

DATE: June 10, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of 1<sup>st</sup> New  
Shipper Review: Certain Steel Nails from the People's Republic of  
China ("PRC")

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## **SUMMARY**

The Department has analyzed the case and rebuttal briefs submitted by Mid-Continent Nail Corporation ("Petitioner"), and Qingdao Denarius Manufacture Co., Ltd. ("Qingdao Denarius"). As a result of our analysis, the Department has made changes from the Preliminary Results. See Certain Steel Nails from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review, 75 FR 2483 (January 15, 2010), ("Preliminary Results"). The period of review ("POR") is January 23, 2008, through January 31, 2009. The Department recommends that you approve the positions it has developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum below. Below is a complete list of issues for which the Department received comments by parties:

**COMMENT 1: LEGITIMACY OF QINGDAO DENARIUS AS A NEW SHIPPER**  
**COMMENT 2: SURROGATE VALUES**  
A. CARTONS  
B. STEEL SCRAP  
C. CURRENCY CONVERSION

**COMMENT 3: CLASSIFICATION OF CERTAIN INPUTS**  
**COMMENT 4: SURROGATE FINANCIAL RATIOS**  
**COMMENT 5: ADJUSTMENT TO GROSS UNIT PRICE**

## **DISCUSSION OF THE ISSUES**

### **COMMENT 1: LEGITIMACY OF QINGDAO DENARIUS AS A NEW SHIPPER**

#### **A. Qingdao Denarius' Existence at its Reported Sales Office**

Petitioner argues that Qingdao Denarius was not a legitimate nails company during the POR and therefore its U.S. sale was not a bona fide transaction because Qingdao Denarius was not located at its reported sales office during the POR.

First, Petitioner contends that it is highly suspect that only Qingdao Denarius' interim lease,<sup>1</sup> but not its actual lease, could be located by Petitioner's corporate researcher. Second, Petitioner argues that circumstances surrounding Qingdao Denarius' relationship with its landlord raise doubts regarding Qingdao Denarius' existence at its office, including Qingdao Denarius' explanation for why its general manager and the company's landlord have the same phone number listed on the interim lease. Petitioner asserts it is suspicious that the office landlord, and not Qingdao Denarius, was listed as the addressee on the receipt for a building management fee that the Department received in Qingdao Denarius' October 5, 2009 Questionnaire Response. Petitioner also contends that the employee of a neighboring office, whom the Department questioned and who corroborated Qingdao Denarius' existence at the site during the POR during the verification, is not reliable because the office he occupies is also owned by Qingdao Denarius' landlord.

Third, Petitioner also contends it is highly suspicious that the signs for the previous occupant of Qingdao Denarius' office were still being used for months outside of the office as well as in the lobby of the office building after Qingdao Denarius began occupying the space. Petitioner also asserts that Qingdao Denarius' explanation for the lobby sign's existence at verification (*i.e.*, that the general manager used a different entrance than where the previous occupant's lobby sign was located, and thus never noticed<sup>2</sup>) contradicts its earlier statement that the signs were left up because the express mail company and other service providers might take months to update their system with the previous occupant's new office address.<sup>3</sup>

Finally, Petitioner argues that the Department's Verification Report omitted certain aspects of Denarius' office that could have given insight into whether Qingdao Denarius operated from its sales office. Specifically, Petitioner contends the Department did not address whether the office contained the usual supplies one would find at an office, such as computers, office supplies, and "wear and tear."

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<sup>1</sup> Qingdao Denarius signed a non-binding "interim lease" with its office landlord, and then signed with its office landlord a binding "actual lease."

<sup>2</sup> See Memorandum to the File through Alex Villanueva, Program Manager, from Tim Lord, Case Analyst, Verification of the Sales and Processing Response of Qingdao Denarius Manufacture Co., Ltd., in the Antidumping New Shipper Review of Certain Steel Nails from the People's Republic of China (January 8, 2009) ("Verification Report") at 3-4.

<sup>3</sup> See Letter from Shanghai Yuet Fai Commercial Consulting Co., Ltd. to the Secretary of Commerce: Factual Information to Respond to Petitioner's Submission Dated September 23, 2009 (October 2, 2009) ("Qingdao Denarius' October 2, 2009 Factual Information") at 4.

Qingdao Denarius contends that Petitioner mischaracterized the record and disagrees with the claim that it is not a legitimate business entity that did not occupy a sales office during the POR. With regard to Qingdao Denarius' general manager and the company's landlord sharing the same phone number on one of their leases, Qingdao Denarius argues that this has no bearing on the fact that it rented and operated out of its office space during the POR. Qingdao Denarius also notes that there are receipts on record showing that the office's landlord paid fees to the building management company, and there are also receipts on record showing that Qingdao Denarius in turn paid its landlord for these same fees.<sup>4</sup>

Qingdao Denarius argues that at verification, the company explained that the lobby sign and office sign of the previous tenant were left up because of an agreement made between Qingdao Denarius' landlord and the previous tenant, not between Qingdao Denarius and the previous tenant directly. Qingdao Denarius consented to the agreement, explaining that this is a typical transitional procedure for businesses in the PRC.<sup>5</sup> See Certain Steel Nails from the People's Republic of China: Rebuttal Brief (March 18, 2010) ("Qingdao Denarius' Rebuttal Brief") at 4.

With regard to Petitioner's comment that the Verification Report did not address critical contents of the office, such as the existence of computers, stationary, etc., Qingdao Denarius contends that the Department in fact conducted a thorough examination of the office, including searches through all file cabinets, desk drawers, and the office's computer system. Qingdao Denarius also contends that the Department examined crucial documentation proving the company's occupancy during the POR, such as business registration documents, personal labor contracts, and invoices for machinery purchased by Qingdao Denarius, which lists the office address as the location for billing. See Verification Report at Exhibits 4.a. and 23.

#### B. Qingdao Denarius' Existence at its Reported Factory

Petitioner argues that the rental receipts of Qingdao Denarius to its factory landlord constitute nothing more than proof that it rented production space, not that it actually produced nails or occupied the production space during the POR. Additionally, Petitioner contends that prior to verification, certain circumstances were present, which indicated that Qingdao Denarius did not exist at the factory during the POR.<sup>6</sup> Petitioner also asserts that the Verification Report did not state whether there was scrap or other waste outside of the factory consistent with the production of steel nails for the last year and whether any other businesses in the vicinity of Qingdao Denarius' factory was familiar with Qingdao Denarius or could confirm that the company produced nails at the factory.

Qingdao Denarius asserts that contrary to Petitioner's contention, it operated at its reported factory throughout the POR. As support, Qingdao Denarius underscores the Department's verification observations that it possessed machinery purchase invoices, a trucking pick-up

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<sup>4</sup> See Verification Report at Exhibit 5.

<sup>5</sup> See Qingdao Denarius' Rebuttal Brief at 4.

<sup>6</sup> The exact information regarding these "certain circumstances" rely heavily on discussion of business proprietary information. Petitioner's arguments in their entirety may be viewed in Petitioner's Proprietary Case Brief at 10.

notice, and materials delivery notes.<sup>7</sup> Qingdao Denarius argues that these documents list the delivery or pick-up address as Qingdao Denarius' reported factory location, have dates throughout the POR, and thus, establish its occupancy. Qingdao Denarius also asserts that the Department noted in the Verification Report that the company's factory space showed the signs of a nail manufacturing facility that had been in existence for a long period of time, including pools of lubricant oil that had leaked from machines, piles of scrap and sawdust, and detergent for the factory workers' clothes. See Verification Report at 10.

### **Department's Position:**

On November 9-12, 2009, the Department verified the data submitted by Qingdao Denarius in response to the multiple questionnaires sent to it by the Department. This included a site visit to the sales office and the production facility.

As stated above, Petitioner argues that the sales office location is highly suspect because: (1) the actual lease between Qingdao Denarius and its landlord could not be found by its corporate researcher; and (2) the unique circumstances surrounding the relationship between Qingdao Denarius and its landlord.

Regarding why Petitioner's corporate researcher could only locate the interim lease, and not the actual lease, the Department finds the explanation and record information Qingdao Denarius provided is credible. As explained by Qingdao Denarius in its October 5, 2010 Questionnaire Response, and demonstrated at verification, Qingdao Denarius signed a non-binding interim lease with its office landlord, which it submitted to the proper business registration authorities solely as a requirement for obtaining a business license. Once it received its license, it signed with its office landlord an actual lease with binding terms. See Qingdao Denarius' October 5, 2010 Questionnaire Response at 2; see also Verification Report at 3. Both leases were placed on the record by Qingdao Denarius prior to verification, and the actual lease was examined by the Department firsthand at verification. At verification, the Department was informed by Qingdao Denarius officials that the interim lease is the only lease kept by the PRC business registration authorities, and the Department was also informed that Qingdao Denarius has not given the business registration authorities the actual lease because it is not legally required to do so. See Id. Record evidence therefore indicates why Petitioner's corporate researcher could not locate the actual lease, and instead was only able to locate a copy of the interim lease.

With respect to unique circumstances surrounding the relationship with Qingdao Denarius' sales office landlord, the Department finds that Petitioner's argument is little more than conjecture unsupported by record evidence. At verification, although the Department noted that Qingdao Denarius' landlord specifically chose to place as little information about himself as possible on documents due to the number of creditors to whom he was indebted (see Verification Report at 3), this finding does not establish that Qingdao Denarius did not operate out of the sales office identified in the rental lease.

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<sup>7</sup> See Qingdao Denarius' October 5, 2009 Questionnaire Response at Exhibits 4-6.

As noted above, Petitioner also takes issue with the fact that the sign outside the sales office and in the lobby did not identify Qingdao Denarius as the official occupant. The Department also addressed this at verification and Qingdao Denarius officials provided an explanation. See Verification Report at 6. More importantly, however, the Department thoroughly examined Qingdao Denarius' sales office, and noted in the Verification Report the review of Qingdao Denarius' price negotiation emails on its computers.<sup>8</sup> The Department also examined documents from different months of the POR that listed the company's sales office location as the receiving address, including: the company's name pre-approval application, the company application form, the business license, and machinery invoices.<sup>9</sup> Thus, the Department finds that record evidence establishes that Qingdao Denarius operated from its reported sales office during the POR.

With respect to the production facility, the Department examined numerous documents that clearly indicate Qingdao Denarius produced nails at its reported factory during the POR, including machinery invoices and payment receipts from throughout the POR, which showed the place of delivery as Qingdao Denarius' reported factory location,<sup>10</sup> and a factory attendance sheet for the POR month of October 2008.<sup>11</sup> At verification, the Department also examined the documentation of a domestic sale that occurred during the POR, which indicated the place of pickup as the reported factory.<sup>12</sup> Furthermore, the Department not only noted that nail production was occurring during the time of the visit, but also observed the conditions one would expect at a nail manufacturing facility that had been in operation for an extended period of time, including well-worn machinery, pools of lubricant oil leaking from machines, piles of scrap, storage rooms filled with various factors of production ("FOP") and other goods needed to maintain a factory, etc.<sup>13</sup> Thus, the Department finds that there is sufficient record evidence that Qingdao Denarius produced subject merchandise at its reported factory during the POR.

As such, the Department finds that record evidence establishes the existence of Qingdao Denarius' sales office and production facility during the POR.

## **COMMENT 2: SURROGATE VALUES**

### **A. CARTONS**

Qingdao Denarius contends the Department should not value cartons solely using Harmonized Tariff Schedule of the United States ("HTS") category 48191010 ("Boxes of Corrugated Paper and Paperboard") as it did the Preliminary Results, and should instead value cartons using the average of HTS categories 48191010 and 48191090 ("Cartons and Cases of Corrugated Paper and Paperboard"), as it did in Steel Nails.<sup>14</sup> Qingdao Denarius contends that in Steel Nails, the

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<sup>8</sup> See Verification Report at 9.

<sup>9</sup> See Verification Report at Exhibits 4.a.-4.d.

<sup>10</sup> See Verification Report at Exhibits 4.a.-4.d.

<sup>11</sup> See Verification Report at Exhibit 8.a.

<sup>12</sup> See Verification Report at Exhibit 12.c

<sup>13</sup> See Verification Report at 10.

<sup>14</sup> 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) and accompanying Issues and Decision Memorandum ("Steel Nails") at Comment 14.

Department found that HTS category 48191090 was more specific to the packing containers used by PRC nails producers.

Petitioner counters that Qingdao Denarius is not citing to its own production experience, but to the experience of a dissimilar producer from Steel Nails, Paslode Fasteners (Shanghai) Co., Ltd. and Illinois Tool Works Inc., Paslode Division (collectively, “ITW”). Petitioner contends that ITW is a significantly larger producer and exporter of nails, which used a wide variety of packing and conveyance containers that were necessary for a broad range of sales channels and customers. Petitioner argues that in contrast, Qingdao Denarius is a much smaller producer with a limited range of products and a lack of variety in its packing containers. Thus, Petitioner argues, Qingdao Denarius’ cartons do not need to be valued using an average of two HTS categories.

### **Department’s Position:**

The Department notes that in Steel Nails, the Department averaged two HTS categories for a particular exporter (ITW) because there was evidence on the record that both HTS categories described the various types of containers used by ITW. The Department agrees with Petitioner that Qingdao Denarius has not shown with record evidence that a similar situation exists with regard to its own cartons. Therefore, the Department will not use an average of two HTS categories, 48191010<sup>15</sup> and 48191090, to value Qingdao Denarius’ cartons.

However, upon further examination of the two HTS categories available on the record the Department finds that HTS category 48191090 is more appropriate to value Qingdao Denarius’ packing cartons than the category used in the Preliminary Results, HTS category 48191010. HTS category 48191010 includes both cartons and boxes, while 48191090 includes only cartons. Because Qingdao Denarius reported only using cartons to pack its merchandise, HTS category 48191090 best captures the description of the cartons used by Qingdao Denarius as it does not contain boxes, only cartons. Thus, for these final results, the Department will use HTS category 48191090 to value Qingdao Denarius’ packing cartons.

## **B. STEEL SCRAP**

Qingdao Denarius argues that the Department should use HTS category 72044100 (“Turnings, Shavings, Chips, Milling Waste, Sawdust, Filings, Trimmings & Stampings, W/N in Bundles”) to value its steel scrap for these final results, instead of HTS category 72044900 (“Other Waste and Scrap”) which was used in the Preliminary Results. Qingdao Denarius contends that in Steel Nails, the Department noted that HTS category 72044100 was more specific to Chinese nail producers, but still chose HTS category 72044900 because HTS category 72044100 had a higher value than steel wire rod, while HTS category 72044900 did not.

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<sup>15</sup> While HTS # 48191010 is entitled “Boxes of Corrugated Paper and Paperboard,” we noted in the 2007 Garlic Final that this HTS # also included some types of cartons. See Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum (“Garlic Final”) at Comment 5.

Petitioner argues that Qingdao Denarius failed to affirmatively present any information in pre-preliminary surrogate value submissions, pre-preliminary comments, or factual information submissions about the proper and accurate description of its scrap materials. Petitioner also contends that the Verification Report does not include any description of Qingdao Denarius' scrap. Thus, Petitioner asserts, the Department should not value its scrap with HTS category 72044100.

### **Department's Position:**

In Steel Nails, the Department stated that although HTS category 72044100 more closely resembled the respondents' scrap, because the value of HTS category 72044100 was higher than that of steel wire rod input from which the scrap was derived, the Department decided instead to value the respondents' scrap using HTS category 72044900.<sup>16</sup> In this case, the values of both HTS categories 72044900 and 72044100 are lower than that of wire rod input. However, unlike the respondents in Steel Nails, Qingdao Denarius has not demonstrated that the scrap it generates is similar to the specific types of scrap covered by HTS category 72044100. Therefore, the Department has continued to value Qingdao Denarius's scrap using HTS category 72044900, which covers a broader category of scrap.

### **C. CURRENCY CONVERSION**

Qingdao Denarius argues that in the Preliminary Results, while the Department valued many inputs using publicly available import prices reported in the World Trade Atlas ("WTA"), and stated in the Surrogate Value Memo that the Department converted rupee denominated Indian values using the official exchange rates on the Department's web-site, the Department failed to do this when it used import prices already converted to U.S. dollars ("USD") by the WTA.<sup>17</sup> Thus, the Department should download the import prices from the WTA in Indian rupees ("Rs") and then convert them to USD using the daily exchange rates from the Department's website. Qingdao Denarius also noted that after the Preliminary Results, it submitted to the record Indian import prices from the WTA (in Rs) for all of the materials, by-product materials, and packing materials. See Letter from Qingdao Denarius to the Secretary of Commerce to Provide Publicly Available Information to Value Factors of Production (February 4, 2010) ("Qingdao Denarius' Surrogate Value Submission") at Exhibits 1-14.

Petitioner argues that the Department's practice is not to rely automatically upon surrogate values reported only on a foreign currency-denominated basis, and that Qingdao Denarius has not cited to any Departmental precedent that the agency is required to first utilize surrogate country input values denominated in a foreign currency, and then apply a stated exchange rate conversion to those values. Petitioner further asserts the Department clearly stated it was necessary to convert values from Rs to USD utilizing the agency's exchange rates for those Indian surrogate values denominated in Rs. Thus, because the values for certain material and

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<sup>16</sup> See Steel Nails at Comment 12.

<sup>17</sup> See Memorandum to the File through Alex Villanueva, Program Manager, from Tim Lord, Case Analyst, First New Shipper Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Determination (Jan. 8, 2010) ("Surrogate Value Memo") at 3.

packing inputs are automatically reported in USD, there is no need for the repetitive conversion steps of reporting all values in Indian rupees and then reconverting the values into USD.

### **Department's Position:**

For the final determination, the Department will continue to use USD-denominated WTA Indian import data to calculate surrogate values.

On March 31, 2010, the Department placed on the record of all cases before the Import Administration the Currency Denomination Memo (which describes the currency conversion method employed by the WTA regarding Rs), and requested comments from interested parties. See Memorandum to the File through Edward Yang, Senior Enforcement Coordinator, from Jennifer Moats, Senior Special Assistant: Indian Import Statistics Currency Denomination in the World Trade Atlas (March 29, 2010) ("Currency Denomination Memo"). Neither interested party in this case responded. The Currency Denomination Memo notes that in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the USD. The Department then contacted GTIS about the change in the original reporting currency for India from Rs to USD. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Rs, the WTA software is limited with regard to the number of significant digits it can manage. See Currency Denomination Memo. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the USD in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the USD using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. See Currency Conversion Memo. Subsequently, GTIS restored the ability to view Indian Rupee values in the WTA software for the Indian import data.

As noted in OCTG, although the WTA's change to USD reporting occurred in October 2009, the change affected all data reported in the WTA, not just data reported after October 2009. See 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 Issues and Decisions Memorandum ("OCTG") at Comment 4. In sum, data collected from WTA covering the POR was also affected by this change. Thus, if the Department were to retrieve the WTA POR data in Indian Rs, the values would not necessarily be the same as the values originally published by the Ministry of Commerce, Government of India. See OCTG at Comment 4.

GTIS officials also indicated that, with each calculation, the WTA software handles only a certain number of significant digits. Accordingly, the numbers converted back to Rs from USD-denominated values do not necessarily correspond to the original Rs-denominated values provided by the Government of India. See Currency Conversion Memo.

In sum, Indian import data in Rs-denominated values (as published by the Ministry of Commerce, Government of India) are obtained by GTIS, which then converts the original Rs

value to USD using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded, which is reported as the original reporting currency to a USD-denominated basis. Then, the original reporting currency amount (i.e., in this case USD) is converted to a Rs value by applying the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded. See Currency Conversion Memo. As noted in the Currency Conversion Memo, GTIS has explained that the Rs values currently available through the WTA software are not the original Indian Rupee values as published by the Ministry of Commerce, Government of India, but instead are values that have been twice converted. Therefore, even if the Department were to utilize the Indian import prices from the WTA in Rs submitted in Qingdao Denarius' Surrogate Value Submission, these data would suffer from the same flaw as noted above (i.e. they are still WTA data which have been converted from USD into Rs).

Finally, the Department agrees with Petitioner that the Department nowhere states that its practice is to rely only upon surrogate values reported on a foreign currency-denominated basis. For the reasons described above, the Department finds that the WTA values denominated in Rs have been twice converted using monthly exchange rates, and would be converted a third time using daily exchange rates if these data were used in the dumping margin calculation. This would produce less accurate results than relying on USD-denominated information provided by WTA. While it is the Department's practice, pursuant to section 773A of the Tariff Act of 1930, as amended ("Act"), to use its official daily exchange rate in effect on the date of sale when it is necessary to convert foreign currencies into USD. In this case, original and authentic Rs-denominated import values are presently not available from the WTA. Section 773A of the Act does not require the Department to rely exclusively on information denominated in foreign currencies to value the FOP. Accordingly, where the Department determines that USD-denominated WTA data are the best available information for valuing the FOP, it is not necessary for the Department to convert a foreign currency into USD.

### **COMMENT 3: CLASSIFICATION OF CERTAIN INPUTS**

Petitioner argues that the Department should treat rubber band as a direct input and not a packing material because the Department stated in the Preliminary Results Analysis Memo that Qingdao Denarius reported it as being a direct material input.<sup>18</sup> Furthermore, Petitioner contends that the Department treated rubber band as a direct input in the Surrogate Value Memo and Preliminary Results Analysis Memo.<sup>19</sup>

Petitioner also asserts that the Department should treat cartons, tape, and anti-moisture paper as direct inputs, and not packing material, consistent with Lined Paper<sup>20</sup> ("where the Department

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<sup>18</sup> See Memorandum to the File through Alex Villanueva, Program Manager, from Matthew Renkey, Senior Case Analyst and Tim Lord, Case Analyst, New Shipper Review of Certain Steel Nails from the People's Republic of China: Analysis Memo for Qingdao Denarius Manufacture Co., Ltd. ("Denarius") (January 8, 2010) ("Preliminary Results Analysis Memo") at 3.

<sup>19</sup> See Surrogate Value Memo at 4 and Preliminary Results Analysis Memo at 3.

<sup>20</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum ("Lined Paper") at Comment 25.

valued polyethylene plastic wrap as a direct input”) and Mushrooms<sup>21</sup> (“where the Department valued cans as a direct input”). Petitioner further argues that the Department should consider these as direct inputs because: 1) these packing materials are received in the same condition by Qingdao Denarius’ U.S. customer as when they are packed with the merchandise; 2) the packaged nails would certainly be resold in the same form by the U.S. customer to end-users, which are “often construction companies and other industrial users;”<sup>22</sup> and 3) cartons, tape, and anti-moisture paper are necessary in order to ship the steel nails from the PRC to the United States in the form required for use (*i.e.*, without rusting, and in the case of collated nails, without damage to the collated ships or coils).

With regard to rubber band, Qingdao Denarius argues that it would be incorrect for the Department to value it as a direct input because in other nails cases, such as Roofing Nails,<sup>23</sup> the Department treated rubber band as a packing material. With respect to cartons, tape, and anti-moisture paper, Qingdao Denarius asserts that in Steel Nails, even the petitioners in that case noted that these were packing materials.<sup>24</sup> Qingdao Denarius also asserts that the cases Petitioner cites are inappropriate, because in Lined Paper and Mushrooms, the input at issue was inextricably part of the merchandise, whereas Qingdao Denarius’ packing materials of cartons, tape, and anti-moisture paper are not part of the merchandise. Qingdao Denarius contends that Petitioner’s argument that the company’s packaged nails would be resold in the same packed form to end-users should be rejected because it is not based on record evidence.

#### **Department’s Position:**

While Petitioner argues that the Department clearly intended to account for rubber bands as a direct material because it listed rubber bands with direct materials in previous memoranda, the Department notes that our listing of them as such was an inadvertent error. While Petitioner relies on the fact that polyethylene wrap was treated as a direct material in Lined Paper, the Department notes that in that case it found polyethylene wrap to be a direct material because it was a FOP utilized in the manufacture of the merchandise.<sup>25</sup> With regard to the treatment of cans in Mushrooms as a direct material, the Department notes that the scope of merchandise included mushrooms “packed and heated in containers including, but not limited to, cans {emphasis added} or glass jars.”<sup>26</sup> The inclusion of cans within the scope of the Mushrooms order underscores the fact that cans (or other such containers) are necessary components of the merchandise, not packing inputs. However, in this proceeding nothing on record indicates that rubber bands, cartons, tape, and anti-moisture paper are used in the manufacture of the company’s nails, or are inescapably purchased with Qingdao Denarius’ nails. Petitioner’s

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<sup>21</sup> See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 70 FR 54361 (September 14, 2005) (“Mushrooms”).

<sup>22</sup> See Petitioner’s Case Brief at 14.

<sup>23</sup> Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From the People’s Republic of China, 62 FR 25899 (May 12, 1997) (“Roofing Nails”). The Department notes the treatment of rubber bands as a packing material did not change in the final determination. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People’s Republic of China, 62 FR 51411 (October 1, 1997).

<sup>24</sup> See Steel Nails at Comments 14 and 15.

<sup>25</sup> See Lined Paper at Comment 25.

<sup>26</sup> See Mushrooms.

statement that Qingdao Denarius' nails would be resold to end-users with cartons, tape, and anti-moisture paper is not supported by any record evidence. Therefore, the Department will continue to treat rubber bands, cartons, tape, and anti-moisture paper as packing materials for these final results.

#### **COMMENT 4: SURROGATE FINANCIAL RATIOS**

Petitioner argues the Department should use, as it did in the Preliminary Results, the financial statement of Lakshmi Precision Screws ("Lakshmi"), an integrated company that produces fasteners and other precision parts. Petitioner notes that the Department stated in the Surrogate Value Memo that it used Lakshmi for the Preliminary Results because Lakshmi "possesses a more similar cost structure {to Qingdao Denarius} than that of a company which produces merchandise from higher value steel wire that does not undergo the wire-drawing stage."<sup>27</sup> Petitioner asserts that Lakshmi produces fasteners that actually could be used as a substitute product for steel nails.<sup>28</sup> Further, Petitioner adds that like certain steel nails, Lakshmi's products are manufactured primarily from steel wire rod that is drawn and then formed to shape using forming machinery. Petitioner continues that the process for forming nails is highly analogous to that used to form Lakshmi's fasteners at all stages of production: Both bolts and nails use a production process that begins with wire rod (or drawn wire); the rod is then drawn, sometimes in a separate production step and sometimes as a part of a continuous process; the drawn wire then enters a forming machine that forms the head, cuts the fastener to length, and forms the end.<sup>29</sup> Petitioner notes that there are nine financial statements on the record advocated by Qingdao Denarius: The 2007-2008 and 2008-2009 financial statements from J&K Wire & Steel Industries (P) Ltd. ("J&K 2007-08" and "J&K 2007-09," respectively.), Nasco Steels Private Ltd. ("Nasco"), R.J. Engineering Company Pvt. Ltd. (R.J. Engineering), M/S Precise Alloys Pvt. Ltd. ("Precise Alloys"), Deccan Wires & Welding Products Pvt. Ltd. ("Deccan Wires"), Bansidhar Granites Pvt. Ltd. ("Bansidhar"), Sri Ananda Subbaraya Wire Products Pvt. Ltd. ("Sri Ananda"), and Narayan Wires Pvt. Ltd. ("Narayan"). Petitioner contends that all of these financial statements are not fit for use because they contain critical problems, as discussed below:

Petitioner asserts that Qingdao Denarius has failed to show that any of the nine financial statements it placed on the record are publicly available. Petitioner notes that in KASRs, the Department stated that financial statements published on the Indian Register of Companies' website or available at the Registrar's office are considered within the public realm,<sup>30</sup> and that it conducted extensive searches of both the Indian Ministry of Corporate Affairs' website and of the internet but did not find a complete financial statements for any of the companies submitted by Qingdao Denarius.<sup>31</sup> Moreover, citing Service Valves and Ironing Tables, Petitioner

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<sup>27</sup> See Surrogate Values Memo at 8.

<sup>28</sup> See Petitioner's Rebuttal Brief at 27.

<sup>29</sup> See Id.

<sup>30</sup> See Final Determination of Sales at Less Than Fair Value: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum ("KASRs") at Comment 10.

<sup>31</sup> See Certain Steel Nails from the People's Republic of China: Rebuttal to Qingdao Denarius' Information to Value FOPs (February 26, 2010) ("Petitioner's FOP Rebuttal Submission").

contends that it is the Department's practice is to reject financial statements that are incomplete.<sup>32</sup>

Petitioner also argues that Qingdao Denarius did not submit complete financial statements for J&K 2007-08, J&K 2008-09, Bansidhar, and Deccan Wires. Petitioner asserts that because Narayan's income statement does not resemble a traditional income statement, the financial statement itself is also incomplete.

Petitioner also argues that the J&K 2007-08 and J&K 2008-09 financial statements show that the company received a subsidy, and that generally, the Department does not use a surrogate company's financial statement if that company has received an actionable subsidy, unless the circumstances of that particular case (e.g., the lack of available alternative financial statements) warrant an exception to the general rule.

Petitioner cites to Warmwater Shrimp and Wooden Bedroom Furniture to argue that the Department has stated that it will not use the financial statements of a company that has zero or negative profit to establish overhead and SG&A expense ratios,<sup>33</sup> and Petitioner notes that Narayan's financial statement shows that it operated at a loss.

Petitioner argues that in a recent case, the Department rejected the financial statement of a company because it was unclear what products the source produced.<sup>34</sup> Petitioner continues that it is also unclear whether certain surrogate financial ratios companies advocated by Qingdao Denarius produce comparable merchandise, arguing that there is no reference to what R.J. Engineering, Sri Ananda, and Deccan Wires produce as their main products.

Petitioner cites recent cases to argue that the Department has rejected financial statements of potential surrogate producers whose production process was not sufficiently comparable to the respondent's production process.<sup>35</sup> Petitioner argues that Nasco's production experience is too dissimilar to Qingdao Denarius' because it uses hot-rolled sheet as the main input. In support of this assertion, Petitioner notes that the Department stated in KASRs, where Nasco was a possible surrogate financial ratios company:

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<sup>32</sup> See Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum ("Service Valves") at comment 1. See also Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, 72 FR 13239 (March 21, 2007) and Issues and accompanying Decision Memorandum ("Ironing Tables") at Comment 1.

<sup>33</sup> See Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 72 FR 52052 (September 12, 2007) and accompanying See Issues and Decision Memorandum ("Warmwater Shrimp") at Comment 2.B, see also Final Results of Antidumping Duty Administrative Review and New Shipper Review: Wooden Bedroom Furniture from the People's Republic of China, 74 FR. 41,374 (August 17, 2009) and accompanying Issues and Decision Memorandum ("Wooden Bedroom Furniture") at Comment 14.

<sup>34</sup> See Service Valves at Comment 1.

<sup>35</sup> See Final Results of Antidumping Duty Administrative Review: Folding Metal Tables and Chairs from the People's Republic of China, 74 FR 68,568 (December 28, 2009) and accompanying Issues and Decision Memorandum at comment 1, see also Final Results of Antidumping Duty Administrative Review Chlorinated Isocyanurates from the People's Republic of China, 74 FR 66087 (December 14, 2009) and accompanying Issues and Decision Memorandum at comment 3.

“{T}he wire rod and wire amount by quantity listed in Nasco’s total raw materials that are purchased/manufactured represents an insignificant amount of Nasco’s total raw material purchases/manufactured quantity. In contrast, the Department notes that hot-rolled sheet accounts for the majority of Nasco’s total raw material purchases/manufactured by quantity. Accordingly, because Nasco is primarily a producer of products manufactured from hot-rolled sheet, the Department finds that Nasco’s production experience is not comparable to the production experience of respondents.”<sup>36</sup>

Petitioner thus argues that since nails, like KASRs, use steel wire rod as the main input, the Department must also reject the Nasco financial statement in this circumstance. Petitioner contends that the record is silent with regard to what raw materials R.J. Engineering and Sri Ananda use as a main input, and alleges there is no indication that Precise Alloys uses wire rod as a main input, because all that is listed as an input in its financial statement is “ferrous bars.”

Petitioner contends that the production processes involved with hot-rolled sheet are much more capital intensive and have a significantly different cost structure than the production processes of companies that use primarily wire rod as a main input, such as Qingdao Denarius. Petitioner continues by asserting that is the cost structure that drives many of the ratios. Petitioner argues that Precise Alloys uses heavy machinery such as pickling tanks, gas furnaces, and electric furnaces which also makes its production experience dissimilar to Qingdao Denarius.’

Qingdao Denarius argues that there is no evidence on the record that Lakshmi produces nails, and rather, evidence shows that it produces “high tensile precision fasteners” for various industrial sectors including automotive, locomotive, tractors, and wind energy. See Qingdao Denarius’ Surrogate Value Submission at Exhibit 34.<sup>37</sup> Qingdao Denarius asserts the Department should instead use one of the five surrogate financial companies it has placed on the record, which, like Qingdao Denarius, produce nails and draw their own wire: J&K 2007-08, J&K 2008-09, Narayan, Bansidhar, or Nasco. Qingdao Denarius also contends that based on the excerpts from its web page and financial statement, Lakshmi Precision Screws appears to make custom fasteners for original manufacturing rather than the commodity nails produced by Qingdao Denarius. However, if none of the aforementioned financial companies proposed by Qingdao Denarius are chosen by the Department, Qingdao Denarius argues that one of the four producers of comparable merchandise on the record should be used (Deccan Wires, R.J. Engineering, Precise Alloys, or Sri Ananda) because they manufacture and sell basic wire products (including nails) rather than the custom and special fasteners produced by Lakshmi.

### **Department’s Position:**

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<sup>36</sup> See KASRs at Comment 10.

<sup>37</sup> See Letter from Qingdao Denarius to the Secretary of Commerce to Provide Publicly Available Information to Value Factors of Production (February 4, 2010) (“Qingdao Denarius’ Surrogate Value Submission”).

Of the financial statements on the record of this case, the Department has determined that the Lakshmi financial statement is the best available information for calculating the surrogate financial ratios. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy ("ME") surrogate companies based on the "specificity, contemporaneity,<sup>38</sup> and quality of the data."<sup>39</sup> Moreover, for valuing factory overhead, SG&A, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>40</sup> The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>41</sup>

The Department also rejects financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.<sup>42</sup>

Additionally, it is the Department's practice to disregard financial statements where it has reason to suspect that the company has received countervailable subsidies, and where there is other usable data on the record. See Tires at Comment 17A.<sup>43</sup> Specifically, the Department stated:

{T}he Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.

Based on the criteria discussed above, for the final determination the Department has disregarded the following financial statements for the reasons discussed below: J&K Wire 2007-08, J&K Wire 2008-09, Narayan, Nasco, Bansidhar, Deccan Wires, R.J. Engineering, and Precise Alloys.

The Department has on record ten financial statements in this case. The Department notes that it has a preference for utilizing complete financial statements in order to ensure the greatest accuracy possible when calculating financial ratios. See Service Valves at Comment 1, see also Ironing Tables at Comment 1. This preference has recently been upheld in a case before the Court of International Trade ("CIT"). See Home Prods. Int'l v. United States, Court No. 08-00094, CIT, 675 F. Supp. 2d 1192; 2009 Ct. Intl. Trade; Slip Op. 2009-145 (December 17,

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<sup>38</sup> All of the financial statements proposed are contemporaneous with the POR, and no party has challenged this. Thus, we will not discuss this criterion below.

<sup>39</sup> See Lined Paper at Comment 1.

<sup>40</sup> 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act; Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 12 ("Diamond Sawblades").

<sup>41</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum ("Chlorinated Isos") at Comment 3.

<sup>42</sup> See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) ("Persulfates") and accompanying Issues and Decision Memorandum at Comment 1.

<sup>43</sup> See Certain New Pneumatic Off-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Market Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum ("Tires").

2009). The Department finds that the following financial statements are incomplete because they lack certain critical components: J&K 2007-08 (a Schedule XVI, which is the “notes on accounts”); J&K 2008-09 (the balance sheet); Bansidhar (the “notes to accounts,” which is Schedule 12 in both the balance sheet and the income statement); Deccan Wires (the notes to accounts or notes to financial statements) and; Sri Ananda (the totals for energy production and generation, totals for steel consumption during fiscal year 2008-2009, and a Schedule 16, which is the “notes to the financial statements”). Therefore, the Department will not rely on these five financial statements because there are alternative sources available on the record that do not have these deficiencies. Furthermore, the Department need not examine these financial statements with regard to the other selection criteria, as the incompleteness of these financial statements alone makes them unsuitable choices.

While Narayan’s webpage indicates that the company produces nails, its financial statement shows that it only produced wire during the POR. As the financial statement is complete and audited, the Department weighs it more heavily than the website and conclude the weight of the evidence supports that Narayan did not produce nails in the period covered by the financial statement. The financial statements of R.J. Engineering and Precise Alloys indicate they do not produce a downstream, wire-based fastening product. Instead, the record of their POR activities shows they solely produced wire—non-comparable merchandise. Therefore, the Department will not rely on these three financial statements because there are alternative sources available that do not have this deficiency. Furthermore, the Department need not examine these financial statements with regard to the other selection criteria, as the deficiencies of these financial statements make them unsuitable choices.

While Nasco manufactures nails, the Department finds that it does not share a comparable production experience with Qingdao Denarius because its main input is not steel wire rod, but hot-rolled sheet. the Department will thus not rely on the Nasco financial statement, because an alternative source on record does not suffer from this deficiency. Furthermore, the Department need not examine the Nasco financial statement with regard to the other selection criteria, as this deficiency alone makes it an unsuitable choice.

The Department will thus use the financial statement of Lakshmi in these final results, because the Department notes Lakshmi’s financial statement meets all of the surrogate financial company selection criteria: 1) it is publicly available, as the financial statement is clearly marked with the web address of “Sansco Services-Annual Reports Library Services;”<sup>44</sup> 2) the vast majority of its input comes from steel wire rod; and 3) its financial statement is complete. While the Department agrees with Qingdao Denarius that Lakshmi does not produce nails and instead produces other types of fasteners, the Department notes that the fasteners produced by Lakshmi, which include screws and bolts, are comparable to steel nails. That is, Lakshmi’s fasteners undergo a similar production process to Qingdao Denarius’ nails, and are drawn from steel wire rod.

#### **COMMENT 5:       ADJUSTMENT TO GROSS UNIT PRICE**

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<sup>44</sup> See Petitioner’s November 24, 2009 submission entitled Certain Steel Nails from the People’s Republic of China: Comments on Appropriate Surrogate Country and Submission of Surrogate Value Data at Exhibit 9.

Qingdao Denarius argues that given the Department revised the denominator of certain FOPs to reflect the actual production weight (rather than using the theoretical, standard weight), it is only proper to use this same actual production weight when converting the carton to a kilogram basis in the calculation of its U.S. price. Specifically, Qingdao Denarius argues that the Department's U.S. price conversion from cartons to kilograms in the Preliminary Results relied on the container weight variable which is incorrect because this data reflect the gross weight of the shipped merchandise, which includes the weight of the packing materials. Qingdao Denarius argues that therefore, this is not consistent with the "actual production weight" used in the denominator of certain FOPs. Thus, to correct for this inconsistency, Qingdao Denarius argues that the U.S. price should be converted from cartons to kilograms using the actual production weight, not the container weight.

Petitioner argues that just because the Department made an adjustment to the FOPs denominator in the normal value ("NV") calculation, does not automatically require that it do an identical adjustment to the U.S. price. Petitioner argues that it was appropriate to use actual production weight for the NV calculation because it reflects the weight of the production output. However, Petitioner argues that the U.S. price should be converted using the weight of the product shipped to the U.S. customer.

#### **Department's Position:**

The Department does not agree that converting the U.S. price using the actual production weight is appropriate. First, we note that it is appropriate for the NV calculation to reflect the actual weight of the production output because there is information on the record that reflects the actual production weight of the output. The Department's antidumping analysis requires that Qingdao Denarius provide the consumption of each FOP used to produce the subject merchandise. The numerator of each FOP is based on the *actual* consumption weight, therefore, the denominator must also reflect the *actual* production weight of the output. Using the actual production weight of the output as the denominator is the most accurate method to achieve an accurate calculation of the overall production experience on a per-unit amount.

However, for the U.S. price, the record is unclear whether the weight of the product shipped and sold to the United States is on a standard, theoretical basis or whether it is on actual production weight basis. Absent evidence that the U.S. price is based on the actual production weight, we have no basis to support using the actual production weight to convert the U.S. price from cartons to kilograms. Therefore, we will not use the actual production weight as the basis for converting the U.S. price from cartons to kilograms. Instead, the Department will rely on the weight from the sales documentation.

#### **RECOMMENDATION**

Based on our analysis of the comments received, the Department recommends adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, the Department will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date