

## FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND ORDER

*Mid Continent Nail Corp. v. United States*,  
CIT Court No. 10-00247, Slip Op. 12-31 (March 7, 2012)

### SUMMARY

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the U.S. Court of International Trade’s (“Court”) remand order in *Mid Continent Nail Corp. v. United States*, Slip Op. 12-31 (March 7, 2012) (“*Mid Continent IF*”). In *Mid Continent II*, the Court addressed the Department’s previous Final Results of Redetermination which we submitted on October 17, 2011, pursuant to the Court’s order in *Mid Continent Nail Corp. v. United States*, 770 F. Supp. 2d 1372 (CIT 2011) (“*Mid Continent I*”).<sup>1</sup>

In *Mid Continent I*, the Court rejected the Department’s finding that household toolkits imported by Target Corporation from the People’s Republic of China (“the PRC”), which include small quantities of nails, were outside the scope of the antidumping duty order covering steel nails from the PRC.<sup>2</sup> The Court held that the Department improperly focused its scope inquiry on Target’s toolkits rather than the nails within because the Department’s decision was made without a clear and consistent standard for determining the proper focus of a mixed-media scope inquiry.<sup>3</sup> The Court explained that although the Department is the authority that “decides where the scope inquiry should be focused,” its decision to “examin{e} mixed-media items or sets instead of the subject goods they contain,” may not be in accordance with law “when such an approach is not warranted.”<sup>4</sup> The Court then ordered the Department to “identify not only a test it will employ consistently, but the legal justification for employing such a test at all.”<sup>5</sup>

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<sup>1</sup> See *Final Results of Redetermination Pursuant to Remand Order in Mid Continent Nail Corporation v. United States and Target Corporation*, dated October 17, 2011 (“*First Remand Redetermination*”).

<sup>2</sup> See *Mid Continent I*, 770 F. Supp. 2d at 1372; see also *Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961 (August 1, 2008) (“*Order*”).

<sup>3</sup> See *Mid Continent I*, 770 F. Supp. 2d at 1382-83.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

Accordingly, the Department issued a remand redetermination articulating its authority to conduct a mixed-media analysis and identified a four-factor test for such analysis. The Department explained that its legal authority to employ a mixed-media test derives from the Tariff Act of 1930, as amended (“the Act”), and the subsequent U.S. Court of Appeals for the Federal Circuit decisions interpreting the Department’s authority to administer the Act.<sup>6</sup> The Department articulated a mixed media test that considered: (1) the practicability of repackaging or resale; (2) the value of the component merchandise in relation to the value of the product as a whole; (3) the ultimate use of the component merchandise compared to the product as a whole; and (4) any other product-specific factors.<sup>7</sup> Using this approach, the Department re-examined the scope request, determined that the proper focus of the scope inquiry was the toolkit as a whole, and thus found the toolkits to not be subject to the *Order*.

In *Mid Continent II*, the Court concluded that the *First Remand Redetermination* was not supported by substantial evidence and was not in accordance with law.<sup>8</sup> The Court then remanded the matter to the Department for further proceedings consistent with its opinion that “the nails in question here are unambiguously subject to the *Final Order*, and there is no support in the law or the record for concluding otherwise.”<sup>9</sup>

## **I. Analysis**

In *Mid Continent II*, the Court observed that the Department has the authority to define the scope of an order and must use general language to do so, but stated that the Department’s ability to define the scope is finished when the order is issued.<sup>10</sup> The Court stated that once the order is issued, the Department’s role is to interpret the scope. Therefore, the Court held that the

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<sup>6</sup> See *First Remand Redetermination* at 2-7.

<sup>7</sup> See *First Remand Redetermination* at 7-11.

<sup>8</sup> See *Mid Continent II* at 2.

<sup>9</sup> See *Mid Continent II* at 11.

<sup>10</sup> See *Mid Continent II* at 6-7; see also *First Remand Redetermination* at 2-4.

Department's proposed four-factor test for examining mixed-media scope requests was an improper analysis of the product subject to the scope request, not an interpretation of the scope.<sup>11</sup>

The Court observed that the statute and regulations are silent regarding “when Commerce should analyze a subject good within a mixed media item on its own, and when it should analyze the mixed-media item as a unique product,” but noted that the Department’s interpretation may not change the language of an order.<sup>12</sup> Furthermore, the Court stated that the Department misconstrued the precedent of *Walgreen*<sup>13</sup> and *Crawfish*<sup>14</sup> to support its four-factor test for determining the proper focus of a mixed-media scope request. The Court noted that, in *Walgreen*, “{t}he Court of Appeals affirmed that Commerce . . . had authority to decide how the scope inquiry would be focused. However, the court in *Walgreen* never stated that this authority abrogated Commerce’s obligation to exercise its authority in light of the final order.”<sup>15</sup> Furthermore, the Court held that the Department’s reliance on *Crawfish* was inapposite because “{t}he nails simply did not experience a *Crawfish*-like substantial transformation by merit of their inclusion in the tool kits.”<sup>16</sup>

The Court rejected the Department’s conclusion that the mixed-media test was necessary because it cannot possibly predict all possible ways in which a product may be imported into the United States, stating that “no predictive powers were required to know that subject nails would be imported in mixed-media sets.”<sup>17</sup> The Court concluded that because a party in the

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<sup>11</sup> See *id.*

<sup>12</sup> See *id.* (citing *Ithaca College v. NLRB.*, 623 F.2d 224, 228 (2d Cir. 1980)).

<sup>13</sup> See *Walgreen Co. v. United States*, 620 F.3d 1350, 1356-57 (Fed. Cir. 2010) (“*Walgreen*”).

<sup>14</sup> See *Crawfish Processors Alliance v. United States*, 483 F.3d 1358, 1360 (CAFC 2007) (“*Crawfish*”).

<sup>15</sup> See *Mid Continent II* at 7-8 (citing *Walgreen*, 620 F.3d at 1355).

<sup>16</sup> See *Mid Continent II* at 8-9 (citing *Crawfish*, 483 F.3d at 1363.).

<sup>17</sup> See *Mid Continent II* at 9.

investigation requested a scope ruling on nails packaged with nail guns and the Department did not address the issue at that time, the Department may not revisit the issue.<sup>18</sup>

Finally, the Court observed that “the inclusion of subject goods in mixed-media items should come as no surprise” and the Department should attempt to answer the question of possible importation in a mixed-media kit at the investigation stage.<sup>19</sup> The Court observed that its approach, rather than the approach employed in the *First Remand Redetermination*, “provides greater certainty for those subject to the order, and preserves resources not only for those same parties, but for Commerce as well.”<sup>20</sup> Thus, the Court remanded the matter to the Department for further proceedings consistent with its opinion.

## **II. Interested Parties’ Comments**

### **Petitioner’s Comments**

Petitioner agrees with the Department’s decision to find the steel nails within Target Corporation’s toolkits to be subject to the *Order*. Petitioner also proposes revisions to the draft instruction to be sent to U.S. Customs and Border Protection (“CBP”) with suggested edits intended to simplify and clarify the directions.

### **Target Corporation’s Comments**

Target Corporation acknowledges that the Department must adhere to the Court’s order in *Mid Continent II* and notes that it respectfully disagrees with the Court. Target Corporation did not comment on the draft CBP instructions.

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<sup>18</sup> See *id.*; see also *Certain Steel Nails from the People’s Republic of China: Preliminary Determination of Sale at Less Than Fair Value*, 73FR 3928-29 (Jan. 23, 2008). The Department notes that the nail gun request was withdrawn before the Department had made a final ruling.

<sup>19</sup> See *Mid Continent II* at 10.

<sup>20</sup> See *Mid Continent II* at 10-11.

## **Department's Position**

In light of the Court's second remand order, the Department finds the steel nails within Target's Corporation's toolkits to be subject to the *Order*. The Department has also considered Petitioner's comments on the draft CBP instructions. Petitioner's comments on the draft CBP instructions include: a) a request to confirm the identity of the importer, b) deletion of words and descriptions, c) deletion of a paragraph 2, and d) a request to limit the scope of paragraph 5 to Target Corporation's six toolkits. The Department agrees with Petitioner's first suggested edit and has clarified the name of the importer. The Department does not agree with Petitioner's second suggested edit. Paragraph 2 is intended to explain that, generally, certain steel nails contained in toolkits are within the scope of the *Order* and the Department has now made edits to this paragraph to make this point more clear. The Department does not agree with Petitioner's third suggested edit because the words and descriptions more clearly identify Target's merchandise subject to the scope inquiry. The Department disagrees with Petitioner's fourth suggested edit because, as discussed above, the scope ruling clarifies that, generally, certain steel nails contained in toolkits as well Target's specific toolkits are within the scope of the *Order*. The Department has now edited this paragraph to make this point more clear.<sup>21</sup>

## **III. Conclusion**

In accordance with the Court's order that the nails "are unambiguously subject to the *Final Order*, and there is no support in the law or the record for concluding otherwise," the Department finds the steel nails within toolkits to be subject to the scope of the *Order*.<sup>22</sup>

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<sup>21</sup> See proposed final CBP instruction included in Attachment I.

<sup>22</sup> The Department is conducting this remand respectfully under protest. See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

Accordingly, if this redetermination is affirmed by the Court, the Department intends to issue instruction to CBP 10 days after entry of final judgment by the Court of International Trade.

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Paul Piquado  
Assistant Secretary  
for Import Administration

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Date

## **Attachment I**

Re: Scope redetermination on antidumping duty order on certain steel nails from the People's Republic of China ("PRC") (A-570-909).

1. On mm/dd/yyyy, in response to a remand order from the United States Court of International Trade in *Mid Continent Nail Corp. v. United States*, Slip Op. 12-31, Court No. 10-00247 (March 7, 2012), the Department issued a final scope redetermination pursuant to remand determining that the certain steel nails within six household toolkits containing subject merchandise, imported by Target Corporation, are within the scope of the antidumping duty order on certain steel nails from the PRC (A-570-909).
2. The Department has determined that certain steel nails included within toolkits are within the scope of the order.
3. On mm/dd/yyyy, the U.S. Court of International Trade issued its final decision in this case, entering an order affirming the Department's final redetermination that the nails contained in the tool kits are within the scope of the antidumping duty order on certain steel nails from the PRC.
4. On mm/dd/yyyy, the Department published in the Federal Register the notice of the court decision not in harmony (xx FR xxxx). In accordance with Section 516A of the Tariff Act of 1930, as amended, the effective date of that notice was mm/dd/yyyy, 10 days after entry of final judgment by the Court of International Trade.
5. Effective, mm/dd/yyyy (10 days after entry of final judgment by the Court of International Trade), in accordance with Section 516A of the Tariff Act of 1930, as amended, CBP shall suspend liquidation of entries of certain steel nails found within toolkits that are subject to the antidumping duty order covering certain steel nails from the PRC including, but not limited to, those certain steel nails imported by Target Corporation in the six household toolkits described below:
  - A. The Durabuilt 161 piece household tool kit with 14.4 volt cordless drill contains a total of 161 pieces, including a single fastener set containing 10 thumb tacks, 5 brass plated cup hooks, 10 brass plated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This product contains a product identification number 085-05-0297 and DPCI number 85-05-297.
  - B. The Durabuilt 161 piece household tool kit with rechargeable 4.8 volt screwdriver contains a total of 161 pieces, including a single fastener set containing 10 thumb tacks, 5 brass coated cub hooks, 10 brass coated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This product contains a product identification number 085-05-0738 and DPCI number 85-05-738.
  - C. The Apollo Precision Tools 138 piece household tool kit contains a total of 138 pieces, including a single fastener set containing 10 thumb tacks, 5 brass coated



cup hooks, 10 brass coated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This product contains a product identification number 085-05-0004 and DPCI number 85-05-04.

- D. The Durabuilt 59 piece home/office tool kit with soft sided bag contains a total of 59 pieces, including a single fastener set containing 10 thumb tacks, 5 brass coated cup hooks, 10 brass coated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This particular tool kit also contains a separate small plastic box with a total of 150 various screws and nuts. The description of the small plastic box with screws and nuts states that it contains an assortment of nails, screws and nuts. This product contains a product identification number 085-05-0852 and a DPCI number 85-05-852.
  - E. The Durabuilt 144 piece household tool kit contains a total of 144 pieces, including a single fastener set containing 10 thumb tacks, 5 brass coated cup hooks, 10 brass coated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This product contains a product identification number 085-05-1050 and DPCI number 85-05-1050.
  - F. The Durabuilt 152 piece household tool kit contains a total of 152 pieces, including a single fastener set containing 10 thumb tacks, 5 brass coated cup hooks, 10 brass coated picture hanger hooks, 55 brass coated steel nails, 10 screws, and 10 plastic wall anchors. The entire fastener kit is counted as a single item within the tool kit. This product contains a product identification number 085-05-0597 and DPCI number 85-05-597.
- 6. If there are any questions by the importing public regarding this message, please contact the Call Center for the Office of AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482-0984. CBP ports should submit their inquiries through authorized CBP channels only. (This message was generated by O#9:JB-W.)
  - 5. There are no restrictions on the release of this information.

Michael B. Walsh