

April 20, 2010

**VIA E-MAIL**

Honorable Ronald K. Lorentzen  
Deputy Assistant Secretary for Import  
Administration  
Room 1870  
Department of Commerce  
14th Street and Constitution Ave., NW,  
Washington, DC 20230

Attn: Mr. Kelly Parkhill  
Supervisory Import Policy Analyst

**Re: Comments on Retrospective Versus Prospective Antidumping and  
Countervailing Duty Systems**

Dear Mr. Lorentzen:

Mid Continent Nail Corporation ("Mid Continent") presents the following comments in response to the March 31, 2010 notice, inviting comments on retrospective versus prospective antidumping and countervailing duty systems. *See Report to Congress: Retrospective Versus Prospective Antidumping and Countervailing Duty Systems; Request for Comment and Notice of a Public Hearing*, 75 Fed. Reg. 16,079 (Mar. 31, 2010) (the "Notice").

The U.S. Department of Commerce (Commerce) has been directed by the United States Congress to work with the Secretaries of the Departments of Homeland Security and Treasury to conduct an analysis on the relative advantages and disadvantages of prospective and retrospective antidumping (AD) and countervailing duty (CVD) systems. Specifically, Commerce is required to address the extent to which each type of system would likely achieve the goals of:

- Remediating injurious dumping or subsidized exports,
- Minimizing uncollected duties,

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- Reducing incentives and opportunities for importers to evade anti-dumping and countervailing duties,
- Effectively targeting high-risk importers,
- Addressing the impact of retrospective rate increases on U.S. importers and their employees, and
- Creating a minimal administrative burden.

Based on its first-hand experience as a U.S. producer and an active participant in antidumping proceedings before Commerce, Mid Continent supports the continued use of the existing retrospective system. Changing to a prospective system would weaken Commerce's ability to effectively administer the trade laws, and would undermine the efficacy of all AD and CVD orders. By all appearances, the only parties who would benefit from such a fundamental change would be U.S. importers, who would eliminate the risk of increased duties when they import dumped product, and foreign exporters, who would be able to dump at levels above the assessment rate, until caught, with no risk that the U.S. importer would have to pay for these unfair trade practices. This is not the way the law is intended to work, and it would not remedy the injury suffered by the U.S. industries that our trade laws are intended to assist.

Mid Continent is a family-owned producer of steel nails, based in Poplar Bluff, Missouri. We are one of the largest producers of steel nails in the United States. We employ nearly 300 people and are one of the largest employers in southeastern Missouri. Our facilities are up-to-date and efficient, and we can be competitive with any producer in the world – when they do not violate the trade laws.

In 2007, Mid Continent and several other members of the U.S. steel nail industry petitioned the Commerce Department and the United States International Trade Commission to investigate dumped steel nails from the People's Republic of China and the United Arab Emirates. We invested an enormous amount of our resources – time, personnel, and money – to save our industry from continued injury.

Our trade laws are designed and intended to help U.S. industries by remedying unfair trade practices and imposing special duties on imports that are unfairly priced and/or subsidized. As a member of a U.S. industry that our trade laws are intended to assist in this way, Mid Continent is surprised that Congress or the Commerce Department would consider moving to a system that sets an importer's antidumping duty liability at the time of entry. This approach would only benefit foreign exporters and their U.S. importers, who would no longer face the

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prospect that Commerce and U.S. Customs and Border Protection (Customs) could look to them for additional duties on their entries.

With specific reference to the points identified in the Notice, we offer the following comments:

First, abandoning our government's existing system of retrospective review and assessment would harm, not benefit, our ability to remedy injurious dumping or subsidized exports. There would be no guarantee that the rates applied at the time of entry would have anything to do with the actual amount by which the entries are unfairly traded. Any foreign exporter or U.S. importer could easily manipulate this system to import large quantities of merchandise at dumping or subsidy levels far exceeding the rate used to collect duties, and they could do so knowing that their liability with respect to those entries would not increase. This would degrade Commerce's ability to remedy injurious dumping or subsidized exports.

Second, moving to a prospective system of duty assessment would make certain that duties are collected at the time of entry, but it also would almost guarantee that the amount of duties collected would be inaccurate and likely too small. This creates a new problem, of uncollected duties, little different in the most fundamental ways from the issues of uncollected duties that our existing system currently faces. Moreover, the problem of uncollected duties, at bottom, is a problem of effective enforcement, not a problem with the system that is in place. If the systems that currently are in place were effectively enforced, the issue of uncollected duties could be effectively addressed, now. Changing to a prospective assessment system would only serve to guarantee that duties in the amount equal to the amount of dumping or subsidization would not be collected.

Third, rather than reducing incentives and opportunities for importers to evade anti-dumping and countervailing duties, moving to a prospective system would make evasion a far less challenging task. Importers who decide to evade duties that are lawfully owed would use existing tools – most notably, the new shipper review process, which allows an importer to post a bond in lieu of cash deposit while the review is underway. During the pendency of a new shipper review, an importer would be able to import huge quantities of merchandise, however much dumped, with duty liability potentially just a fraction of the true level of dumping. With no risk that additional duties will be collected from these entries, the importer can easily use this tool to import highly dumped product without any real risk. If a high dumping rate results from the new shipper review, the importer can simply stop importing from the exporter, and find another new shipper to use as an export conduit.

Fourth, a prospective system would offer no apparent advantage over the existing system in terms of targeting high-risk importers. Customs already employs sophisticated tools to conduct risk analysis, and presumably can identify high-risk importers today. Additionally, the customs laws already allow a port director to suspend liquidation of entries where circumvention or evasion is suspected. Here again, the problem appears to have less to do with the mechanisms that are in place, and more to do with effectively using the tools our government agencies already possess.

Fifth, the impact of retrospective rate increases on U.S. importers and their employees is a function not of the way our government collects duties, but of the success or failure of individual importers to conduct proper risk assessment. The purpose of our trade laws is to provide an effective remedy for U.S. industries that are injured by unfair pricing and improper subsidization of foreign imports. Any importer can choose to import merchandise that is subject to an antidumping or countervailing duty order, but that choice comes with the possibility that CBP later will be instructed to collect additional duties because the product was dumped or subsidized at a level higher than the cash deposit rate. Like any business person, an importer makes decisions concerning imports based on a variety of factors – including price, availability, quality, and their determination of the level of risk that comes with the transaction. As in so many other contexts, if a deal (or the price of an import) seems too good to be true, it probably is. Responsible importers know this, and operate their businesses accordingly. Importers who choose to take risks cannot later complain that our system of retrospective duty assessment worked correctly.

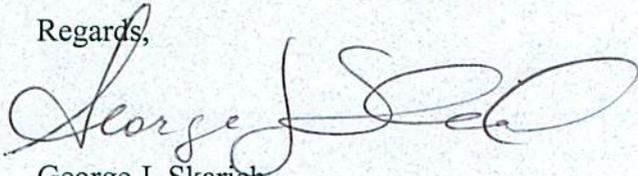
Sixth, whether considered in terms of burdens on the government or on interested parties, we cannot see how a prospective system would reduce administrative burdens at all, and if it does, how it could reduce them enough to offset the many ways such a change would reduce the effectiveness of antidumping and countervailing duty orders and our trade laws generally. While in no way do we favor complicated and expensive government processes, this is one area where the amount of administrative complexity and burden is a direct result of the complexity of the issues that are involved. In short, our unfair trade laws are important enough that our government should commit the resources needed to administer them fully, correctly, and accurately.

As noted earlier in these comments, by all appearances, moving to a prospective system of duty assessment would only benefit U.S. importers and the foreign exporters who supply them. In short, prospective AD/CVD systems are “one-sided.” They put the interests of foreign producers, foreign exporters and importers ahead of those for whom the AD/CVD laws are meant to assist: America’s producers, manufacturers and workers. We urge Commerce – and Congress – to maintain the existing system.

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In accordance with Commerce's instructions, an electronic file containing our comments has been submitted to [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov). In addition, for Commerce's convenience, the original and one copy of these comments are being submitted in printed form at the captioned address.

Regards,

A handwritten signature in cursive script, appearing to read "George J. Skarich". The signature is written in black ink and is positioned above the printed name and title.

George J. Skarich  
Executive Vice President of Sales  
Mid Continent Nail Corporation