



January 13, 2010

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 National Nail's Plastic Cap Steel Nails

SUMMARY

In accordance with 19 CFR 351.225(k)(1), the Department of Commerce ("Department") has determined that National Nail Corp's ("National Nail") plastic cap steel nails are included within the scope of the antidumping duty order of certain steel nails from the People's Republic of China ("Order"), because (1) the physical characteristics of National Nail's plastic cap steel nails meet the physical description of steel nails subject to the Order, and (2) National Nail's plastic cap nails are not excluded as roofing nails because they are not identified as roofing nails in ASTM Standard F 1667, Type I, Style. See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China, 73 FR 44961 (August 1, 2008).

BACKGROUND

On October 21, 2009, National Nail requested that the Department determine that its plastic cap steel nails are outside the scope of the Order. See National Nail's Scope Inquiry, dated October 21, 2009. National Nail submitted charts and pictures of its plastic cap steel nails underlining the physical characteristics of the nails.

On November 19, 2009 and December 8, 2009, National Nail submitted additional comments in support of its request that its plastic cap steel nails should be found to be outside the scope of the Order. On November 9, 2009 and November 30, 2009, the Petitioner¹ submitted rebuttal comments on National Nail's 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

¹ Mid Continent Nail Corporation.



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). 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 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 CRR 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

National Nail

National Nail contends that the plain language of the Order categorically excludes *all* roofing nails and that its plastic cap steel nails, which are a type of roofing nail, should also be excluded. According to National Nail, other than the nail head material, its plastic cap steel nails have similar physical characteristics as roofing nails excluded from the scope of the Order. National Nail argues that it uses the same channels of distribution for its plastic cap steel nails as for its steel cap roofing nails and other non-subject and subject merchandise, and that its plastic cap steel nails are marketed in a similar manner as steel cap nails. National Nail claims that although its plastic cap steel nails are not identified in the ASTM standard for roofing nails, ASTM officials have been working to expand roofing nail specifications to include its plastic cap roofing nails since 2002.

Petitioner

The Petitioner argues that the scope of the Order provides a specific text that describes steel roofing nails as identified in ASTM Standard F 1667 (2005 Revision) Type I, Style 20 nails, and that therefore, only those nails are excluded the scope of the Order. The Petitioner asserts that National Nail’s plastic cap steel nails are not specifically identified by ASTM as steel roofing nails and therefore, should not be excluded.

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

ANALYSIS

A. Regulatory Framework

The issue presented by this scope inquiry is whether the plastic cap steel nails imported by National Nail fall within the scope of the Order. As noted above, our initial basis for determining whether a product is included within the scope of the order is the description 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 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 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

The ITC

On August 2007, the ITC issued a preliminary investigation on certain steel nails from the PRC and the United Arab Emirates ("UAE"), and on July 2008, the ITC published a final investigation on certain steel nails from the PRC.⁴ Both the preliminary and final investigations determined that excluded from the scope of the Order are roofing nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails.

Prior Scope Determinations

On September 15, 2008, we issued a final scope determination on Trackers Inc's ("Trackers") color coded system nails and found that in accordance with 19 CFR 351.225(k)(1), Trackers' color coded system nails are included within the scope of the Order because (1) the physical dimensions of Trackers' color coded system nails are included within the scope of the Order, (2) the color coded system alone does not exclude Trackers' color coded system nails, and (3) none of the exclusions in the scope of the Order applied to Tracker's color coded system nails.⁵ On June 5, 2009, we issued a final scope determination on Shanghai March's horseshoe nails and found that in accordance with 19 CFR 351.225(k)(2), four out of five (k)(2) criteria support the finding that Shanghai March's horseshoe nails are different than subject nails, and therefore, that Shanghai March's horseshoe nails are outside the scope of the Order.⁶ Neither of these scope determinations affect our analysis here as these prior decisions involved nails that are different than those subject to this scope inquiry (i.e., did not involve a claim to be roofing 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).

⁴ See Certain Steel Nails From China and the United Arab Emirates: Investigation Nos. 731-TA-1114 and 1115 (Preliminary), dated August 2007, and Certain Steel Nails From China: Investigation No. 731-TA-1114 (Final), dated July 2008.

⁵ See Scope Determination: Certain Steel Nails From the People's Republic of China, dated September 15, 2008.

⁶ See Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Shanghai March's Horseshoe Nails, dated June 5, 2009.

B. Application of Regulatory Framework

We examined the plastic cap steel nails imported by National Nail and note that they: (1) are made of steel, (2) are up to three inches long, (3) have a spiral or ring shank, (4) include plastic washers with a one inch diameter and, (5) are not specifically enumerated and identified in ASTM Standard F 1667, Type I, Style 20 nails. Therefore, we find that National Nail's plastic cap steel nails meet the physical requirements of steel nails that fall within the scope of the Order, and that the plastic washer alone does not exclude the nails from the scope since included steel nails may be constructed of two or more pieces.

Although National Nail submitted arguments that its plastic cap steel nails fall under the exclusion of roofing nails, we find that this particular scope exclusion does not apply to National Nail's plastic cap steel nails. Specifically, we note that while the scope of the Order excludes roofing nails, the Order defines roofing nails as specifically identified in ASTM Standard F 1667, Type I, Style 20 nails; National Nail's plastic cap steel nails are not identified in ASTM Standard F 1667 as Type I, Style 20 nails.

In addition, we note that the product brochure submitted by National Nail on October 21, 2009, indicates that its plastic cap steel nails are also used for non-roofing applications such as "affix[ing] wind-draft housewrap or attach[ing] foamboard sheathing." See National Nail's Scope Inquiry, dated October 21, 2009, at Exhibit 4, page 3. Therefore, because the plastic cap steel nails subject to this inquiry can be used in other applications, it is not appropriate to exclude them from the scope of the Order under the roofing nails exclusion.

For these reasons we determine that National Nail's plastic cap nails are not excluded as roofing nails from the scope of the Order.

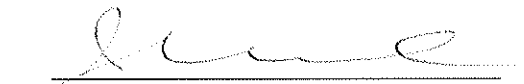
CONCLUSION

In summary, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(1) supports the conclusion that National Nail's plastic cap steel nails are included within the scope of the Order because: (1) the physical characteristics of National Nail's plastic cap steel nails meet the physical description of steel nails subject to the Order, and (2) National Nail's plastic cap nails are not excluded as roofing nails because they are not identified as roofing nails in ASTM Standard F 1667, Type I, Style 20 nails.

RECOMMENDATION

For the reasons described above, and in accordance with 19 CFR 351.225(k)(1), the Department finds that National Nail's plastic cap steel 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 decision.

Agree ✓ Disagree _____



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

1/13/10
Date