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April 17, 2013

**MEMORANDUM TO:** James C. Doyle  
Director, Office 9  
Import Administration

**FROM:** Scot Fullerton  
Program Manager, Office 9  
Import Administration

**SUBJECT:** Third Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Ministerial Error Allegations Memorandum

## **SUMMARY**

On March 18, 2013, the Department of Commerce (“Department”) published in the Federal Register the Final Results of the third antidumping duty administrative review of certain steel nails from the People's Republic of China (“PRC”).<sup>1</sup> On March 13, 2013, Hongli et al.<sup>2</sup> filed timely allegations that the Department made ministerial errors in the Final Results and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors. No other party in this proceeding submitted comments on the Department's final margin calculations.

The Department has analyzed the comments submitted by the interested parties and, as a result of our analysis, we recommend changing our calculation with respect to the errors alleged by Hongli et al., as we find the nature of these purported errors to be ministerial. Therefore, in accordance with section 751(h) of the Tariff Act of 1930, as amended (“Act”), we have determined that we made a ministerial error in our calculation of Hongli's Final Results margin calculation. We note that correcting this error changes the weighted-average margins for Hongli as well as the separate rate companies from the Final Results. In addition, the Final Results inadvertently reported a separate rate margin for CPI and China Staple, although we rescinded

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<sup>1</sup> See Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010–2011, 78 FR 16651 (March 18, 2013), and accompanying Issues and Decision Memorandum (“Final Results”).

<sup>2</sup> Itochu Building Products Co., Inc., Tianjin Jinghai County Hongli Industry & Business Co., Ltd. (“Hongli”), Certified Products International Inc. (“CPI”), China Staple Enterprise (Tianjin) Co., Ltd. (“China Staple”), Chiieh Yung Metal Ind. Corp. (“CYM BVT”), CYM (Nanjing) Nail Manufacture Co., Ltd. (“CYM Nanjing,”) Qidong Liang Chyuan Metal Industry Co., Ltd. (“Qidong Liang Chyuan”) and Hengshui Mingyao Hardware & Mesh Products Co., Ltd. (“Hengshui Mingyao”) (collectively Hongli et al.).



the review of these two companies.<sup>3</sup> Hence, we recommend amending our Final Results to address these issues.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## **SCOPE**

The merchandise covered by the order 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 the order 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 the order are steel 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 are the following steel nails: 1) Non-collated (i.e., hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; and an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive; 2) Non-collated (i.e., hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; 3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; and 4) Non-collated (i.e., hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized

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<sup>3</sup> The Department notes that it rescinded the review for the following companies in the final results: 1) Jining Huarong Hardware Products Co., Ltd.; 2) Chiieh Yung Metal Ind. Corp.; 3) CYM (Nanjing) Nail Manufacture Co., Ltd.; 4) Qidong Liang Chyuan; 5) CPI; 6) Besco Machinery Industry (Zhejiang) Co., Ltd.; 7) China Staple; 8) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.; 9) PT Enterprise Inc.; 10) Shanxi Yuci Broad Wire Products Co., Ltd.; 11) Hengshui Mingyao; and, 12) Union Enterprise (Kunshan) Co., Ltd, collectively “No Shipment Respondents.” See Final Results, 78 FR at 16652.

finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive.

Also excluded from the scope of the order 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 the order 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 the order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of the order 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 the order 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 the order is dispositive.

## **LEGAL AUTHORITY**

Pursuant to section 751(h) of the Act, the Department has established procedures for the correction of ministerial errors in the final results of a review within a reasonable time after the determination is issued. The Act defines “ministerial error” as including “errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.”<sup>4</sup> The Department’s regulations stipulate that the Department will disclose its calculations to parties to the proceeding and that those parties may submit comments concerning any ministerial error allegation.<sup>5</sup> However, allegations of ministerial errors raised by parties to the proceeding which are, in fact, the result of a methodological decision by the Department, will not be considered a ministerial error as it would not meet the statutory definition of that term.<sup>6</sup> Where appropriate, the Department will correct any ministerial errors by amending the final results.<sup>7</sup>

## **DISCUSSION OF THE ISSUES**

### **Issue 1: Calculation of the Surrogate Financial Ratios**

*Hongli et al.*

- The Department inadvertently included the expenses “Welfare” and “Welfare/Social Security Funds” under the accounting heading of “SGA & Interest” instead of “Direct Labor” when it

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<sup>4</sup> See section 751(h) of the Act.

<sup>5</sup> See 19 CFR 351.224(b) and (c).

<sup>6</sup> See, e.g., *Alloy Piping Products, Inc. v. United States*, 201 F. Supp. 2d 1267, 1285 (CIT 2002).

<sup>7</sup> See 19 CFR 351.224(e).

calculated the financial ratios from the 2011 financial statements of Bangkok Fastening Co., Ltd.<sup>8</sup> The Department stated that it would treat these two items as Direct Labor in the Issues and Decision Memorandum accompanying the Final Results, at Comment 2.

*Petitioners*

- Petitioners did not comment.

**Department's Position:**

Consistent with our statements in the Final Results, we agree with Hongli et al. that “Welfare” and “Welfare/Social Security Funds” were inadvertently included in the financial ratio calculation (numerator) for “SGA & Interest,” and should have instead been treated as “Direct Labor.”<sup>9</sup> Thus, we will reclassify “Welfare” and “Welfare/Social Security Funds” as “Direct Labor.”

**Issue 2: Separate Rates and Rescission**

*Hongli et al.*

- In the Preliminary Results, the Department preliminarily rescinded the review for CPI, China Staple, CYM BVI, CYM Nanjing, Qidong Liang Chyuan and Hengshui Mingyao based on its determination that these companies did not have any reviewable transactions during the POR.
- In the Final Results, the Department inadvertently assigned separate rates to CPI and China Staple instead of rescinding the review of these two companies.
- In addition, in the Final Results, the Department did not rescind the review of CYM BVI, CYM Nanjing, Qidong Liang Chyuan and Hengshui Mingyao, and Hongli et al. requests clarification that the Department did, in fact, rescind the review of these companies.

*Petitioners*

- Petitioners did not comment.

**Department's Position:**

We agree with Hongli et al., in part. We inadvertently listed CPI and China Staple in the margin chart for the Final Results, suggesting that they were receiving a separate rate. This was a ministerial error because CPI and China Staple have not been granted a separate rate, but rather, the review has been rescinded for these companies, as explained in footnote 15 of the Final Results.<sup>10</sup>

Notwithstanding Hongli et al.'s claim that we did not rescind the review of CYM BVI, CYM Nanjing, Qidong Liang Chyuan and Hengshui Mingyao, we note that we did, in fact, rescind the review with respect to all six companies in the “Final Partial Rescission” section of the Final

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<sup>8</sup> See Memorandum to the File, regarding Antidumping Administrative of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results, dated March 5, 2013, at Attachment 20.

<sup>9</sup> See Final Results, and accompanying Issues and Decision Memorandum at 21.

<sup>10</sup> See Final Results, 78 FR at 16652, n.15.

Results.<sup>11</sup> Further, we note that, unlike CPI and China Staple, the Final Results did not list CYM BVI, CYM Nanjing, Qidong Liang Chyuan and Hengshui Mingyao as receiving separate rates. Thus the source of the respondents' confusion is unclear.

As noted above, we rescinded the review of those companies properly, thus, we do not agree with Hongli et al.'s allegation to the contrary.

**RECOMMENDATION**

We recommend changing our calculation with respect to the errors alleged by Hongli et al., as we find the nature of these purported errors to be ministerial. As a result, the margin for Hongli and the separate rate respondents changes from 33.40% to 33.25%. Thus we recommend amending our Final Results pursuant to section 751(h) of the Act.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

*Ronald K Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

*April 17, 2013*

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Date

<sup>11</sup> See Final Results, 78 FR at 16652.