

## US Producer Lauds Commerce Duties On Omani Nails

By **Nicole Rosenthal**

Law360 (June 14, 2022, 4:02 PM EDT) -- A U.S. steel nails producer showed its support for the U.S. Department of Commerce's decision to lower countervailing duties on nails from Oman, commending Commerce for using the right documents to calculate the levies after a series of court rebukes.

U.S. steel nail producer Mid Continent **applauded** Commerce on Monday over its use of Indian steel nail producer Sundram Fasteners Ltd.'s financial documents in a decision to lower duties for competitor Oman Fasteners LLC. The comments came after Commerce scrapped its initial move to use a Thai producer's financial information to calculate Oman Fastener's duties after the department determined that Oman Fastener's financial statements lacked the necessary data for calculations.

In what is known as constructed value, a third-country producer's financial information can be used to compute duties when a mandatory respondent has insufficient sales in its home market to support the assessment.

Commerce did not use Oman Fasteners' financial statements to calculate profits and indirect selling expenses because the company's home market sales are "not meaningfully significant," according to Mid Continent.

But while Sundram was not the perfect fit either because it receives government subsidies, according to Mid Continent, Commerce concluded in April that the company is a better fit than 10 others on the record.

"The record evidence clearly indicates that the subsidy in question had a negligible effect on Sundram's financial experience for its fiscal year and would not have affected whether the company was profitable or not," Mid Continent wrote, citing that the subsidy amount represented less than two-tenths of 1% of Sundram's profit.

"Indeed, viewed in this light, the presence of the subsidy in Sundram's statement pales in comparison to the serious and immutable flaws present in the other options, all of which Commerce and/or Mid Continent have detailed in earlier stages of this litigation, and in the most recent remand redetermination," Mid Continent added.

Mid Continent's demonstration of approval comes after Commerce's series of back-and-forth disputes over calculation methodology in the Federal Circuit and the Court of International Trade. Commerce initially decided to use Thai producer Hitech Fastener Manufacturer Ltd. for records to calculate the duties.

Commerce ultimately used competitor Sundram's financial records to calculate the levies, slashing the anti-dumping duties for Omani goods from 9.1% to 4.22%. Commerce noted that Sundram Fasteners' financial records were the only contemporary records of comparable products reflecting production, sale and profit.

Mid Continent agreed with Commerce's final decision to stop using Hitech's financial documents or those of six Omani companies on record because none of them produced steel nails comparable to Oman Fasteners' product.

While the analysis resulted in lower duties, Mid Continent praised Commerce for declining to use disparate and outdated information, issues that were found in the reports of the other companies considered for the calculations.

"Hitech's financial statements are not contemporaneous with the period of investigation ... since they cover the calendar year 2012, which ended four months before the [period of investigation] began, while Sundram's financial statements correspond with the POI exactly," Mid Continent wrote. "Therefore, on balance, Commerce reasonably determined that Sundram's financial statements are the only contemporaneous financial statements on the record that reflect production, sale, and profit from the sale of comparable merchandise."

Counsel for Mid Continent, Oman Fasteners and the U.S. government did not respond to requests for comment on Tuesday.

Mid Continent is represented by Adam H. Gordon of The Bristol Group PLLC.

The federal government is represented by Mikki Cottet, Joseph H. Hunt, Jeanne E. Davidson and Patricia M. McCarthy of the U.S. Department of Justice and Ian McInerney of the U.S. Department of Commerce.

Oman Fasteners is represented by Michael P. House, Andrew Cardias and Shuaiqi Yuan of Perkins Coie LLP.

The case is Mid Continent Steel & Wire Inc. v. U.S., case number 1:15-cv-00214, in the U.S. Court of International Trade.

--Additional reporting by Alex Lawson. Editing by Vaqas Asghar.