



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-909
Scope Inquiry
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September 15, 2008

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle *JCD*
Director, Office 9
for Import Administration

SUBJECT: Scope Determination: Certain Steel Nails From the People's
Republic of China

SUMMARY

On July 22, 2008, Trackers Inc. ("Trackers") requested that the Department of Commerce ("the Department") find their color coded system nails to be outside the scope of the antidumping duty order of certain steel nails ("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 ("Order"), 73 FR 44961 (August 1, 2008).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that Trackers' color coded system nails are included within the scope of the Order because (1) the physical characteristics of Trackers' color coded system nails are included in the scope of the Order, (2) the color coded system alone does not exclude the nails and, (3) none of the exclusions provided in the scope of the Order apply to Trackers' color coded system nails.

BACKGROUND

On July 1, 2008, Trackers filed a request that the Department find their color coded system nails to be outside the scope of the antidumping order of certain steel nails from the People's Republic of China ("PRC"). See Trackers' Scope Inquiry, dated July 1, 2008. Trackers also submitted a chart of their color coded system nails which also identified the physical characteristics of the nails. See Trackers' Scope Inquiry at 2. On August 7, 2008, Petitioners¹ submitted comments addressing Trackers' request for a scope determination.

¹Petitioners include: Mid Continent Nail Corporation, Davis Wire Corporation, Gerdau Ameristeel Corporation (Atlas Steel & Wire Division), Maze Nails (Division of W.H. Maze Company), Treasure Coast Fasteners, Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.



APPLICABLE REGULATIONS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an antidumping order, our initial basis for determining whether a product is included within the scope of an order is the description of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the U.S. International Trade Commission ("ITC"). See 19 CFR 351.225(d) and 351.225(k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d) and 351.225(e). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise in question is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products criteria. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.²

COMMENTS

Trackers

Trackers claims that its color coded system nails are different from nails subject to the Order based on their unique identifiable color code process and process of production. Specifically, Trackers notes that their color coded system, "uses specially designed, highly visible, impact resistant, colored coatings which are applied to the fastener, and remain visible after the fastener is installed." See Trackers' Scope Inquiry at 1. Furthermore, Trackers argues that they have spent considerable time and money obtaining patents and developing color coatings for their nails. Finally, Trackers contends that the product specification and tolerance level achieved during the production process further distinguishes its color coded system nails from those subject to the Order.

Petitioners

The Petitioners argue that based on an analysis under 19 CFR 351.225(k)(1), the Department is required to review the written description of the scope of the Order in making a scope determination. The Petitioners argue that the physical characteristics of the color coded system nails (e.g. dimension, diameter size and painted finish) are specifically covered by the scope of

² The Department only relied on those documents placed on the record of this scope proceeding in making this scope determination.

the Order. Moreover, the Petitioners argue that none of the exclusions provided in the scope of the Order apply to Trackers' color coded system nails.

ANALYSIS

The issue presented by this scope inquiry is whether the color coded system nails imported by Trackers fall within the scope of the Order. As noted above, our initial basis for determining whether a product is included within the scope of an order is the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1).

The Order defines the scope as follows:

The merchandise covered by this investigation 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 is cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this 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.

See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China, 73 FR 44961 (August 1, 2008).³

We examined the color coded system nails imported by Trackers and note that they are: (1) made of steel, (2) up to 12 inches long, (3) have a painted or galvanized head, (4) have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters, (5) head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinkers and, (6) shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. The written description includes painted nails and is not limited to a specific quality of nails. Therefore, the Department finds that the color coded system alone does not exclude the nails from the scope.

Although Trackers did not submit arguments that their nails fall under the specific product exclusions, we found that none of the scope exclusions provided in the scope of the Order apply to Trackers' color coded system nails. Specifically, we find that they do not possess any of the physical characteristics of the following scope exclusions: roofing, corrugated, power-actuated hand tools, and thumb tacks. Regarding exclusions for certain collated finish nails and brads, Trackers meets some but not all of the criteria for exclusion. Although Trackers' color coded system nails meet the length dimensions of excluded brads and finish nails, they were neither equal to nor 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 were not collated with adhesive or polyester film tape backed with a heat seal adhesive. Therefore, we determine that none of the specific product exclusions listed in the scope cover Trackers' nails.

³ The scope remained unchanged between the Petition and the Order. See Petition for the Imposition of Antidumping Duties on Certain Steel Nails from the People's Republic of China and the United Arab Emirates, (May 29, 2007) ("the Petition") and Certain Steel Nails from China, USITC Publication 4022, Inv. No. 731-TA-1114 (Final) (July 2008).

CONCLUSION

In summary, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(1) support the conclusion that Trackers color coded system nails are included within the scope of the Order because (1) the color coded system (i.e., painting) alone does not exclude the nails, (2) the physical dimensions of Trackers' color coded system nails are included in the scope of the Order and, (3) none of the exclusions provided in the scope of the Order apply to Trackers' color coded system nails.

RECOMMENDATION

For the reasons described above, and in accordance with 19 CFR 351.225(k)(1), the Department find that Trackers' color coded system nails are included within the scope of the Order. If you agree, we will send a letter to interested parties enclosing this ruling and notify the U.S. Customs and Border Protection of our final determination.

Agree ✓ Disagree _____

Stephen J. Claeys
Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

7/15/08
Date

