

instrument and instructions should be directed to William G. Jacobson, (562) 980-4035 or bill.jacobson@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information required by the International Dolphin Conservation Program Act, amendment to the Marine Mammal Protection Act, is needed to: (1) Document the Dolphin-safe status of tuna import shipments; (2) verify that import shipments of fish not harvested by large scale, high seas driftnets; and (3) verify that imported tuna not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers and processors.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648-0370.

Form Number: NOAA Form 370.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 440.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 4,167.

Estimated Total Annual Cost to Public: \$4,050.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 12, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-909]

Certain Steel Nails from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty order on certain steel nails from the People's Republic of China ("PRC"). See *Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("Order"). We preliminarily find that Qingdao Denarius Manufacture Co., Ltd ("Qingdao Denarius") sold subject merchandise at less than normal value ("NV") during the period of review ("POR"), January 23, 2008, through January 31, 2009. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

EFFECTIVE DATE: January 15, 2010.

FOR FURTHER INFORMATION CONTACT: Tim Lord or Matthew Renkey, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-7425 and (202) 482-2312, respectively.

SUPPLEMENTARY INFORMATION:

General Background

On February 25, 2009, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(c), the Department received a NSR request from Qingdao Denarius. Qingdao Denarius certified that it is a producer and exporter of the subject merchandise upon which the request was based. On March 20, 2009, the Department initiated the requested antidumping duty NSR. See *Certain*

Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review, 74 FR 11909 (March 20, 2009). On June 11, 2009, the Department extended the deadline for the preliminary results of this review by 120 days, to January 11, 2010. See *Certain Steel Nails from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review* ("Extension")¹, 74 FR 27777 (June 11, 2009).

Between April 3, 2009, and August 4, 2009, Qingdao Denarius submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

Surrogate Values

On October 29, 2009, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production ("FOP"). On November 24, 2009, Petitioner² submitted surrogate value data. No other party submitted surrogate country or surrogate value data.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production ("FOP") for Qingdao Denarius between November 9-12, 2009. See Memorandum to the File from Tim Lord, Case Analyst through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of Qingdao Denarius Manufacture Co., Ltd in the Antidumping New Shipper Review of Certain Steel Nails from the People's Republic of China, dated, January 8, 2010 ("Qingdao Denarius Verification Report").

Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating

¹ Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will reach its determination on the next business day, pursuant to 19 CFR 351.303(b). In this instance, the preliminary results will be due no later than January 11, 2010.

² Mid-Continent Nail Corporation.

or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007). See also *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632, (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determinations

A designation as a NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government

decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

In this review, Qingdao Denarius submitted a complete response to the separate rates section of the Department's NME questionnaire. The evidence submitted by Qingdao Denarius includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by Qingdao Denarius supports a finding of a *de jure* absence of government control over its export activities. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; (2) the legal authority on the record decentralizing control over the respondent; and (3) other formal measures by the government decentralizing control of companies.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In this review, Qingdao Denarius submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5)

there is no restriction on any of the company's use of export revenues. Therefore, the Department preliminarily finds that Qingdao Denarius has established that it qualifies for a separate rate under the criteria established by Silicon Carbide and Sparklers.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Qingdao Denarius for this NSR. In evaluating whether a single sale in a NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) timing of the sale; (2) price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were sold at a profit; and (5) whether the transaction was made on an arms-length basis. See *Tianjin Tiancheng Pharmaceutical Co. v. the United States*, 366 F. Supp. 2d R46, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, "all of which may be specific to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co. v. the United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005). In examining Qingdao Denarius' sale in relation to these factors, the Department observed no evidence that would indicate that this sale was not *bona fide*. Therefore, we preliminarily find that the new shipper sale by Qingdao Denarius was made on a *bona fide* basis.

Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Qingdao Denarius, and our verification of Qingdao Denarius, as well the company's eligibility for separate rates (see Separate Rates Determination section above), we preliminarily determine that Qingdao Denarius has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating Qingdao Denarius' sale of subject merchandise to the United States as an appropriate transaction for this NSR.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section

773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.³ Once it has identified economically comparable countries, the Department's practice is to select an appropriate surrogate country from the list based on the availability and reliability of data from the countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). In this case, we have found that India is a significant producer of comparable merchandise. In the less-than-fair value investigation, we determined that India is comparable to the PRC in terms of economic development and has surrogate value data that is available and reliable. See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008). In this proceeding, we received comments regarding surrogate country selection only from the Petitioner, which supports the selection of India. Since no information has been provided in this review that would warrant a change in the Department's selection of India from the less-than-fair value investigation, we continue to find that India is the most appropriate surrogate country because it is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

³ See Memorandum from Kelly Parkhill, Acting Director of Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Request for a List of Surrogate Countries for the New Shipper Review of the Antidumping Duty Order on Certain Steel Nails ("Steel Nails") from the People's Republic of China ("PRC") (October 28, 2009).

U.S. Price

For Qingdao Denarius' sale to the United States, we used the export price ("EP") methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the price to unaffiliated purchasers in the United States.

In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. We have reviewed each of these services and expenses reported by Qingdao Denarius and find that they were provided by an NME vendor or paid for using PRC currency. Thus, we based the deduction of these movement charges on surrogate values. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Tim Lord, Case Analyst, Office 9: Antidumping Duty New Shipper Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results, dated January 8, 2010 ("Surrogate Values Memo") for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Qingdao Denarius during the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a

surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

Indian surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website. For further details regarding the surrogate values used for these preliminary results, see the Surrogate Values Memo.

Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period January 23, 2008, through January 31, 2009:

CERTAIN STEEL NAILS FROM PRC

| Manufacturer/Exporter | Weighted-Average Margin (Percent) |
|------------------------|-----------------------------------|
| Qingdao Denarius | 38.13 |

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this NSR, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or

corrects information recently placed on the record.⁴

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this NSR. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. See 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of this NSR, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a weighted-average basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this NSR is above *de minimis*.

⁴ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Cash-Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this NSR for all shipments of subject merchandise from Qingdao Denarius entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Qingdao Denarius, the cash deposit rate will be the rate that is established in the final results of this NSR; (2) for subject merchandise exported by Qingdao Denarius but not manufactured by Qingdao Denarius, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 118.04 percent); and (3) for subject merchandise manufactured by Qingdao Denarius, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those entries of subject merchandise both produced and exported by Qingdao Denarius. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-723 Filed 1-14-10; 8:45 am]

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