



A-570-909  
Scope Inquiry  
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June 5, 2009

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

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

SUBJECT: Certain Steel Nails From the People's Republic of China: Final  
Scope Ruling on Shanghai March's Horseshoe Nails

### **SUMMARY**

Based on the analysis below, we recommend finding that the product subject to this scope ruling is outside the scope of the order on 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).

### **BACKGROUND**

On October 17, 2008, Shanghai March Import and Export Co., Ltd. ("Shanghai March") requested that the Department of Commerce ("Department") find their horseshoe nails to be outside the scope of the Order ("Shanghai March's Request"). On January 2, 2009, the Department initiated a formal scope inquiry in which we asked interested parties to address the criteria set forth in section 351.225(k)(2) of the Department's regulations. On January 30, 2009, Shanghai March submitted comments addressing the formal scope inquiry criteria. ("Shanghai March's January 30, 2009 Response"). Petitioners<sup>1</sup> did not submit comments on the initial request or the formal scope inquiry.

### **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

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<sup>1</sup> 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.



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). 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.

Pursuant to 19 CFR 351.225(k)(1) and as stated above, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the ITC, and the initial investigation. On January 2, 2009, we initiated a formal scope inquiry of Shanghai March’s horseshoe nails because the Department found that the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the ITC, and the initial investigation were not dispositive. Therefore, we examined Shanghai March’s horseshoe nails pursuant to the criteria set forth in section 351.225(k)(2) of the Department’s regulations to determine if they are covered by the scope of the Order.<sup>2</sup>

## **COMMENTS**

- Shanghai March contends that its horseshoe nails are stamped with the company logo on a single side of the head to help farriers (specialists in equine hoof care) determine which part of the nail is the “outside” or the “inside,”<sup>3</sup> and that this characteristic is not an aesthetic feature; rather, it is unique to Shanghai March horseshoe nails.
- Additionally, Shanghai March argues that it advertises in equestrian publications, participates in equestrian-related trade shows, and that its catalogue includes only equestrian related products; Shanghai March argues that producers and exporters of subject merchandise do not advertise or display their nails in either of these venues or have catalogues which contain solely equestrian-related products.
- Finally, Shanghai March contends that it sells its horseshoe nails to equestrian product distributors, while distributors of subject merchandise sell to entities such as building and drywall contractors, lumberyards, and pallet manufacturers.

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

<sup>3</sup> See Shanghai March’s Request, at 2.

## **SCOPE OF THE ORDER**

The Order defines the scope as follows:

The merchandise covered by this proceeding 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 or hotdipping 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).<sup>4</sup>

## **ANALYSIS**

### **(1) Physical Characteristics of the Product**

The Order states that “Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker.” Therefore, the Shanghai March logo stamped on the heads of the horseshoe nail does not place the nail outside of the scope of the Order. Absent other physical characteristics, we do not find Shanghai March’s nails to be excluded based on this factor.

### **(2) The Manner in Which the Product is Advertised and Displayed**

Record evidence shows that Shanghai March advertises in equestrian publications, such as the *American Farrier’s Journal*,<sup>5</sup> and participates in equestrian-related trade shows,<sup>6</sup> while there is no evidence or argument that any other types of nails are also advertised in these publications or trade shows. Therefore, we find that subject merchandise is not advertised in the same manner as Shanghai March’s horseshoe nails.

### **(3) The Channels of Trade in Which the Product is Sold**

Record evidence shows that Shanghai March sells its horseshoe nails to equestrian product distributors, such as [redacted],<sup>7</sup> and that distributors of subject merchandise sell to entities such as building and drywall contractors, lumberyards, and pallet manufacturers.<sup>8</sup> Conversely, there is no evidence or argument that any other types of nails were sold to equestrian product distributors. Therefore, we find that subject merchandise does not share the same channel of trade as Shanghai March’s horseshoe nails.

### **(4) The Expectations of the Ultimate Purchaser**

By examining the k(2) factors of “The Manner in Which the Product is Advertised and Displayed” and “The Channels of Trade in Which the Product is Sold,” we can ascertain the “Expectations of the Ultimate Purchaser”. We find that Shanghai March advertises in equestrian publications, participates in equestrian venues, and has a catalogue that contains only equestrian products, while producers and exporters of subject merchandise do not utilize these channels of trade or forms of advertising. Further, Shanghai March’s clients are equestrian product

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<sup>4</sup> 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).

<sup>5</sup> See Shanghai March’s Request, at Exhibits 9 and 11.

<sup>6</sup> See Shanghai March’s Request, at Exhibit 10.

<sup>7</sup> See Shanghai March’s January 30, 2009 Response, at Exhibit 6.

<sup>8</sup> See Shanghai March’s Request, at Exhibit 15.

distributors, while the clients of the producers and exporters of subject merchandise are in fields unrelated to the equestrian industry. Therefore, the expectations of the ultimate purchaser of subject merchandise are not the same as the expectations of the ultimate purchaser of Shanghai March's horseshoe nails.

#### **(5) Ultimate Use of the Product**

Shanghai March's horseshoe nails are ultimately used to shoe horses. We have come to this conclusion not only by examining the four previously examined k(2) criteria, but also because the record evidence illustrates the bendability of Shanghai March's horseshoe nails.<sup>9</sup> This bendability is an inherent characteristic of Shanghai March's horseshoe nails that is consistent with their asymmetrical design. This asymmetrical design causes horseshoe nails to bend outward when being struck, thus preventing the nails from piercing and seriously damaging the horse's sensitive inner hoof. There is no evidence on the record or argument that this inherent bendability is present in subject merchandise, and thus, no evidence that subject merchandise could be used to shoe horses. Additionally, the aforementioned record evidence<sup>10</sup> shows that distributors of subject merchandise sell to building and drywall contractors, lumberyards, and pallet manufacturers, while Shanghai March sells its horseshoe nails to equestrian product distributors. Therefore, the ultimate use of subject merchandise is not the same as the ultimate use of Shanghai March's horseshoe nails.

### **CONCLUSION**

As discussed above, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(2) supports the conclusion that Shanghai March's horseshoe nails are not within the scope of the Order. While the k(2) criterion of physical characteristics of the product is not dispositive, four of the five k(2) criteria support a finding that Shanghai March's horseshoe nails are different than subject merchandise in: (1) the manner in which Shanghai March's horseshoe nails are advertised and displayed; (2) the channels of trade; (3) the expectations of the ultimate purchaser; and (4) the ultimate use. Therefore, taken as a whole, we find that Shanghai March's horseshoe nails are outside the scope of the Order.

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<sup>9</sup> See Shanghai March's Request, at 2.

<sup>10</sup> See Shanghai March's Request, at Exhibits 1 and 10.

**RECOMMENDATION**

For the reasons described above, and in accordance with 19 CFR 351.225(k)(2), the Department finds that Shanghai March's horseshoe nails are not 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 \_\_\_\_\_



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

6/5/09  
Date \_\_\_\_\_