

**Final Results of Redetermination Pursuant to
Mid Continent Nail Corporation v. United States
Court No. 11-00119 (Ct. Int'l Trade 2015)
(September 30, 2015)**

I. SUMMARY

The U.S. Department of Commerce (“Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “Court”) in *Mid Continent Nail Corporation v. United States*, Court No. 11-00119 (CIT 2015) (“Mid Continent 2015 Remand Order”).

In accordance with the Court’s instructions in the Mid Continent 2015 Remand Order, the Department determines that U.S. Customs Border and Protection (“CBP”) entries attributed to three combination rates¹ associated with Certified Products International (“CPI”), but for which we found knowledge of the U.S. destination on the part of the producers in the Mid Continent 2014 Remand,² should be liquidated at the rate in effect at the time of entry and not the separate rate calculated in this administrative review. The three producers for the three subject combination rates of these final results are: [

].

¹ The Separate Rates and Combination Rates Bulletin states: “while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.” See Policy Bulletin 05.1: Separate--Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department’s Web site at <http://enforcement.trade.gov/policy/>.

² See Final Results of Redetermination Pursuant to *Mid Continent Nail Corporation v. United States*, Slip Op. 13-115 (March 5, 2014) (“Mid Continent 2014 Remand”).

The Department released its Draft Results on October 27, 2015.³ Interested parties did not submit any comments. Therefore, our analysis and determination remain unchanged for these final results of redetermination.

II. ANALYSIS

Background

In the first administrative review of certain steel nails from the People's Republic of China ("PRC"), CPI, a Taiwanese reseller, submitted a no-shipment response to the Department and requested that the Department rescind the administrative review with respect to it, pursuant to 19 CFR 351.213(d)(3). In the *Preliminary Results*, the Department considered whether CPI or its unaffiliated PRC producers were the respondent(s), based on which party had knowledge that the merchandise was destined for the U.S. market.⁴

In its responses to the Department prior to the *Preliminary Results*, CPI maintained that its PRC producers, and not CPI itself, should be considered the actual respondents, as they had knowledge the product was destined for the U.S. market.⁵ The Department found in the *Preliminary Results* that evidence demonstrated that CPI's producers helped arrange shipping from the PRC port of export to the United States, and were in many instances aware of the ultimate U.S. customer name, and thus had actual knowledge of the final destination.⁶

During this administrative review, the Department obtained CBP data that showed there were entries (based on the nine-digit case numbers) for 23 out of 29 of CPI's combinations. For

³ See Draft Results of Redetermination Pursuant to *Mid Continent Nail Corporation v. United States* Court No. 11-00119 (Ct. Int'l Trade 2015) (September 30, 2015) ("Draft Results").

⁴ See *Certain Steel Nails from the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 75 FR 56070 (September 15, 2010) ("*Preliminary Results*").

⁵ See Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, Subject: Certain Steel Nails from the People's Republic of China: Partial Rescission of the First Antidumping Duty Administrative Review, (September 7, 2010) at 3 ("*Partial Rescission Memo*").

⁶ See *Preliminary Results*; Partial Rescission Memo at 4.

the 23 combinations identified in the CBP data, CPI acknowledged that it sourced subject merchandise from 13 of the producers and that the other 10 producer combinations were misattributed to it, either due to coding errors or differences in timing.⁷ In the *Preliminary Results*, after obtaining sample CBP entry packages for every combination rate appearing in the CBP data pertaining to CPI, the Department found that, for the 13 combination codes which CPI acknowledged using during the period of review (“POR”), the entry documents were consistent with the information provided by CPI.⁸ However, for the other 10 combinations, the Department found that the entry documents demonstrated that they did not pertain to the combination under which they entered.⁹ Accordingly, the Department preliminarily rescinded the review for CPI because it had no shipments of the subject merchandise during the POR.¹⁰

In the *Final Results*, the Department continued to find that CPI had no shipments of subject merchandise during the POR and rescinded the review with respect to CPI.¹¹ In response to Mid Continent Nail Corporation’s (“Petitioner’s”) argument that the entries with CPI’s 23 combinations should be liquidated at the NME-wide rate, the Department found that 13 of the producers had knowledge that their sales made to CPI, a Taiwanese reseller, were destined for the United States, and that their entries should not be liquidated at the NME-wide rate. Instead, the Department found that these entries should be liquidated at the separate rate the producers earned in the investigation or in this review.¹² Additionally, for the other 10 producer

⁷ See Partial Rescission Memo, at 4.

⁸ *Id.*

⁹ *Id.*, at 3-4.

¹⁰ See *Preliminary Results*.

¹¹ See *Certain Steel Nails from the People’s Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 16379, 16380 (March 23, 2011) (“*Final Results*”).

¹² *Id.*, and accompanying Issues and Decision Memorandum at Comment 9.

combinations, the Department found that these entries should be liquidated at the rate in effect at the time of entry.¹³

In the Mid Continent 2013 Remand Order, the Court found the liquidation determinations regarding CPI's 23 combination rates in this case raise concerns about the reasonableness of the Department's assessment practice in NME cases.¹⁴ The Court noted that, until recently, the Department's duty assessment practice in ME cases and NME cases has been inconsistent.¹⁵

The Court found that, in this case, the Department did not address the inconsistency regarding the Department's duty assessment practice in ME cases versus NME proceedings.¹⁶ The Court found that the Department's indication to liquidate at the rate entered at the time of entry in the final results of this case, involving an NME country, were not consistent with the Department's practice in ME proceedings, and that this inconsistency rendered the liquidation instructions unreasonable absent an explanation for why differential treatment between ME and NME proceedings is necessary.¹⁷

Based on the Mid Continent 2013 Remand Order, the Department determined that U.S. Customs Border and Protection ("CBP") entries misattributed to 10 combination rates associated with CPI should be treated in a manner consistent with the rationale underlying the Department's non-market economy ("NME") reseller policy statement.¹⁸ Additionally, the Department determined to amend its previous partial rescission of the administrative review and no longer rescind the review with respect to CPI, instead issuing final results of review with respect to

¹³ *Id.*

¹⁴ See *Mid Continent Nail Corporation v. United States*, Slip Op. 13-115 (CIT 2013) ("Mid Continent 2013 Remand Order") at 63.

¹⁵ *Id.*, at 64.

¹⁶ See Mid-Continent Remand Order at 66.

¹⁷ *Id.*

¹⁸ See Mid Continent 2014 Remand at 1; *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) ("NME Final Assessment of Antidumping Duties").

CPI.¹⁹ In this regard, the Department noted that it intended to issue instructions to CBP to liquidate the entries with CPI's 23 combination rates, which consisted of 10 combination rates that CPI did not acknowledge using ("10 combination rates") and 13 combination rates that CPI did acknowledge using ("13 combination rates").²⁰ For the 10 combination rates, the Department found that it was appropriate to instruct CBP to liquidate entries with these 10 combination rates at the NME-wide rate (*i.e.*, 118.04 percent) because the record evidence demonstrated that none of the companies associated with these 10 combination rates made the relevant export sale.²¹ For the 13 combination rates (for which each producer had knowledge the merchandise was destined for the United States), the Department found that it was appropriate to instruct CBP to liquidate entries with these 13 combination rates at the separate rate, 15.43 percent, determined for the producer in each combination during this administrative review.²²

Liquidation Rate for the Entries of Three Combination Rate Producers Not Included in the Review

As explained above, in the Mid Continent 2014 Remand, the Department stated: "it is appropriate to instruct CBP to liquidate entries with these 13 combination rates at the separate rate, 15.43 percent,²³ determined for each producer during this administrative review."²⁴

However, the Department finds that this statement was not entirely correct because three of the 13 combination rates were for producers, [

], that were not under review.²⁵ Specifically, in the *Partial Rescission 1st AR*,

¹⁹ See Mid Continent 2014 Remand at 1-2.

²⁰ *Id.*

²¹ *Id.*, at 2 and 38.

²² *Id.*

²³ The rate calculated for Stanley in the Final Results of Redetermination (March 5, 2014) Pursuant to *Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems. LP v. United States*. Slip Op. 13-118 (CIT 2013) (September 3, 2013).

²⁴ *Id.*, at 38.

²⁵ See *Certain Steel Nails from the Peoples' Republic of China: Notice of Partial Rescission of the First Antidumping Duty Administrative Review*, 75 FR 43149, 43150 (July 23, 2010) ("*Partial Rescission 1st AR*").

the Department rescinded the reviews for these three producers and stated that it would instruct CBP to assess antidumping duties for these three producers, which had a separate rate from the investigation of 21.24 percent, at the rate “equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).”²⁶ Accordingly, the Department finds that entries entered under CPI’s combination rates for the three producers, [

], should not be liquidated at the separate rate (15.43 percent) calculated in the first administrative review but, instead, should be liquidated at the rate in effect at the time of entry.

Liquidation Rate for the Entries of the Remaining 10 Combination Rate Producers

For the additional 10 producers with CPI combination rates that CPI did acknowledge using, the Department notes that these 10 producers received a separate rate in the first administrative review. These producers include the following: [

].²⁷ Therefore, the Department finds that it is appropriate to instruct CBP to liquidate entries for these 10 producers at the separate rate, 15.43 percent, determined for the producer in each combination during this administrative review.


²⁶ *Id.*, 75 FR at 43150; *Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961, 44963-5 (August 1, 2008).

²⁷ *See Partial Rescission 1st AR*, 75 FR at 43150; *Certain Steel Nails from the People’s Republic of China: Amended Final Results of the First Antidumping Duty Administrative Review*, 80 FR 23279, 23280 (April 26, 2011).

IV. CONCLUSION

The Department determines that the liquidation instructions covering the 13 combination rates that CPI acknowledged using, made pursuant to the Mid Continent 2014 Remand, need to be corrected. The Department finds that those entries with CPI's combination rates for the three producers, [

], should not be liquidated at the separate rate (15.43 percent) calculated in the first administrative review, but, instead should be liquidated at the rate in effect at the time of entry, because these three producers were not included in the final results of the first administrative review. Additionally, the Department finds that it is appropriate to instruct CBP to liquidate entries with combination rates applicable to each of the additional 10 producers that CPI acknowledged using, and that the Department included in the final results of the first administrative review, at the separate rate, 15.43 percent, determined for the producer in each combination during this administrative review.



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12 NOVEMBER 2015
Date