




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

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

July 21, 2010

MEMORANDUM FOR: Edward C. Yang  
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 Grip Rite Nails

**SUMMARY**

In accordance with 19 CFR 351.225(k)(1), the Department of Commerce (“Department”) has determined that the Grip Rite fasteners imported by Itochu Building Products, Inc. (“IBP”)<sup>1</sup> 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 Grip Rite fasteners meet the physical description of steel nails subject to the Order, and (2) IBP’s Grip Rite fasteners are not excluded because they are not identified as Type I, Style 20 nails in ASTM Standard F 1667 (2005 Revision). See Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China, 73 FR 44961 (August 1, 2008).

**BACKGROUND**

On June 30, 2010, IBP requested that the Department determine that its Grip Rite fasteners are outside the scope of the Order because they are roofing nails, and as such, are excluded from the scope of the Order. See IBP’s Scope Inquiry, dated June 30, 2010. IBP describes Grip Rite fasteners as roofing nails which have shank lengths of two inches or longer and are electro galvanized (smooth or barbed shank) and hot-dipped galvanized (smooth or barbed shank). On July 12, 2010, Petitioner<sup>2</sup> submitted rebuttal comments on IBP’s scope inquiry. On July 16, 2010, IBP submitted its response to Petitioner’s rebuttal.

**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

<sup>1</sup> As noted by IBP, it distributes the nails that it imports through its affiliate, Prime Source Building Products, Inc. These nails, which are the subject of this scope inquiry, are sold in the United States as “Grip Rite fasteners.”

<sup>2</sup> Mid Continent Nail Corporation.



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 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.<sup>3</sup>

## COMMENTS

### *IBP*

IBP contends that the plain language of the Order categorically excludes *all* roofing nails and that its Grip Rite fasteners should thus be excluded. IBP argues that the plain language of the Order, which states, “Excluded from the scope of this proceeding are roofing nails of all lengths and diameters, whether collated or in bulk, and whether or not galvanized,” is unequivocal in excluding all steel roofing nails, while the sentence in the Order which states, “Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails,” is referential, not definitional. IBP argues that if the Department conducts a formal inquiry under 19 CFR 351.225(k)(2), it will find that its Grip Rite fasteners are excluded from the scope of the Order.

### *Petitioner*

Petitioner contends that IBP’s Grip Rite fasteners have the same physical characteristics as subject nails, are used for many applications, are sold through the same channels of trade as subject nails, and are advertised like subject nails. Petitioner argues that the scope of this investigation was specifically crafted to exclude from the scope of the Order only those roofing nails identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Petitioner notes that the reference to this ASTM standard in the scope description is required to give meaning to the term “roofing nails” and thus is definitional and limiting in nature. Petitioner asserts that IBP’s Grip Rite fasteners are not specifically identified by ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails and therefore, should not be excluded.

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<sup>3</sup> 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 Grip Rite fasteners 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.

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>

#### *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.<sup>5</sup> 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, the Department 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.<sup>6</sup> 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 the 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.<sup>7</sup> 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).

However, the Department subsequently issued two scope rulings regarding nails that can be used for roofing. On January 13, 2010 the Department issued a final scope determination on National Nail Corp.'s ("National Nail") plastic cap steel nails,<sup>8</sup> and on May 14, 2010, the Department issued a final scope determination on IBP's plastic cap steel nails.<sup>9</sup> In both cases the Department

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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 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.

<sup>6</sup> See Scope Determination: Certain Steel Nails From the People's Republic of China, dated September 15, 2008.

<sup>7</sup> See Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Shanghai March's Horseshoe Nails, dated June 5, 2009.

<sup>8</sup> See Certain Steel Nails From the People's Republic of China: Final Scope Ruling on National Nail's Plastic Cap Steel Nails, ("National Nail's Final Scope Ruling") dated January 13, 2010.

<sup>9</sup> See Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Itochu Building Products' Plastic Cap Steel Nails, dated May 14, 2010.

found that in accordance with 19 CFR 351.225(k)(1), the plastic cap steel nails are within the scope of the Order because (1) the physical characteristics of the plastic cap steel nails meet the physical description of steel nails subject to the Order; and (2) the plastic cap nails are not excluded as roofing nails because they are not identified as roofing nails in ASTM Standard F 1667 (2005 revision), Type I, Style 20. With regard to National Nail's plastic cap nails, the Department also noted that the product brochure submitted by National Nail on October 21, 2009, indicated that its plastic cap steel nails are also used for non-roofing applications,<sup>10</sup> and therefore, it was not appropriate to exclude them from the scope of the Order under the roofing nails exclusion.<sup>11</sup>

#### *B. Application of Regulatory Framework*

We examined the Grip Rite fasteners imported by IBP and note that they: (1) are made of steel; (2) have shank lengths of two inches or longer; and (3) are not specifically enumerated and identified in ASTM Standard F 1667 (2005 revision), as Type I, Style 20 nails. Therefore, we find that IBP's Grip Rite fasteners meet the physical requirements of steel nails that fall within the scope of the Order.

Although IBP submitted arguments that its Grip Rite fasteners fall under the roofing nails exclusion established in the scope of the Order, we find that this particular scope exclusion does not apply to IBP's Grip Rite fasteners. 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. IBP's Grip Rite fasteners do not meet this standard.

Therefore, we determine that IBP's Grip Rite fasteners do not meet the roofing nails exclusion described in the scope of the Order, and therefore are within 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 IBP's Grip Rite fasteners are included within the scope of the Order because: (1) the physical characteristics of IBP's Grip Rite fasteners meet the physical description of steel nails subject to the Order; and (2) IBP's Grip Rite fasteners do not adhere to ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails and, as such, do not meet the scope's definition of excluded roofing nails.

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<sup>10</sup> See National Nail's Scope Inquiry, dated October 21, 2009, at Exhibit 4, page 3.

<sup>11</sup> See National Nail's Final Scope Ruling at 5.

