



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

A-570-909
Scope Inquiry
Public Document
IA/NME/IX: EA

May 14, 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 Itochu Building Products' Plastic Cap
Steel Nails

SUMMARY

In accordance with 19 CFR 351.225(k)(1), the Department of Commerce ("Department") has determined that Itochu Building Products' ("IBP") 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 IBP's plastic cap steel nails meet the physical description of steel nails subject to the Order, and (2) IBP'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, as required by the scope of the Order. See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China, 73 FR 44961 (August 1, 2008).

BACKGROUND

On March 30, 2010, IBP requested that the Department determine that its plastic cap steel nails are outside the scope of the Order. See IBP's Scope Inquiry, dated March 30, 2010.

On April 9, 2010, the Petitioner¹ submitted rebuttal comments on IBP's scope inquiry.

On April 8, 2010, the Department issued a supplemental questionnaire. On April 20, 2010, IBP submitted a response to the supplemental questionnaire, including photographs and detailed descriptions of its plastic cap steel nails.

¹ Mid Continent Nail Corporation.



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). 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.² 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.³

COMMENTS

IBP

IBP contends that the plain language of the Order categorically excludes *all* roofing nails and that its plastic cap steel nails, which IBP claims are a type of roofing nail, should also be excluded. Furthermore, IBP asserts that the scope of the Order's reference to ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails is only an example of roofing nails and not a definition or limitation of excluded roofing nails. IBP 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. IBP contends that while both plastic cap steel nails and excluded roofing nails have other uses outside of roofing, they are both primarily used for roofing applications, falling within the same class or kind of merchandise. IBP argues that it uses the same channels of distribution for its plastic cap steel nails as for its steel cap roofing nails.

Petitioner

The Petitioner contends that IBP's plastic cap steel nails meet the physical specifications of included steel nails. Additionally, the Petitioner contends that similar to included nails, IBP's plastic cap steel nails can also be used in a wide array of applications.

² See *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*").

³ The Department only relied on those documents placed on the record of this scope proceeding in making this scope determination.

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 identified in this ASTM standard are excluded as roofing nails from the scope of the Order. The Petitioner asserts that IBP's plastic cap steel nails are not specifically identified by ASTM as steel roofing nails and therefore, should not be excluded.

Notwithstanding this, the Petitioner asserts that it is unambiguously clear that in a prior scope determination, the Department found that plastic cap steel nails are within the scope of the Order under (k)(1) criteria,⁴ and that IBP's plastic cap steel nails should also be found within the scope of the Order because they share the same basic physical characteristics and raise the same issues as in the National Nail Ruling.

ANALYSIS

A. Regulatory Framework

The issue presented by this scope inquiry is whether the plastic cap steel nails imported by IBP 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.

⁴ The Petitioner cites Certain Steel Nails From the People's Republic of China: Final Scope Ruling on National Nail's Plastic Cap Steel Nails, dated January 13, 2010 ("National Nail Ruling").

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).⁵

The ITC

In August 2007, the ITC issued a preliminary investigation on certain steel nails from the PRC and the United Arab Emirates ("UAE"), and in July 2008, the ITC published a final investigation on certain steel nails from the PRC.⁶ In both of its preliminary and final investigations the ITC adopted the definition of steel roofing nails used by the Department which are steel roofing nails as specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Therefore, the ITC did not consider these roofing nails in their determinations.

Prior Scope Determinations

Among all prior scope determinations, only the National Nail Ruling affects our analysis here as National Nail's scope inquiry involved plastic cap steel nails that are almost identical to those nails subject to this scope inquiry and, like IBP, also claimed that its plastic cap steel nails should be excluded as roofing nails.

⁵ 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).

⁶ 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.

On January 13, 2010, we issued a final scope determination on National Nail Corp.'s ("National Nail") plastic cap steel nails and found that in accordance with 19 CFR 351.225(k)(1), 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. See National Nail Ruling.

B. Application of Regulatory Framework

For the reasons discussed below, we find that the plastic cap steel nails imported by IBP are subject merchandise within the scope of the Order.

As noted above, the Department has addressed in a prior scope determination whether plastic cap steel nails are included in the Order. See National Nail Ruling. In the National Nail Ruling, the Department found that the plastic cap steel nails imported by National Nail are included within the scope of the Order using the factors listed in 19 CFR 351.225(k)(1). In its petition, IBP has not provided any additional information such that we would reach a different conclusion than the one reached in the National Nail Ruling. Nonetheless, we have applied the regulatory framework and find that the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and of the ITC are dispositive in this case. Therefore, the Department has based its decision in this case on the criteria of 19 CFR 351.225(k)(1), and does not find it necessary to examine the merchandise in questions through a 19 CFR 351.225(k)(2) analysis.

We examined the plastic cap steel nails imported by IBP, and note that they: (1) are made of steel, (2) are up to three inches long, (3) have a ring shank, (4) have a diamond point, (5) include non-removable plastic washers with a one inch diameter and, (6) are not specifically enumerated and identified in ASTM Standard F 1667, Type I, Style 20 nails. We also note that the physical characteristics of IBP's plastic cap steel nails mentioned herein are identical to the nails found to be within the scope of the Order in the National Nail Ruling. Therefore, we find that IBP'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 IBP 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 IBP'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; IBP's plastic cap steel nails are not identified in ASTM Standard F 1667 as Type I, Style 20 nails.

CONCLUSION

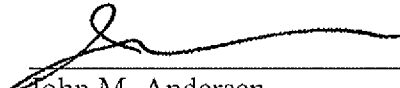
In summary, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(1) supports the conclusion that IBP's plastic cap steel nails are included within the scope of the Order because: (1) the physical characteristics of IBP's plastic cap steel nails meet the physical description of steel nails subject to the Order, and (2) IBP'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 IBP'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

5/12/10

Date