionnaire.⁷ On April 17, 2023, we issued an additional supplemental questionnaire regarding Oman Fasteners' section C response.⁸ On April 26, 2023, we released the draft results of redetermination.⁹ On March 22, 2023, we offered interested parties the opportunity to submit comments for Commerce's consideration in its draft results of redetermination.¹⁰ On April 3, 2023, Oman Fasteners¹¹ and the petitioner¹² submitted comments on the draft redetermination, and on April 6, 2023, Oman Fasteners submitted rebuttal comments to the petitioner's case brief.¹³

III. ANALYSIS

In accordance with the Court's *Remand Order*, we determined an estimated weighted-average dumping margin for Oman Fasteners based on its reported data. We calculated this margin, as discussed below.

A. Date of Sale

Section 351.401(i) of Commerce's regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of

⁶ See Memorandum, “Adding the Extant Record of the Administrative Review to the Record of the Remand,” dated March 21, 2023 (AR6 Record), at Exhibit 62a.

⁷ See Commerce's Letter, “Remand Redetermination: Second Section C Supplemental Questionnaire,” dated March 1, 2023.

⁸ See Oman Fasteners' Letter, “Remand Redetermination: Third Section C Supplemental Questionnaire,” dated April 17, 2023.

⁹ See Commerce's Letter, “Draft Results of Redetermination Pursuant to Court Remand,” dated April 26, 2023 (Draft Remand).

¹⁰ See Memorandum, “Remand Redetermination Regarding the Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman; 2020-2021: Deadline for Comments,” dated March 22, 2023.

¹¹ See Oman Fasteners' Letter, “Remand Redetermination Oman Fasteners; Slip. Op. 23-17; Comments on Draft Remand Redetermination,” dated April 3, 2023.

¹² See Petitioner's Letter, “Comments for Draft Remand Redetermination,” dated April 3, 2023.

¹³ See Oman Fasteners' Letter, “Remand Redetermination Oman Fasteners; Slip. Op. 23-17; Corrections to Petitioner Comments on Draft Remand Redetermination,” dated April 6, 2023.

business.” The regulation provides further that Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁴ Commerce has a long practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹⁵

Oman Fasteners reported the earlier of the commercial invoice date or the shipment date as the date of sale for their U.S. sales.¹⁶ We have analyzed the information on the record and have relied on the reported date of sale for all U.S. market sales for the margin calculations.

B. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Oman Fasteners’ sales of steel nails from Oman to the United States during the POR were made at less than normal value (NV), Commerce compared the exported price (EP) to the NV as described in the “Export Price” and “Normal Value” sections below.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EP or constructed export price (CEP) (*i.e.*, the average-to-average method) unless it determines that another method is appropriate. In a less-than-fair-value investigation, Commerce examines whether to compare weighted average NVs with EPs or CEPs of individual sales (*i.e.*, the average-to-transaction

¹⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; see also *Notice of Final Determination of Sales at Less than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

¹⁶ See AR6 Record at Exhibit 23a (pages 10-11) and Exhibit 33a (pages 12-13).

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 Commerce’s examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in a less-than-fair-value investigation.¹⁷

In numerous investigations and ARs, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation consistent with 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁸ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in these final results of redetermination of this administrative review.

The differential pricing analysis used in these final results of redetermination examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. sales by purchaser, region, and time period to determine whether a pattern of prices that differ 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

¹⁷ 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 accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014), *aff’d* 862 F. 3d 1322 (CAFC 2017).

¹⁸ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, ZIP code or state 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 POR 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 producer, region, and time period, that Commerce 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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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.

2. Results of the Differential Pricing Analysis

For Oman Fasteners, based on the results of the differential pricing analysis, we find that 47.34 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test.²⁰ Thus, for these final results of redetermination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Oman Fasteners.

C. Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States

¹⁹ See Memorandum, “Analysis Memorandum for the Final Remand Redetermination regarding the Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman; 2020-2021,” dated concurrently with this final remand redetermination (Final Remand Redetermination Analysis Memorandum) at 4.

²⁰ *Id.*

or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for Oman Fasteners because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States.²¹

D. Normal Value

1. Comparison Market Viability

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

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we separately compared Oman Fasteners’ volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. Oman Fasteners’ aggregate volumes of sales of foreign like product in the home market or in third-country markets were not greater than five percent of the company’s sales of subject merchandise to the United States.²² Therefore, Oman Fasteners’ sales

²¹ See AR6 Record at Exhibit 23a (page 2).

²² *Id.* at Exhibit 23a (page 2) and Exhibit 33a (at Exhibit C-13 therein).

in the home market and in its third-country markets are not viable as comparison markets. Consequently, we based NV on constructed value (CV) for Oman Fasteners.

2. Calculation of Normal Value Based on CV

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because Oman Fasteners did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, general and administrative (G&A) expenses, indirect selling expenses, and profit in the calculation of CV. We relied on Oman Fasteners' submitted materials and fabrication costs, G&A, indirect selling expenses, and U.S. packing costs.

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

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

On January 6, 2022, we requested comments and new factual information from interested parties on CV profit and selling expenses.²³ On February 7, 2022, we received 23 financial statements (FS) for consideration. Based on the record evidence, we have 23 possible options for CV profit under section 773(e)(2)(B)(iii) of the Act for this administrative review: (1) the audited FS covering the calendar year 2020 of Al Jazeera Steel Products Co SAOG (Al Jazeera), an Omani producer of steel pipe, hollow sections, and steel bar;²⁴ (2) the audited FS covering the period 4/1/2020 through 3/31/2021 of Alsons Manufacturing India LLP (Alsons), an Indian producer of steel nails, nails puns, pinners, brad nailers, and staplers;²⁵ (3) the audited FS covering the period 4/1/2020 through 3/31/2021 of Astrotech Steels Private Limited (Astrotech), an Indian producer of specialized steel product, fasteners, wire, and other products;²⁶ (4) the audited FS covering the calendar year 2020 of Bangkok Fastening Company Limited (Bangkok Fastening), a Thai producer of various types of fasteners, nails, wire, and wire rods;²⁷ (5) the

²³ *Id.* at Exhibit 40.

²⁴ *Id.* at Exhibit 51 (at Exhibit 2B therein).

²⁵ *Id.* (at Exhibit 6B therein).

²⁶ *Id.* at Exhibit 50 (at Exhibit 10 therein).

²⁷ AR6 Record at Exhibit 51 (at Exhibit 3B therein).

audited FS covering the period 4/1/2019 through 3/31/2020 of Ganpati Fasteners Pvt. Ltd (Ganpati), an Indian producer of various steel fasteners and steel tractor and trailer parts;²⁸ (6) the audited FS covering the period 4/1/2020 through 3/31/2021 of Geekay Wires Ltd. (Geekay), an Indian producer of steel wire, nails, and other specialty products;²⁹ (7) the audited FS covering the calendar year 2020 of Haspl a.s. (Haspl), a Czech producer and wholesaler of various metal fasteners;³⁰ (8) the audited FS covering the period 4/1/2020 through 3/31/2021 of Hiten Fasteners Pvt. Ltd. (Hiten), an Indian producer of various types of steel fasteners;³¹ (9) the audited FS covering the period 4/1/2020 through 3/31/2021 of Indian Steel & Wire Products Limited (ISWP), an Indian producer of wire and wire rod, nails, welding products and steel rolls;³² (10) the audited FS covering the period 4/1/2019 through 3/31/2020 of J&K Wire and Steel Industries Pvt. Ltd. (J&K), an Indian producer of steel nails and wire;³³ (11) the audited FS covering the period 4/1/2019 through 3/31/2020 of Jai Fasteners Pvt. Ltd. (Jai Fasteners), an Indian producer of various types fasteners for the automotive industry and brass and copper parts for transformers;³⁴ (12) the audited FS covering the calendar year 2020 of Jinhai hardware Co. Ltd. (Jinhai), a Thai producer of various types of steel nails and other fasteners;³⁵ (13) the audited FS covering the calendar year 2020 of Kardemir Karabuk Demir Celik Sanayi Ve Ticaret A.S. (Kardemir), a Turkish producer of railway and locomotive parts and steel bar and wire for the railway, automotive, defense, construction, and mining sectors;³⁶ (14) the audited FS covering the period 4/1/2019 through 3/31/2020 of KBV Industries Pvt. Ltd. (KBV), an Indian

²⁸ *Id.* (at Exhibit 7B therein).

²⁹ *Id.* (at Exhibit 8B therein).

³⁰ *Id.* (at Exhibit 19B therein).

³¹ *Id.* (at Exhibit 9B therein).

³² *Id.* at Exhibit 50 (at Exhibit 4 therein).

³³ *Id.* at Exhibit 51 (at Exhibit 10B therein).

³⁴ *Id.* (at Exhibit 11B therein).

³⁵ *Id.* (at Exhibit 4B therein).

³⁶ *Id.* (at Exhibit 18B therein).

producer and wholesaler of various steel fasteners;³⁷ (15) the audited FS covering the period 4/1/2019 through 3/31/2020 of Mita Fasteners Pvt. Ltd. (Mita), an Indian producer of various screws and specialized fasteners for various downstream industries;³⁸ (16) the audited FS covering the period 4/1/2020 through 3/31/2021 of Mohindra Fasteners Limited (Mohindra), an Indian producer of various steel fasteners and automobile components;³⁹ (17) the audited FS covering the period 4/1/2019 through 3/31/2020 of Salasar Alloy & Steel Industries Pvt. Ltd. (Salasar), an Indian processor of physical inputs and wholesaler of steel wire and metal ores;⁴⁰ (18) the audited FS covering the calendar year 2020 of Sangchai Factory Co., Ltd. (Sangchai), a Thai producer of nails;⁴¹ (19) the audited FS covering the period 4/1/2020 through 3/31/2021 of Shivalik Wires Private Limited (Shivalik), an Indian producer of steel wire and various steel fasteners;⁴² (20) the audited FS covering the period 4/1/2020 through 3/31/2021 of Sterling Tool Ltd. (Sterling), an Indian producer of high-tensile and cold-forged fasteners;⁴³ (21) the audited FS covering the period 4/1/2020 through 3/31/2021 of Sundram Fasteners Limited (Sundram), an Indian producer of various steel fasteners and automobile parts;⁴⁴ (22) the audited FS covering the period 4/1/2019 through 3/31/2020 of Techbolt Industries Pvt. Ltd. (Techbolt), an Indian producer of various types of steel fasteners;⁴⁵ and, (23) the audited FS covering the period 4/1/2019 through 3/31/2020 of Utech Fasten Private Limited (Utech), a Turkish producer and wholesaler of various types of metal nails and fasteners.⁴⁶

³⁷ *Id.* (at Exhibit 12B therein).

³⁸ *Id.* (at Exhibit 13B therein).

³⁹ *Id.* at Exhibit 50 (at Exhibit 12 therein).

⁴⁰ *Id.* at Exhibit 51 (at Exhibit 14B therein).

⁴¹ *Id.* (at Exhibit 5B therein).

⁴² *Id.* (at Exhibit 15B therein).

⁴³ *Id.* at Exhibit 50 (at Exhibit 8 therein).

⁴⁴ *Id.* (at Exhibit 6 therein).

⁴⁵ *Id.* at Exhibit 51 (at Exhibit 16B therein).

⁴⁶ *Id.* (at Exhibit 17B therein).

We acknowledge that each of these options has certain limitations. Based on the guidance from the preferred method under section 773(e)(2)(A) of the Act, CV profit is intended to reflect the production and sale of subject merchandise in the foreign country. Therefore, we have analyzed these FS pursuant to the framework established in *Pure Magnesium from Israel* and *CTVs from Malaysia*.⁴⁷ Pursuant to that analysis, we have considered: (1) the similarity between a potential surrogate's business operations and products and those of the respondent; (2) the extent to which a potential surrogate has sales in the United States and the home market; (3) the contemporaneity of the surrogate data; and (4) the similarity of customer base between a potential surrogate and the respondent.

First, with respect to the only Omani FS on the record, *i.e.*, Al Jazeera, in the investigation we found that Al Jazeera (a manufacturer of steel tube and structural products) did not produce or sell merchandise identical or comparable to subject merchandise – steel nails.⁴⁸ After reviewing Al Jazeera's FS on the record, we find that the company's business activities have not changed. Accordingly, we find that, although Al Jazeera represents a profit experience of an Omani company, their business operations, production processes, and merchandise for sale that are dissimilar to those of Oman Fasteners.

Second, with respect to the FS on the record for Ganpati, J&K, Jai Fasteners, KBV, Mita, Salasar, Techbolt, and Utech, these FS are not contemporaneous with the POR. All eight FS cover the period from April 1, 2019, through March 30, 2020, which ends three months before

⁴⁷ See *Notice of Final Determination of Sales at Less than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Pure Magnesium from Israel*), and accompanying IDM at Comment 8; see also *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*), and accompanying IDM at Comment 26.

⁴⁸ See *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 IDM at Comment 1; see also *Final Results of Redetermination Pursuant to Court Order, Mid Continent Steel & Wire, Inc. v. United States*, Consol. Court No. 15-00214, USCIT Slip Op. 17-5, dated May 18, 2017, available at <https://access.trade.gov/Resources/remands/17-5.pdf>.

the start of the POR (*i.e.*, from July 1, 2020, through June 30, 2021).⁴⁹ Thus, there is no overlap between the financial reporting periods covered by these eight FS and the POR, indicating that the profit and selling experiences contained therein reflect a different operating environment from Oman Fasteners' reported data.⁵⁰ Commerce's preference is to use contemporaneous data in selecting surrogate data to use in calculating accurate dumping margins. Contemporaneous data better reflect the mandatory respondent's cost and sales data, along with the same market conditions and operating environment. Therefore, we find that the FS of Ganpati, J&K, Jai Fasteners, KBV, Mita, Salasar, Techbolt, and Utech do not represent the most similar data on the record to Oman Fasteners and we have not used them in our financial ratio calculations.

Third, we find that the FS of Geekay, Mohindra, Sterling, and Sundram contain evidence of subsidies/subsidization (*i.e.*, money received pursuant to a program which Commerce has previously found to be countervailable). Specifically, note 16 to Geekay's FS enumerates government grants recognized during the year under the Duty Drawback Program.⁵¹ While Geekay's FS also indicates participation with the Merchandise Exports from India Scheme (MEIS), the FS shows a net loss for this program during Geekay's reporting period.⁵² Additionally, note 15 to Sterling's FS recognizes a positive value under "export incentive receivable," which note 1.c (12) specifies is income from the Duty Drawback Program and MEIS.⁵³ The MEIS and Duty Drawback Program are recognized subsidies which Commerce has previously found to be countervailable.⁵⁴ Also, Mohindra's FS, in Note 23, part b, contains

⁴⁹ See AR6 Record at Exhibit 51 (at Exhibits 7B, 10B, 11B, 12B, 13B, 14B, 16B, and 17B therein).

⁵⁰ The FS of Techbolt and Ganpati also evidence money received under the Duty Drawback Program, a subsidy program which Commerce has previously found to be countervailable, discussed below.

⁵¹ *Id.* (at Exhibit 8B therein (pages 100, 143-144)).

⁵² *Id.*

⁵³ *Id.* at Exhibit 50 (at Exhibit 8 therein (page 119, 130)).

⁵⁴ See, e.g., *Utility Scale Wind Towers from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 86 FR 15897 (March 25, 2021) (*Wind Towers India Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 19 and 24.

evidence of income earned under the Duty Drawback Program.⁵⁵ Finally, Sundram’s FS contains evidence of money earned under the Special Economic Zones (SEZ) Act, 2005, and the rules made thereunder as well as the Export Oriented Unit Scheme (EOUS).⁵⁶ Sundram’s FS also indicates the company maintains reserves in an SEZ reinvestment reserve, “created out of the profit of eligible SEZ units in terms of provisions of section 10AA(1)(ii) of the Income Tax Act, 1961.”⁵⁷ Commerce has previously found the SEZ Act, the EOUS, and the SEZ Income Tax Exemption Scheme under section 10A of the Income Tax Act to all be countervailable.⁵⁸ Therefore, because we prefer to not rely on data distorted by the presence of countervailable subsidies, and because the record contains FS of producers of identical and comparable merchandise that do not evidence receipt of countervailable subsidies, we find that the FS of Geekay, Mohindra, Sterling, and Sundram are not the best sources of CV information on the record, and we have not used them in our financial ratio calculations.

Fourth, we find that the FS of Alsons and Kardemir reflect principal business activities dissimilar to those of a predominant nail producer like Oman Fasteners. Oman Fasteners provided company information for Alsons in the form of a product brochure, which lists the company’s principal products, in order, as “Nailer, Nailer Puncher, Micro Pinner, Brad Nailer, Stapler, Fine Wire Stapler, Cartoon Closing Stapler, {and} Fast{e}ners.”⁵⁹ Fasteners are the only merchandise with similar production processes and market conditions to those of steel nails. Additionally, Alsons’ FS does not breakdown the proportions of revenue stemming from the sale of dissimilar merchandise (*i.e.*, mechanized hand tools) and identical/comparable merchandise

⁵⁵ See AR6 Record at Exhibit 50 (at Exhibit 12 therein (page 122)).

⁵⁶ *Id.* at Exhibit 51 (at Exhibit 6 therein) and Exhibit 57a (at Exhibit CVR-11 therein (pages 32, 100, and 111)).

⁵⁷ *Id.* at Exhibit 57a (at 15 and Exhibit CVR-11 therein (pages 32, 100, and 111)).

⁵⁸ See, e.g., *Utility Scale Wind Towers from India: Final Affirmative Countervailing Duty Determination*, 86 FR 56896 (October 13, 2021), and accompanying IDM at 3-4.

⁵⁹ See AR6 Record at Exhibit 51 (at Exhibit 6A therein (page 3)).

(*i.e.*, nails and fasteners). Regarding Kardemir, the FS indicates the company's main business activity is the "manufacture and {sale of} all kinds of raw iron and steel goods, coke and coke by-products,"⁶⁰ which consist predominately of "railway wheels, rail tracks, profiles, coils, rebar construction steel, blooms, platinas, billets, angles, mine poles, pig irons, coke and coke by-product" for the "rail systems, automotive, defense industry, machinery manufacturing, construction, and the mining sectors."⁶¹ These products require wholly different production processes, are subject to the different market conditions, and are sold to different sorts of customers for different end uses than steel nails and other comparable merchandise. Thus, based on our analysis and considering the presence of FS on the record which more closely reflect the profit and production experience of a producer of steel nails, we find that Alsons and Kardemir are not the best source of information on the record, and we have not used them in our financial ratio calculations.

Fifth, the record demonstrates that a majority of Astrotech's revenue stems from sales made to the United States. Astrotech's FS demonstrates that roughly 1.04 percent of revenue is from sales to the domestic market (*i.e.*, India), and the remaining 98.96 percent of revenue comes from export sales.⁶² Based on export data provided by Oman Fasteners and compiled by Import Genius, a third party provider of government-sourced trade data, approximately 83 percent of Astrotech's revenue for the fiscal period is from sales of nails to the United States.⁶³ Financial data containing exclusive or predominant U.S. sales information and very little home market sales are unsuitable in the calculation of a NV based on CV.⁶⁴ Therefore, we find that

⁶⁰ *Id.* (at Exhibit 18B therein (page 6)).

⁶¹ *Id.* (at Exhibit 18A therein (page 9)).

⁶² *Id.* at Exhibit 50 (at Exhibit 10 therein (page 62)).

⁶³ *Id.* at Exhibit 57a (at 3-9 and Exhibits CVR-1, CVR-2, CVR-3, and CVR-4 therein).

⁶⁴ See *Pure Magnesium from Israel* IDM at Comment 8.

Astrotech's profit and indirect selling expenses do not reflect the home market or third-country sales necessary to derive CV profit and indirect selling expense ratios, and we have not relied on Astrotech's FS to calculate CV ratios.

Finally, we find the FS of Bangkok Fastening, ISWP, Jinhai, Sangchai, and Shivalik do not break down their respective sales by geographical markets. As stated above, we examine the proportion of a company's sales made to the United States because financial data containing exclusively or predominantly U.S. sales information are unsuitable in the calculation of a normal value based on CV.⁶⁵ We rejected the FS of Astrotech because record evidence demonstrated that too high of a proportion of its sales were to the United States. Here, unlike the Astrotech FS, the record contains no information regarding what proportion, if any, of each company's revenue stems from sales made to the United States. As it is the U.S. market that is allegedly impacted by unfair pricing, we prefer not to rely on CV profit based predominantly on sales to the United States.⁶⁶ Because the FS of Bangkok Fastening, ISWP, Jinhai, Sangchai, and Shivalik do not provide any information regarding the geographical markets to which they sell, we are unable to ensure that their information does not represent the profit of sales made primarily to the United States. The record contains alternative sources for CV information that do break out revenue by geographical markets and, in so doing, demonstrate that a majority of their revenue stems from sales made outside the United States. Therefore, we find that the record contains better information than the FS of Bangkok Fastening, ISWP, Jinhai, Sangchai, and Shivalik, which cannot confirm that revenue does not stem predominately from sales made to the United States.

⁶⁵ *Id.*

⁶⁶ See, e.g., *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 71372 (December 27, 2019), and accompanying IDM at Comment 1.

Based on the above analysis, the record has two remaining FS, (*i.e.*, Haspl and Hiten), that are both contemporaneous with the POR and do not contain evidence of subsidies that Commerce has previously found countervailable. Next, we consider the extent to which the business activities of Haspl and Hiten resemble those of Oman Fasteners (*i.e.*, the manufacture of steel nails). The record demonstrates that Haspl is primarily involved in “nail production as well as the sale of other fasteners in the field of construction industry and wood packaging.”⁶⁷ However, Haspl is also involved in wholesale, specialized retailing of mixed goods, and road motor transport.⁶⁸ Revenue from the sale of Haspl’s own products and services account for 71.72 percent of total sales revenue.⁶⁹ This figure includes the sale of comparable merchandise and the provision of road motor transport (Haspl’s only service). Therefore, Haspl’s maximum revenue from the sale of comparable merchandise cannot exceed 71.72 percent of its total revenue. The remaining 28.28 percent of Haspl’s revenue stems from the wholesale of other goods that Haspl did not produce.⁷⁰ With regard to Hiten, the company is “primarily engaged in the business of manufacturing of fasteners and also generation of power through windmills.”⁷¹ Hiten’s FS indicates that 97.97 percent of the company’s revenue stems from the sale of produced steel fasteners (*i.e.*, comparable merchandise).⁷² The remaining 2.03 percent comes from sale of produced electricity.⁷³

We then considered record evidence demonstrating the extent to which each company sells to the United States. Haspl’s FS indicates that 96.56 percent of revenue from all business activities comes from domestic sales (*i.e.*, in the Czech Republic) and within the European

⁶⁷ See AR6 Record at Exhibit 51 (at Exhibit 19A therein (page 2)).

⁶⁸ *Id.* (at Exhibit 19B therein (page 46)).

⁶⁹ *Id.* (at Exhibit 19B therein (page 70)).

⁷⁰ *Id.*

⁷¹ *Id.* (at Exhibit 9B therein (page 84)).

⁷² *Id.* (at Exhibit 9B therein (page 89)).

⁷³ *Id.*

Union.⁷⁴ The remaining 3.44 percent of revenue consists of sales made to all other markets.⁷⁵ For Hiten, the FS indicates that 86.87 percent of total revenue (including the sale of comparable merchandise and the small revenue from domestic sale of produced electricity) comes from domestic sales (*i.e.*, in India).⁷⁶ The remaining 13.13 percent of total revenue consists of sales made to all other markets.⁷⁷ Because neither FS further breaks out the various selling markets, we can only conclude that revenue stemming from sales to the United States cannot exceed 3.44 percent and 13.13 percent, for Haspl and Hiten, respectively.

The framework established in *Pure Magnesium from Israel* and *CTVs from Malaysia* does not value one criterion above another.⁷⁸ Instead, we must consider the facts on the record and reasonably deduce which option represents the best available information. Taken together, we find that the FS of Hiten and Haspl represent the best available information on the record. Both FS are contemporaneous with the POR, neither evidence receipt of subsidies that Commerce has previously found countervailable, both are predominately involved in the production and sale of identical and/or comparable merchandise, and both break out their sales by market, confirming that neither receives a majority of its revenue from sales to the United States. While Hiten may evidence a greater proportion of sales of comparable merchandise, and Haspl may evidence a smaller guaranteed proportion of sales made outside the United States, we do not attempt to establish a hierarchy amongst the criteria set by *Pure Magnesium from Israel* and *CTVs from Malaysia*. Instead, while acknowledging the flaws exhibited by each FS outlined above, we find that both FS represent the best available information on the record with which to base CV profit.

⁷⁴ *Id.* (at Exhibit 19B therein (page 70)).

⁷⁵ *Id.*

⁷⁶ *Id.* (at Exhibit 9B therein (page 89)).

⁷⁷ *Id.*

⁷⁸ See *Pure Magnesium from Israel* IDM at Comment 8; see also *CTVs from Malaysia* IDM at Comment 26.

Each FS reasonably reflects the profit experience of a producer of steel nails. Thus, we will use a simple average of both FS to calculate CV profit and indirect selling expenses.⁷⁹

The petitioner contends that Hiten’s FS contains evidence of a previously countervailed program. However, we disagree. Hiten’s FS identifies the nature of the line item “other current assets” as “Export Incentives Receivable & MAT credit entitlement.”⁸⁰ This refers to the Minimum Alternative Tax (MAT) Act.⁸¹ The petitioner claims Commerce has previously found this program to be countervailable, citing to the final determination in the countervailing duty investigation of certain polyethylene terephthalate (PET) resin from India (*PET Resin from India*).⁸² However, in *PET Resin from India*, the MAT Act was not under investigation as a potentially countervailable program. In that investigation, the issue was whether the respondent received credit under the Income Tax Exemption Scheme (ITES), and whether Commerce properly calculated the amount of the potential conferred benefit. The respondent in *PET Resin from India* argued that because the MAT Act establishes a minimum floor for income taxes owed, the nature of the benefit conferred by the ITES—a reduction in the respondent’s total owed income tax—would not have impacted the amount of income tax owed by the respondent.⁸³ The discussion in *PET Resin from India* only involved the MAT Act insofar as the MAT Act set a minimum tax floor value with which Commerce needed to calculate a conferred benefit from the program at issue, the ITES.⁸⁴ Further, in *PET Resin from India*, we found that the ITES did not confer a benefit to the respondent in that case, and we also found that the ITES was not

⁷⁹ See Final Remand Redetermination Analysis Memorandum at Attachment 4.

⁸⁰ See AR6 Record at Exhibit 51 (at Exhibit 9B therein (page 82)).

⁸¹ See, e.g., *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (*PET Resin from India*), and accompanying IDM at Comment 1.

⁸² See AR6 Record at Exhibit 56 (at 9 (citing *PET Resin from India* IDM at Comment 1)).

⁸³ See *Pet Resin from India* IDM at Comment 1.

⁸⁴ *Id.*

countervailable.⁸⁵ In the instant case, Hiten's FS has no additional information regarding the nature of this line item and does not identify any program that Commerce has previously found to be countervailable. Moreover, the petitioner has not provided any evidence identifying a previously countervailed subsidy in Hiten's FS. Therefore, we find that Hiten's FS does not contain any evidence of subsidies that Commerce has previously found countervailable and is a reasonable basis for CV ratios.⁸⁶

Furthermore, we have not calculated a profit cap because we are unable to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category as steel nails. As discussed above, we have determined the only Omani FS on the record, that of Al Jazeera, reflects business operations, production processes, and products that are dissimilar to those of Oman Fasteners. Thus, we find that Al Jazeera's products cannot be considered within the same general category of merchandise as steel nails. Accordingly, the record does not contain information for calculating a profit cap within the meaning of section 773(e)(2)(B)(iii) of the Act.⁸⁷

Pursuant to section 776(a) of the Act, where necessary information is not on the record of a proceeding, Commerce shall use facts otherwise available. Accordingly, we have considered whether information on the record could be useable as a facts available profit cap. However, our analysis of the financial statements on our record leads us to conclude that, for the reasons discussed above, no financial statements on the record of this proceeding would better fulfill the purpose of the profit cap than the financial statements we have determined to use to calculate CV

⁸⁵ *Id.* at pages 23 and 30.

⁸⁶ See Final Remand Redetermination Analysis Memorandum at Attachment 4.

⁸⁷ See, e.g., *Mid Continent Steel & Wire, Inc. v. United States*, 941 F.3d 530, 545-46 (CAFC 2019).

profit and indirect selling expenses under any other reasonable method. Therefore, because there is no other information available on the record, as facts available, we are applying option (iii) of section 773(e)(2)(B) of the Act, without quantifying a facts available profit cap.

3. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP.⁸⁸ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit.⁸⁹ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁹⁰

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Because Oman Fasteners has no viable comparison market,⁹¹ we could not conduct an LOT analysis. Accordingly, we made no LOT adjustment to Oman Fasteners' NV.

4. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and cost of production (COP) information from Oman Fasteners to determine if there are reasonable

⁸⁸ See section 773(a)(7)(A) of the Act.

⁸⁹ See 19 CFR 351.412(c)(1)(iii).

⁹⁰ See 19 CFR 351.412(c)(1)(i).

⁹¹ See AR6 Record at Exhibit 23a (at page 2) and Exhibit 33a (at Exhibit C-13 therein).

grounds to believe or suspect that sales of the foreign like product have been made at prices that are less than the COP of the product.

i. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for G&A and interest expenses. We relied on the COP data submitted by Oman Fasteners.⁹²

ii. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales prices during the shorter cost averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.⁹³

We examined Oman Fasteners' cost data for the POR, and we determine that both criteria were met, and that the application of our quarterly cost methodology is appropriate for calculating the weighted-average dumping margin.⁹⁴

⁹² See Oman Fasteners' Letter, "Remand Redetermination Oman Fasteners; Slip. Op. 23-17; 2nd Supplemental Section D Questionnaire Response," dated March 8, 2023 (2DSQR), at Exhibit S4-6.

⁹³ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC from Mexico Final*), and accompanying IDM at Comment 6; see also *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium Final*), and accompanying IDM at Comment 4.

⁹⁴ See Final Remand Redetermination Analysis Memorandum at Attachment 3.

1) Significance of Cost Changes

In prior determinations, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.⁹⁵ In the instant case, record evidence shows that Oman Fasteners experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the 2020-2021 POR.⁹⁶

2) Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in COM during the POR to be significant, we evaluated whether there is evidence of a linkage between the COM changes and the sale prices during the POR.⁹⁷ Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in sale prices reasonably correlate to changes in unit COM.⁹⁸ To determine whether a reasonable correlation existed between the sales prices and underlying COM during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for high volume product matching control numbers (CONNUMs). Our comparison revealed that sales prices and COM for Oman Fasteners during the POR showed reasonable correlation.⁹⁹

After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit COM, we determine that there is a linkage between Oman Fasteners' changing sales prices and COM during the POR.¹⁰⁰ Thus, we determine that a shorter cost-averaging period approach, based on a quarterly-average COM, is appropriate for Oman

⁹⁵ See *SSPC from Belgium Final IDM* at Comment 4.

⁹⁶ See Final Remand Redetermination Analysis Memorandum at Attachment 3; *see also* AR6 Record at Exhibit 35c (at Exhibit D-1 therein) and Exhibit 62c (at Exhibits S3-1 and S3-2 therein); and 2DSQR at S4-1.

⁹⁷ See *SSSSC from Mexico Final IDM* at Comment 6; and *SSPC from Belgium Final IDM* at Comment 4.

⁹⁸ See *SSPC from Belgium Final IDM* at Comment 4.

⁹⁹ See Final Remand Redetermination Analysis Memorandum at Attachment 3.

¹⁰⁰ *Id.*

Fasteners during the POR because we found significant cost changes in COM as well as reasonable linkage between costs and sales prices.¹⁰¹

5. 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.

IV. INTERESTED PARTIES' COMMENTS ON THE DRAFT REDETERMINATION

On April 26, 2023, Commerce released the draft results of determination,¹⁰² and invited interested parties to comment on the Draft Remand. On May 8, 2023, Oman Fasteners and the petitioner each submitted comments regarding the draft results of redetermination.¹⁰³ On May 19, 2023, we elicited additional information from Oman Fasteners regarding certain issues raised in the party comments,¹⁰⁴ and on May 30, 2023, Oman Fasteners timely responded.¹⁰⁵ On June 6, 2023, Oman Fasteners¹⁰⁶ and the petitioner¹⁰⁷ each submitted additional comments limited to the additional information which Oman Fasteners placed on the record on May 30, 2023.

¹⁰¹ See Final Remand Redetermination Analysis Memorandum at Attachment 3.

¹⁰² See Draft Remand.

¹⁰³ See Oman Fasteners' Letter, "Certain Steel Nails from Oman; Remand Redetermination Oman Fasteners; Slip. Op. 23-17; Comments on Draft Results of Redetermination," dated May 8, 2023 (Oman Fasteners' Comments); see also Petitioner's Letter, "Certain Steel Nails from Oman – Comments on Draft Remand Redetermination," dated May 8, 2023 (Petitioner's Comments).

¹⁰⁴ See Commerce's Letter, "Remand Redetermination: Second Section C and D Supplemental Questionnaire," dated May 19, 2023.

¹⁰⁵ See Commerce's Letter, "Certain Steel Nails from Oman; Remand Redetermination Oman Fasteners; Slip. Op. 23-17; Response to May 19 Supplemental Section C&D Questionnaire," dated May 30, 2023 (CDSQR).

¹⁰⁶ See Oman Fasteners' Letter, "Certain Steel Nails from Oman; Remand Redetermination Oman Fasteners; Slip. Op. 23-17; Comments on New Factual Information," dated June 6, 2023.

¹⁰⁷ See Petitioner's Letter, "Certain Steel Nails from Oman – Comments on Draft Remand Redetermination," dated June 6, 2023 (Petitioner's NFI Comments).

Comment 1: Whether Oman Fasteners' actions warrant the application of Adverse Facts Available (AFA)

*Petitioner's Comments:*¹⁰⁸

- The undisputed facts provide substantial evidence supporting Commerce's decision to apply AFA, based on Oman Fasteners' failure to timely provide requested information to Commerce by the established deadline. Oman Fasteners was aware it would be unable to timely file its response, but failed to notify Commerce, and failed to demonstrate any extraordinary circumstances precluded timely submission.¹⁰⁹
- Oman Fasteners has never submitted a sworn statement concerning the circumstances that led to its failure to file the supplemental response on time.¹¹⁰
- Commerce misconstrues the Court's opinion and instructions. The CIT did not require that Commerce avoid relying on AFA under any circumstances related to the filing of Oman Fasteners' supplemental section C response. Rather, the CIT ruled only that Commerce erred in denying Oman Fasteners a retroactive extension for the submission of Oman Fasteners' supplemental section C response and consequently was not justified in relying on AFA.¹¹¹
- AFA is warranted because the record still contains numerous serious deficiencies, despite the numerous additional supplemental questionnaires issued in this remand proceeding.¹¹²

Commerce's Position: We disagree with the petitioner. In its *Remand Order*, the CIT unambiguously ordered Commerce to allow Oman Fasteners to place both the business proprietary and public versions of Oman Fasteners' supplemental section C questionnaire

¹⁰⁸ See Petitioner's Comments.

¹⁰⁹ *Id.* at 2.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 3.

¹¹² *Id.* at 4.

response on the record and further ordered that Commerce shall then consider the supplemental section C response for purposes of calculating Oman Fasteners' rate.

The petitioner mischaracterizes the Court's order. The petitioner claims that "the {Court} did *not* disagree that Oman Fasteners' supplemental section C questionnaire response was submitted late, nor did it find {Commerce's} initial rejection of Oman Fasteners' submission to be improper."¹¹³ However, in the Slip Op., the Court expounds:

On the merits, Oman asserts three separate and independent theories challenging Commerce's decision to apply facts otherwise available with an adverse inference. First, the Department abused its discretion in denying Oman a retroactive extension of time in these circumstances. Second, even if the Department properly refused to grant Oman a retroactive extension, the Department abused its discretion in applying an adverse inference. Finally, even if the Department properly applied an adverse inference, the Department abused its discretion in selecting such a high rate (154.33 percent). The court easily agrees with Oman as to each of its theories; this is not a close case.

Unlike the petitioner's claim, the Court clearly found Commerce's denial of a retroactive extension for Oman Fasteners to be an abuse of discretion, as well as the subsequent determinations made in the *Final Results* that led to the application of total AFA.¹¹⁴ In other words, had Commerce acted within its discretion, Oman Fasteners would have received a retroactive extension to file its supplemental section C questionnaire response, and the administrative review might have proceeded forward. Therefore, the Court's *Remand Order* clearly aims to change Commerce's truncation of the administrative review by reversing Commerce's rejection of Oman Fasteners' supplemental section C questionnaire response from the record.

The Court remanded Commerce to allow Oman Fasteners to refile the section C supplemental questionnaire response, effectively mirroring the scenario wherein Commerce

¹¹³ See Petitioner's Comments at 3.

¹¹⁴ See *Final Results* IDM.

would have granted Oman Fasteners a retroactive extension during the normal course of the administrative review. Accordingly, it was appropriate and necessary for Commerce to proceed as though a retroactive extension were granted in the underlying administrative review. This meant reviewing the supplemental section C questionnaire response and, as the Court ordered, “consider{ing} that supplemental section C {questionnaire} response for purposes of calculating {Oman Fasteners}’s rate.”¹¹⁵ In the normal course of an administrative review, where necessary, Commerce may elicit additional information from the mandatory respondent(s) to calculate a reasonable and reliable dumping margin based on the respondent’s own data. After reviewing the data on the record, including the refiled supplemental section C questionnaire response, Commerce determined it was necessary to elicit additional information from Oman Fasteners, and Oman Fasteners fully complied with all additional requests for information.

Based on the above, we find our conduct in this remand proceeding to be reasonable, necessary, and in line with the CIT’s *Remand Order* to calculate a dumping margin for Oman Fasteners. Thus, relying on facts available, and further applying an adverse inference, based on Oman Fasteners’ conduct regarding the initial submission of the supplemental section C questionnaire response, *i.e.*, the very reason this remand proceeding exists, would directly contradict the Court’s clear direction and *Remand Order*.

Moreover, we find it inappropriate to rely on facts available or apply an adverse inference for any reason. Under Section 776(a)(1)-(2) of the Act, Commerce must rely on facts otherwise available when necessary information is missing from the record or a respondent: (1) withholds information requested by Commerce; (2) fails to provide information in a timely manner or in the form requested; (3) significantly impedes a proceeding; or (4) provides

¹¹⁵ See *Remand Order* at 1-2.

information that cannot be verified. Section 776(b) of the Act authorizes Commerce to apply an adverse inference when selecting from among the facts available when an interested party fails to act to the best of its ability to comply with Commerce's request for information. Disregarding the circumstances surrounding Oman Fasteners' initial filing of the supplemental section C questionnaire response, which the CIT has expressly rejected as a reasonable basis for applying AFA in the *Remand Order*, we find that Oman Fasteners has fully complied with all requests for information and has timely submitted all information in the manner in which Commerce has requested it, and no information is missing from the record. Thus, the reliance on facts available or the application of an adverse inference is not warranted.

Comment 2: Whether Oman Fasteners' movement expenses contain unexplained discrepancies

*Petitioner's Comments:*¹¹⁶

- Commerce noted that a number of U.S. sales with a reported term of delivery did not report U.S. inland freight expenses and requested correction. Oman Fasteners responded that no correction is necessary because the U.S. sales identified by Commerce were shipped with a specific term of delivery where no U.S. inland freight expenses are incurred.¹¹⁷
- Oman Fasteners also explained that freight revenue (FRTREVVU) is charged to the customer based on related movement expenses for the delivery terms of a particular sales invoice, but the invoice reports a value for FRTREVVU that conflicts with the value reported for domestic freight to port or U.S. inland freight.¹¹⁸

¹¹⁶ See Petitioner's Comments.

¹¹⁷ *Id.* at 5.

¹¹⁸ *Id.*

- There are numerous transactions with errors for reported U.S. brokerage expenses.¹¹⁹
- Certain Invoices include discrepant figures to those reported in the database for domestic inland freight and domestic brokerage.¹²⁰
- Oman Fasteners' reported movement expenses are, therefore, unreliable, and Commerce should apply partial AFA to certain Oman Fasteners' movement expenses. As partial AFA, Commerce should set for all sales the highest reported value for the following fields: domestic freight to port (DINLFTPU_OMR), inland freight from warehouse to customer (INLFQCU_USD), U.S. brokerage (USBROKU), and domestic brokerage (DBROKU_OMR).¹²¹

Petitioner's NFI Comments:

- Oman Fasteners failed to adequately explain the discrepant U.S. brokerage expenses or domestic brokerage expenses for certain invoices, and therefore, Commerce should assign partial AFA on these sales in the U.S. sales database.¹²²

Commerce's Position: We disagree with petitioner on assigning partial AFA in calculating Oman Fasteners' margin based on its reported movement expenses. Oman Fasteners timely responded to Commerce's requests for additional information and provided all information in the manner in which it was requested, adequately supporting the movement expense information reported in the U.S. sales database. Therefore, it is unnecessary and inappropriate, pursuant to sections 776(a)-(b) of the Act, to rely on facts available or apply an adverse inference to Oman Fasteners' movement expenses for the final results of redetermination. Therefore, for the final

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.* at 7.

¹²¹ *Id.*

¹²² *See* Petitioner's NFI Comments at 2-4.

results of redetermination, we have continued to rely on the movement expenses as reported by Oman Fasteners.

Further, as explained below, the petitioner's arguments regarding alleged discrepancies in Oman Fasteners' data are unfounded and mischaracterize record evidence. First, the petitioner alleges a discrepancy regarding a number of U.S. sales with a reported term of sale that indicates the payment of U.S. inland freight expenses while Oman Fasteners reported no U.S. land freight expenses for these U.S. sales.¹²³ However, Commerce inquired about this exact issue and, on February 21, 2023, Oman Fasteners explained that some shipments with this term of sale are a specific type of delivery for which "no U.S. inland freight expenses {are} incurred."¹²⁴ Oman Fasteners supported this explanation in Exhibit S2-23 of its CSQR by providing the sequential numbers (SEQU) of every U.S. sale with this specific term of sale, amounting to the total number of U.S. sales initially flagged by Commerce for further explanation or correction.¹²⁵ Therefore, we do not find a discrepancy regarding these U.S. sales which report no U.S. inland freight expenses.

Second, the petitioner alleges a discrepancy for a certain invoice because Oman Fasteners reported a figure for freight revenue (FRTREVU) which conflicts with the values reported for domestic freight to the port of exportation (DINLFTPU_OMR) and U.S. inland freight (INLFWCU_USD). However, the record does not suggest that freight revenue relates solely to these two movement expense categories highlighted by the petitioner. Rather, in its initial response to section C of the antidumping questionnaire, Oman Fasteners explained that "Oman Fasteners' freight revenue charges relate to U.S. inland freight, ocean freight, demurrage,

¹²³ See Petitioners Comments at 5.

¹²⁴ See Oman Fasteners' Letter, "Certain Steel Nails from Oman; 6th Administrative Review Remand; Refiling of Supplemental Section C Questionnaire Response," dated February 21, 2023 (CSQR), at 12.

¹²⁵ *Id.* at Exhibit S2-23.

U.S. brokerage and Customs clearance charges, and other expenses. These expenses are reported in INLFWCU_OMR/USD, INTNFRU_OMR/ USD, DETDEM1U_OMR/ USD, USBROKU_USD, and USOTHTRU_OMR/ USD.”¹²⁶ As such, the quoted language does not suggest any discrepancy with the reported FRTREVVU for this invoice. Further, record evidence supports the reported FRTREVVU for this invoice. Exhibit S2-4-1 of Oman Fasteners’ CSQR provides the details of freight revenue for each sales invoice.¹²⁷ For this invoice, exhibit S2-4-1 corroborates the reported FRTREVVU figures in the U.S. sales database and provides the extended freight revenue charged to the customer.¹²⁸ As such, Oman Fasteners provided adequate support for its reported FRTREVVU figures, and we have relied on the reported FRTREVVU data for these final results of redetermination.

Third, the petitioner claims that numerous deficiencies exist in the supporting documentation provided for movement expenses related to certain invoices. On May 19, 2023, we requested that Oman Fasteners provide further explanation and support for all calculations it conducted when demonstrating its reported movement expenses for these two invoices. Specifically, at Exhibits S2-23 and S2-24 of the CSQR, a line item in a movement expense invoice reports a total expense which Oman Fasteners reported under two different expense categories using an allocation which lacked any explanation on the record.¹²⁹ At Commerce’s request, Oman Fasteners provided the original agreement which set the agreed upon rates for services rendered by the supplier for the specific movement expense invoice to Oman Fasteners, confirming the allocation demonstrated in Exhibits S2-23 and S2-24 of the CSQR.¹³⁰ Oman

¹²⁶ See AR6 Record at Exhibit 33a (page 27 therein).

¹²⁷ See Oman Fasteners’ CSQR at 4 and Exhibit S2-4-1.

¹²⁸ *Id.*; see also Oman Fasteners’ letter, “Certain Steel Nails from Oman; Remand Redetermination Oman Fasteners; Slip. Op. 23-17; 2nd Supplemental Section C Questionnaire Response,” dated March 8, 2023 (2CSQR), at Exhibit S5-2.

¹²⁹ See CSQR at Exhibit S2-23 and S2-24; see also Petitioner’s Comments at 6.

¹³⁰ See CDSQR at 2 and Exhibit S7-1.

Fasteners explained that it reported all movement expenses provided by the supplier consistent with the agreed upon allocation.¹³¹ Therefore, we find that the record adequately supports Oman Fasteners' movement expenses for the invoices identified by the petitioner. Thus, we used Oman Fasteners' reported figures in our final results of redetermination calculations.¹³²

Fourth, the petitioner also claims a discrepancy exists in the domestic brokerage reported for certain invoices. However, this is not supported by record evidence. For the invoices identified by the petitioner, the petitioner suggests that the reported total brokerage expenses are incorrect based on single movement expense invoice amounts; but, Exhibits S2-23 and S2-24 of the CSQR demonstrate that the total brokerage expenses is an accumulation of line items and expenses from various movement expense invoices, not a grand total from a single expense invoice. At Exhibits S2-23 and S2-24, Oman Fasteners identified and corroborated each figure included in the total brokerage expense by providing the complete set of movement expense invoices for the two sales invoices identified by the petitioner. These expense invoices support the extended brokerage expenses for these sales invoices and the per-unit rates reported in the U.S. sales database.¹³³

Finally, the petitioner identifies certain transactions with a reported U.S. brokerage expense which conflicts with the reported terms of sale. We asked Oman Fasteners to explain why the U.S. brokerage expense figures it reported for these transactions conflict with the terms of sale, to which Oman Fasteners responded by providing a narrative explanation that satisfactorily explained the reported figures.¹³⁴ Accordingly, Oman Fasteners' reported U.S. brokerage expenses for these transactions are supported by the record evidence. Therefore, we

¹³¹ *Id.*

¹³² See Final Remand Redetermination Analysis Memorandum at Attachments 1 and 2.

¹³³ See CSQR at Exhibits S2-23 and S2-24; see also 2CSQR at Exhibit S5-2.

¹³⁴ See CDSQR at 1.

have relied on Oman Fasteners' reported movement expenses for these final results of redetermination.¹³⁵

Comment 3: Whether Commerce should rely on quarterly costs

*Petitioner's Comments:*¹³⁶

- Oman Fasteners failed to demonstrate that the use of quarterly costs is warranted.¹³⁷
- Not all of the top five CONNUMs sold in the U.S. market have a variation in prices and costs higher than 25 percent nor do all the top ten largest CONNUMs by volume sold in the U.S. market have a variation of prices and costs higher than 25 percent. Therefore, the use of quarterly costs is not warranted.¹³⁸
- Oman Fasteners failed to provide actual direct material (DIRMAT) costs on a quarterly basis. Instead, it just provided a standard DIRMAT cost on a quarterly basis and an adjustment factor that was calculated on an annual basis.¹³⁹
- While Oman Fasteners provided individual adjustment factors for each quarter, such calculations are unsupported by any data or formula on the record.¹⁴⁰
- The margin calculation program excluded numerous sales that entered in the POR but were invoiced outside of the POR, and these sales should be included in Commerce's calculations.¹⁴¹

Commerce's Position: For the final results of redetermination, we have continued to rely on quarterly costs. We considered the petitioner's arguments regarding the record information in

¹³⁵ See Final Remand Redetermination Analysis Memorandum at Attachment 1.

¹³⁶ See Petitioner's Comments.

¹³⁷ *Id.* at 18.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 19.

support of relying on quarterly costs in this instance, and we do not find petitioner's argument compelling. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the COM recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales prices during the shorter cost averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.

We reviewed Oman Fasteners information and continue to find that it satisfies our established criteria warranting the application of our quarterly cost methodology. A majority of the top five CONNUMs sold to the United States by volume during the POR indicate a significant variation in direct material costs and a majority of the top ten CONNUMs by volume sold to the United States during the POR indicate a positive correlation between the quarterly changes in cost of manufacturing and average U.S. price.¹⁴² In other words, a majority of Oman Fasteners' top CONNUMs sold to the United States pass our test for significant changes in direct material costs and pass our test for correlation between cost of manufacturing and U.S. price. Therefore, we continue to find that the application of our quarterly cost methodology is appropriate for calculating the weighted-average dumping margin for these final results of redetermination.

The petitioner alleges that Oman Fasteners did not provide actual DIRMAT on a quarterly basis, and instead provided standard quarterly cost information and quarterly adjustment factors based on the actual annual DIRMAT. However, this allegation is unfounded. In its initial section D questionnaire response, Oman Fasteners stated that it "has reported drawn wire costs based on

¹⁴² See Final Remand Redetermination Analysis Memorandum at Attachment 3.

the quarterly weighted-average actual per-unit drawn wire consumption values as per its cost accounting system,”¹⁴³ adding that it “calculated the costs of drawn wire for each finished good item by multiplying the required drawn wire quantity by the unit price of the particular drawn wire type mapped to the nail in the cost accounting system. The resultant costs are aggregated and compared to the actual consumption figures in Oman Fasteners’ general ledger for drawn wire. The small variances are then allocated back to the drawn wire costs to ensure the reported costs are consistent with the figures in Oman Fasteners’ records.”¹⁴⁴ At Exhibit D-7 of the initial section D questionnaire response, Oman Fasteners provides quarterly-cost DIRMAT calculations showing the derived drawn wire costs based on the standard costs embedded in the cost accounting system, before *then applying the quarterly cost adjustment factor* to derive the adjusted cost (column E therein), which is then divided across the production quantity to derive the drawn wire per-unit adjusted cost.¹⁴⁵ This adjusted drawn wire per-unit quarterly cost serves as the basis for the figures Oman Fasteners provided in Exhibit S3-3 to support the application of its quarterly cost methodology and the figures reported in the quarterly-cost COP database.¹⁴⁶ In fact, we requested confirmation that Oman Fasteners reported COP based on the manufacturing costs recorded in its normal course of business, adjusted for raw material costs variances and Oman Fasteners confirmed that “the direct material costs reported in its Section D Response directly match the manufacturing costs recorded in Oman Fasteners’ normal course of business, adjusted for {Commerce}’s reporting requirements and variances recorded in the accounting system.”¹⁴⁷ Oman Fasteners then provided a detailed example of its DIRMATW calculations

¹⁴³ See AR6 Record at Exhibit 35a (page 23 therein).

¹⁴⁴ *Id.*

¹⁴⁵ See AR6 Record at Exhibit 35c (Exhibit D-7 therein).

¹⁴⁶ *Id.* at Exhibit 62c (Exhibit S3-3 therein); see also Oman Fasteners’ Letter, “Certain Steel Nails from Oman; Remand Redetermination Oman Fasteners; Slip. Op. 23-17; 2nd Supplemental Section C Questionnaire Response,” dated March 8, 2023 (2DSQR), at S4-6.

¹⁴⁷ See AR6 Record at Exhibit 62a (page 4 therein).

linking printouts from the cost accounting system, monthly inventory movement schedules for a specific drawn wire input, and the calculated annual and quarterly DIRMATW figures for a downstream product code, which makes up part of the top CONNUM by volume sold to the United States.¹⁴⁸ This figure, based on the inventory movement schedule, links to the extended cost buildup example for the CONNUM provided in exhibit D-25 of the initial section D questionnaire response.¹⁴⁹ As such, we find that the quarterly cost information on the record matches Oman Fasteners' actual costs for the POR, and we have continued to rely on this information to calculate a dumping margin for these final results of redetermination.

The petitioner also raises a ministerial error allegation pertaining to the numerous sales that were excluded from the antidumping margin program for the draft results of redetermination.¹⁵⁰ In light of the petitioner's argument, we have revised the antidumping margin program to include these sales for these final results of redetermination.¹⁵¹ In administrative reviews with EP sales, the universe of U.S. sales includes all merchandise which enters the United States during the POR. It is possible and common for certain entries at the beginning of the POR to have invoice dates falling before the beginning of the POR. In these cases, we include these sales in our margin calculation program. However, in cases where we rely on our quarterly-averaged cost methodology, it is necessary to derive quarter-specific cost information for these sales. Thus, our practice is to derive indices for direct material costs based on the first quarter of the POR and the quarter immediately preceding the POR.¹⁵² On May 19, 2023, we afforded Oman Fasteners the opportunity to place on the record the information

¹⁴⁸ *Id.* at Exhibit 62c (Exhibit S3-3 therein).

¹⁴⁹ *Id.* at Exhibit 35c (Exhibit D-25 therein).

¹⁵⁰ See Petitioner's Comments at 19.

¹⁵¹ See Final Remand Redetermination Analysis Memorandum at 2-3 and Attachments 1 and 2.

¹⁵² See, e.g., *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Reviews; Deferred 2019-2020 Period and Concurrent 2020-2021 Period*, 88 FR 39227 (June 15, 2023), and accompanying IDM at Comment 2.

necessary to derive such data. On May 30, 2023, Oman Fasteners provided revised data¹⁵³ to recalculate the antidumping margin program to include the formerly excluded sales in the margin calculation. For a full explanation of the changes to the antidumping margin program regarding these sales, *see* the accompanying Final Remand Redetermination Analysis Memorandum.

Comment 4: The Appropriate FS for CV

*Oman Fasteners' Comments:*¹⁵⁴

- Commerce should rely on Omani home market profit information, namely the FS of Al Jazeera, the only company on the record from Oman.¹⁵⁵
- Should Commerce continue to rely on third country data, it should continue to rely on the FS of Hiten and Haspl.¹⁵⁶
- Commerce should apply a profit cap.¹⁵⁷

*Petitioner's Comments:*¹⁵⁸

- Commerce should rely upon the FS of ISWP, Sundram, Sterling, and Mohindra, instead of Hiten and Haspl.¹⁵⁹
- Any export subsidies received by these companies are insignificant and do not distort the CV calculations.¹⁶⁰
 - In note 15 to Sterling's FS, the reference is "export incentive receivable," implying that Sterling did not actually receive any export incentives during the

¹⁵³ *See* CDSQR at Exhibit S7-4.

¹⁵⁴ *See* Oman Fasteners' Comments.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *See* Petitioner's Comments.

¹⁵⁹ *Id.* at 9.

¹⁶⁰ *Id.*

fiscal period. Moreover, the amount received under the Duty Drawback and MEIS programs represents only 0.29 percent of Sterling’s total revenue.¹⁶¹

- Mohindra’s FS only report amounts under Duty Drawback and other export incentives representing merely 2.5 percent of Mohindra’s total revenue.¹⁶²
- References of countervailable subsidy schemes in Sundram’s FS only stem from an auditor’s note listing specific laws applicable to the company and does not indicate that any amount was received pursuant to these laws.¹⁶³ Further, note 14 to Sundram’s FS describes an SEZ reinvestment reserve under equity but does not indicate that Sundram received any amount under a countervailable program.¹⁶⁴
- Commerce recently determined that Oman Fasteners itself benefitted from countervailable subsidies at the rate of 2.49 percent.¹⁶⁵
- Commerce previously relied on Sundram’s FS to calculate CV profit, in the *Investigation Final Remand*.¹⁶⁶
- Commerce faulted ISWP’s FS for lacking a breakdown of the company’s geographical markets. However, note 28 to the FS state that “revenue from sales to external customers outside India is less than 10% of the company’s total revenue.”¹⁶⁷
- Commerce used ISWP as a source for CV ratios in the preceding administrative review of this proceeding, finding that it produced identical and comparable merchandise, likely

¹⁶¹ *Id.* at 10.

¹⁶² *Id.*

¹⁶³ *Id.* at 11.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* (citing *Certain Steel Nails from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 87 FR 51335 (August 22, 2022), and accompanying IDM).

¹⁶⁶ *Id.* (citing Final Results of Redetermination Pursuant to Court Remand, Slip Op. 21-172 (CIT December 22, 2021) (Investigation Final Remand)).

¹⁶⁷ *Id.* at 12.

has a similar customer base to Oman Fasteners. Further, ISWP's FS are contemporaneous and demonstrate a profit.¹⁶⁸

- In *Steel Nails from Oman ARI*,¹⁶⁹ Commerce did not set a strict threshold of production in order for a company to constitute a producer of identical merchandise, rather than comparable. Instead, Commerce elected that another company on the record had business operations, production processes, and products that more closely resembled those of the mandatory respondent.¹⁷⁰
- In *Steel Nails from China Final Remand*,¹⁷¹ Commerce elected to average the FS of companies which produced both identical and comparable merchandise.¹⁷²
- Commerce should not rely on the FS of Hiten and Haspl.
 - Haspl provides services, and the company's revenue from sale of its own products and services accounts for 71.72 percent of the total sales revenue. It is unknown what proportion of this figure constitutes sales of subject merchandise.¹⁷³
 - Commerce has previously rejected Haspl's FS as a source for CV ratios.¹⁷⁴
 - Hiten's FS include "Export Incentives Receivable" that represents almost the totality of other current assets of the company.¹⁷⁵

¹⁶⁸ *Id.* at 13.

¹⁶⁹ See *Certain Steel Nails From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014–2016*, 82 FR 36738 (August 7, 2017) (*Steel Nails from Oman ARI*), and accompanying PDM at 17.

¹⁷⁰ *Id.* at 13-14.

¹⁷¹ See *Final Results of Redetermination Pursuant to Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems, LP v. United States*, Slip Op. 13-118 (CIT September 3, 2013) (*Steel Nails from China Final Remand*).

¹⁷² See Petitioner's Comments at 14.

¹⁷³ *Id.* at 16.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 17.

- Hiten’s FS do not break down what extent of the company’s income derives from sale of fasteners.¹⁷⁶
- If Commerce continues to rely on Hiten’s FS to value CV profit and ISE, Commerce should exclude the line item “discounting charges” from Hiten’s total costs and add the amount to the total selling expenses. This item likely refers to discounting of financial charges related to trade receivables and would constitute selling expenses.¹⁷⁷

Commerce’s Position: We have continued to rely on the FS of Haspl and Hiten as a basis for CV profit and ISE ratios for the final results of redetermination. We considered the comments presented by Oman Fasteners and the petitioner, and we find that the FS of Haspl and Hiten continue to be the best available information on the instant record most closely representing the experience of a predominate manufacturer of steel nails (*i.e.*, fasteners), for the following reasons.

Contrary to the petitioner’s claims, the FS of Sterling, Sundram, and Mohindra evince receipt of countervailable subsidies during the fiscal period and, therefore, do not represent the best basis for CV ratios on the record. Note 15 to Sterling’s FS includes the line item “Export Incentive Receivable,” with a positive figure of 104.13 Lakh received during the fiscal period, clearly indicating, despite the petitioner’s claims, that Sterling received money under certain export incentive programs.¹⁷⁸ As detailed in note 1, part C, subpart (12), the specific programs

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 19.

¹⁷⁸ *See* AR6 Record at Exhibit 50 (at Exhibit 8 therein).

are Duty Drawback and MEIS,¹⁷⁹ both of which Commerce has previously determined to be countervailable programs.¹⁸⁰ Regarding Sundram, note 14, part B, subpart (c)(1) specifies that:

The Special Economic Zone (SEZ) re-investment reserve has been created out of the profit of eligible SEZ units in terms of the provisions of section 10AA(1)(ii) of the Income-tax Act, 1961. The reserve is utilised by the Company for acquiring new assets as per the terms of Section 10AA(2) of Income Tax Act, 1961. The utilization of reserves in the previous year includes {crore} 1.25 representing the balance which was reversed.¹⁸¹

Therefore, the SEZ re-investment reserve contained reserves comprised of profit earned from eligible SEZ units under the provisions of a program which Commerce has previously found countervailable, *i.e.*, the Income Tax Act 1961.¹⁸² Sundram's FS further adds that reserves from this fund were utilized during the previous year, indicating that Sundram utilized benefits provided through programs which Commerce has previously found to be countervailable.¹⁸³ Finally, the petitioner outright acknowledges that Mohindra's FS evince receipt of countervailable subsidies, only contending that the amount constitutes an insignificant percent of the company's revenue.¹⁸⁴ Commerce has stated, "it is {Commerce's} practice to disregard financial statements of companies that evidence receipt of countervailable subsidies and where there are other usable data on the record."¹⁸⁵ Therefore, because the record contains FS of

¹⁷⁹ *Id.*

¹⁸⁰ *See, e.g., Wind Towers India Prelim PDM* at 19 and 24.

¹⁸¹ *See* AR6 Record at Exhibit 57a (at Exhibit CVR-11).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See* Petitioner's Comments at 10.

¹⁸⁵ *See, e.g., Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 8907 (February 27, 2009), and accompanying IDM at Comment 1; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 13; *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35995 (July 24, 2019) ("It is Commerce's practice to reject the financial statements of a company that we have reason to believe or suspect may have received countervailable subsidies from a program previously investigated by Commerce, particularly when other sufficient, reliable, and representative data are available for calculating surrogate financial ratios").

producers of identical and comparable merchandise that do not exhibit receipt of countervailable subsidies, we find that the FS of Sterling, Sundram, and Mohindra are not the best sources of CV information on the record, and we have not relied on these FS in our CV ratio calculations.

The petitioner notes that Commerce has relied on Sundram to value CV ratios in previous segments of this proceeding, but that is not a basis for relying on Sundram's FS here. Commerce must select the best available information from the available options on the instant record. In the remand redetermination of the final determination in the underlying investigation of this proceeding—the segment noted by the petitioner wherein Commerce valued CV ratios using Sundram's FS—the decision to select Sundram's FS as the basis for CV ratios was based on a leveled analysis of the available options on that record.¹⁸⁶ What serves as the best available information on one record may not be the best available information on another record. In this case, the record includes more suitable candidates than Sundram to represent the experience of a predominate manufacturer of steel nails, *i.e.*, usable FS which do not exhibit receipt of countervailable subsidies. Therefore, we have not relied on Sundram's FS in our CV ratio calculations.

We acknowledge the petitioner's identification that ISWP does sell predominately within its domestic market, *i.e.*, India, contrary to our appraisal in the Draft Remand.¹⁸⁷ Nonetheless, even after further consideration of ISWP's FS, we find that ISWP does not represent the best available information on the record. ISWP produces steel nails, but the FS indicate that steel nails account for only 13 percent of the company's sales revenue.¹⁸⁸ Further, note 8 details that the company discontinued its fasteners business and any inventories pertaining

¹⁸⁶ See Investigation Final Remand at 10.

¹⁸⁷ See Petitioner's Comments at 12; *see also* AR6 Record at Exhibit 50 (at Exhibit 4 therein).

¹⁸⁸ See AR6 Record at Exhibit 40 (at Exhibit 4 therein).

to fasteners are reclassified under “assets classified as held for sale,” which the balance sheet values at 5.84 lakhs for the fiscal period.¹⁸⁹ Clearly, nail production has ceased, and the sale of nails is not the company’s primary business activity. While there is no rigid threshold percentage which a company’s sales of a given product must meet to be considered a manufacturer of that product, we may still conclude that one company more closely reflects the business operations of another by the degree to which the sale of that product comprises that company’s total revenue. ISWP is primarily a producer of wire rod and wire, accounting for 42 and 29 percent, respectively, of the company’s total sales revenue.¹⁹⁰ Because Oman Fasteners is primarily a manufacturer of steel nails,¹⁹¹ a manufacturer of steel nails and/or fasteners would more closely reflect the experience of Oman Fasteners than a manufacturer of primarily wire rod and wire. In this case, the record includes FS which reflect the experience of a predominate manufacturer and seller of nails and/or fasteners. Therefore, we have not relied on ISWP’s FS in our CV ratio calculations.

Next, we find the petitioner’s attempts to discredit the FS of Haspl and Hiten to be unpersuasive. First, the petitioner suggests the record lacks a breakdown of revenue stemming from the sale of comparable merchandise for either company,¹⁹² but we disagree. In the Draft Remand, we acknowledged that Haspl’s business activities are not limited to the manufacture and sale of steel nails and/or fasteners but also include the provision of trucking services. The record demonstrates that Haspl is primarily involved in “nail production as well as the sale of other fasteners in the field of construction industry and wood packaging.”¹⁹³ The Appendix to

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *See* AR6 Record at Exhibit 23d (at Exhibit A-5 therein (page 8)).

¹⁹² *See* Petitioner’s Comments at 16-17.

¹⁹³ *See* AR6 Record at Exhibit 51 (at Exhibit 19A therein (page 2)).

Haspl's FS lists the company's business activities, in order, with "manufacture of metal consumables" first and "road motor transport" fourth (*i.e.*, last).¹⁹⁴ Revenue from the sale of Haspl's own products and services accounts for 71.72 percent of total sales revenue, which includes both the revenue from sale of comparable merchandise and the revenue from the dissimilar business activity of trucking services.¹⁹⁵ Part III.1. of the Appendix states that "the properties are predominately production buildings" and "{s}eparate movables {...} consists mainly of production equipment and handling equipment."¹⁹⁶ Thus, while the portion of Haspl's total revenue stemming from the sale of comparable merchandise cannot exceed 71.72 percent, we find that the record reasonably demonstrates that Haspl is predominately a manufacturer and seller of steel nails and fasteners, with other business activities being secondary. Regarding Hiten, the FS clearly indicate that 97.97 percent of the company's total revenue stems from the fasteners segment, with the remaining 2.03 percent stemming from the windmill segment.¹⁹⁷ Therefore, we also find that Hiten is predominately a manufacturer of comparable merchandise (*i.e.*, fasteners).

The petitioner again identifies the line item "Export incentives receivable & MAT credit entitlement" as evidence that Hiten's FS are unsuitable sources for CV information. However, as explained in the Draft Remand, Hiten's FS contain no indication that this line item is related to any program which Commerce has previously found countervailable. As there is no record evidence suggesting that this line item in Hiten's FS relates to a countervailable program, for these final results of redetermination, we have continued to rely on the FS of Haspl and Hiten to calculate CV profit and ISE ratios.

¹⁹⁴ *Id.* (at Exhibit 19B therein (page 59)).

¹⁹⁵ *Id.* (at Exhibit 19B therein (page 70)).

¹⁹⁶ *Id.* (at Exhibit 19B therein (page 64)).

¹⁹⁷ *Id.* (at Exhibit 9B therein (page 89)).

Finally, we agree with the petitioner’s claim that the “discounting charges” expense in Hiten’s FS represent a selling expense. Consistent with our treatment of discounting charges,¹⁹⁸ we have treated this expense as a direct selling expense for these final results of redetermination by deducting the “discounting charges” value from the total cost denominator in our calculations of Hiten’s profit and ISE ratios.¹⁹⁹ However, we disagree with the petitioner’s argument that this expense should be added to the ISE numerator. Because we find this expense to be properly classified as a direct selling expense, we have not added the value to the ISE numerator.²⁰⁰

Comment 5: Credit Expenses

*Oman Fasteners’ Comments:*²⁰¹

- Commerce failed to make a corresponding adjustment for home market credit expenses when it made an adjustment for U.S. credit expenses in the Draft Remand. As a result, this creates an unreasonable comparison that artificially inflates the dumping margin. For the final results of redetermination, Commerce should make no adjustment for U.S. credit expenses.²⁰²
- For the final results of redetermination, Commerce should make no adjustment for U.S. credit expenses or setting U.S. credit expenses equal to zero.²⁰³

The petitioner did not submit rebuttal comments on this issue.

¹⁹⁸ See, e.g., *Polyester Textured Yarn From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 31301 (July 1, 2019), and accompanying PDM at 18; see also *Common Alloy Aluminum Sheet From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65377 (October 15, 2020), and accompanying PDM at 18.

¹⁹⁹ See Final Analysis Memorandum at 3-4 and Attachment 4.

²⁰⁰ *Id.*

²⁰¹ See *Oman Fasteners’ Comments*.

²⁰² *Id.* at 4-5.

²⁰³ *Id.*

Commerce’s Position: We agree with Oman Fasteners. In the Draft Remand, we included Oman Fasteners’ reported U.S. credit expenses as a circumstances-of-sale (COS) adjustment to the net U.S. price.²⁰⁴ Pursuant to section 773(a)(6)(C)(iii) of the Act, in order to compare the sale of the foreign like product to the sale of subject merchandise in the United States on as equal a basis as possible, it is our practice to make adjustment for differences in COS by deducting home market (HM) or comparison market (CM) direct selling expenses (*i.e.*, imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, warranty expenses, technological services, and bank charges), where appropriate. In this case, because Oman Fasteners did not have a HM or CM exceeding five percent of its sales to the United States,²⁰⁵ we relied on CV as a basis for calculating NV. Consequently, we lack any HM or CM data from which to derive COS adjustments and, therefore, did not deduct a HM or CM credit COS adjustment from NV. Because there is no downward credit COS adjustment to NV, it is inappropriate to then apply the corresponding upward credit COS adjustment to the net U.S. price. Therefore, for these final results of redetermination, we have not included Oman Fasteners’ reported per-unit U.S. credit expenses as an upward adjustment to net U.S. price.²⁰⁶

Comment 6: Whether to deduct Section 232 duties

*Petitioner’s Comments:*²⁰⁷

- Oman Fasteners reported that it paid no Section 232 duties on entries of subject merchandise into the United States during the POR due to the CIT decision in *Oman Fasteners, LLC v. United States Final*.²⁰⁸ However, that decision was recently overturned

²⁰⁴ See Draft Analysis Memorandum at 6.

²⁰⁵ See AR6 Record at Exhibit 23a (at page 2 and Exhibit A-1 therein).

²⁰⁶ See Final Remand Redetermination Analysis Memorandum at 3 and Attachment 1.

²⁰⁷ See Petitioner’s Comments.

²⁰⁸ See *Oman Fasteners, LLC v. United States*, 520 F. Supp. 3d 1332 (CIT 2021) (*Oman Fasteners, LLC v. United States Final*).

by the U.S. Court of Appeals for the Federal Circuit (CAFC) in *PrimeSource Bldg. Prods. V. United States*.²⁰⁹

- Accordingly, Oman Fasteners is now required to pay Section 232 duties on all entries of steel nails made during the POR and Commerce, consistent with its normal practice, should deduct these duties from U.S. price in calculating Oman Fasteners' dumping margin.²¹⁰
- Commerce should deduct 25 percent of the reported entered value from each sale. Regarding sales for which the entered value was not reported, Commerce should deduct 24 percent of the gross U.S. price. At minimum, as neutral facts available, Commerce should deduct Section 232 duties for those sales with delivery terms wherein Oman Fasteners paid entry duties, and which was the importer of record.²¹¹

No other party submitted comments regarding this issue.

Commerce's Position: We have continued not to deduct Section 232 duties or their equivalent value from Oman Fasteners' U.S. sales for these final results of redetermination, except for the case of the three entries for which payments were made during the POR. During the POR, Oman Fasteners stated that, apart from three entries, they did not pay any Section 232 duties on its entries of subject merchandise.²¹² For the three entries on which Oman Fasteners stated that it paid Section 232 duties, Oman Fasteners provided complete explanations and a reconciliation to the total Section 232 duties figure reported in the U.S. sales database.²¹³ Further, Oman Fasteners explained it is currently in the process of receiving a refund from CBP for these three

²⁰⁹ See *PrimeSource Bldg. Prods. V. United States*, 59 F. 4th 1255 (CAFC 2023) (*PrimeSource v. United States*).

²¹⁰ See Petitioner's Comments at 7-8.

²¹¹ *Id.* at 8.

²¹² See *Oman Fasteners LLC v. United States*, CIT No. 20-00037, Dkt. 35 (February 21, 2020), as amended by Dkt. 75 (April 16, 2020) and Dkt. 95 (September 11, 2020).

²¹³ See AR6 Record at Exhibit 33c.

payments.²¹⁴ Nevertheless, because Oman Fasteners paid these Section 232 duties as the importer of record, and there is no evidence on the record that Oman Fasteners received a refund for the three entries, we find that these three payments are properly deducted from U.S. price.

Comment 7: Whether Commerce’s differential pricing analysis is unlawful

*Oman Fasteners’ Comments.*²¹⁵

- Commerce’s differential pricing analysis in the Draft Remand was unreasonable and unsupported by substantial evidence in this review.²¹⁶
- The CIT and CAFC have found unreasonable Commerce’s methodology of accounting for the difference in the size of each group (for example, test groups, comparison groups) when calculating the Cohen’s *d* coefficient by dividing the difference in the groups’ means by a simple average rather than by a weighted average.²¹⁷
- For the final results of redetermination, Commerce should correct its flawed differential pricing analysis.²¹⁸

No other party submitted comments regarding this issue.

Commerce’s Position: We disagree with Oman Fasteners. In *Mid-Continent*,²¹⁹ the only point which Oman Fasteners cites to support its allegation against Commerce’s differential pricing methodology is that the CAFC has remanded the issue back to Commerce for further explanation (*i.e.*, the usage of a simple average when comparing test groups as part of the Cohen’s *d* test).²²⁰

Notably, in its opinion, the CAFC did not find the usage of a simple average to be unlawful;

²¹⁴ *Id.*; see also Oman Fasteners’ CSQR at 14.

²¹⁵ See Oman Fasteners’ Comments.

²¹⁶ *Id.* at 5.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ See *Mid Continent Steel & Wire, Inc., v. United States*, Court No. 15-00213, Slip Op. 23-45 (CIT April 3, 2023).

²²⁰ *Id.* at 10 and 20.

rather, the CAFC simply found that Commerce's reliance on a simple average over a weighted average required additional explanation.²²¹ Currently, Commerce is in the process of responding to the CAFC's request for further explanation pursuant to *Mid Continent* and the CAFC has yet to enter a final judgement on this issue. Therefore, in the instant case, for the final results of redetermination, per our practice, we have continued to use a simple average when applying our differential pricing methodology.

Comment 8: Cash Deposit Instructions

*Oman Fasteners' Comments.*²²²

- The final results of redetermination should serve the same function as the final results issued by Commerce in a normal administrative review. Therefore, immediately upon the CIT's affirmance of the final results, Commerce should issue revised cash deposit instructions to CBP that reflect the 0 percent final weighted-average margin.²²³

No other party submitted comments regarding this issue.

Commerce's Position: We intend to promptly issue revised cash deposit instructions reflecting the calculated dumping margin determined in this remand proceeding, following a final affirmative ruling by the Court in this remand proceeding.

²²¹ *Id.* at 11.

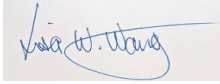
²²² *See* Oman Fasteners' Comments.

²²³ *Id.* at 5.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's *Remand Order*, and based on the above analysis, Commerce has recalculated Oman Fasteners' weighted-average dumping margin. Accordingly, the revised weight-averaged dumping margin for Oman Fasteners is 0.00 percent *ad valorem*.

7/17/2023

X 

Signed by: LISA WANG

Lisa Wang
Assistant Secretary
for Enforcement and Compliance