

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**  
*Midwest Fastener Corp., v. United States*  
**Court No. 17-00231, Slip Op. 18-142 (CIT October 19, 2018)**

**I. SUMMARY**

The Department of Commerce (Commerce) prepared these Final Results of Redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) in *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 18-142 (October 19, 2018) (*Remand Order*). These Final Results concern Commerce’s Final Scope Ruling<sup>1</sup> that strike pin anchors imported by Midwest Fastener Corp. (Midwest) fall within the scope of the antidumping duty order on certain steel nails (nails) from the People’s Republic of China (China).<sup>2</sup> In the *Remand Order*, the Court held that the scope determination is not supported by substantial evidence and directed Commerce to perform a scope analysis in accordance with the five factors outlined in 19 CFR 352.225 (k)(2).<sup>3</sup>

On April 11, 2019, Commerce issued a Draft Remand Redetermination and, on April 18, 2019, received comments from Mid-Continent Steel & Wire (Mid Continent) and Midwest.<sup>4</sup> In

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<sup>1</sup> See “Antidumping Duty Order on Certain Steel Nails from the People’s Republic of China: Final Scope Ruling on Midwest Fastener Strike Pin Anchors” dated August 2, 2017 (Final Scope Ruling).

<sup>2</sup> See *Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961 (August 1, 2008) (*China Nails Order*).

<sup>3</sup> See *Remand Order*, Slip. Op. 18-142 at 5 and 14.

<sup>4</sup> See Draft Results of Redetermination Pursuant to Court Remand, dated April 11, 2019 (Draft Remand); see also Mid Continent’s Draft Remand Comments, “Certain Steel Nails from the People’s Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Remand,” dated April 18, 2019 (Mid Continent’s Draft Remand Comments); and Midwest Draft Remands Comments, “Midwest Fastener Corp. v. United States and Mid Continent Steel & Wire Inc., Court No. 17-00231, Slip. 18-142 (CIT Oct. 2018): Comments on Draft Results of Redetermination Pursuant to Court Remand,” dated April 18, 2019 (Midwest’s Draft Remand Comments).

these Final Results, pursuant to the *Remand Order* and under respectful protest,<sup>5</sup> Commerce has conducted an analysis in accordance with 19 CFR 351.225(k)(2) and finds that Midwest's strike pin anchors are within the scope of the *China Nails Order* as "nails...constructed of two or more pieces." Further, as a result of our analysis pursuant to the *Remand Order*, we intend to instruct U.S. Customs and Border Protection (CBP) that only the nail piece, *i.e.*, the pin, of the product is subject to the *China Nails Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject.

## **II. Scope of the Order**

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

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<sup>5</sup> See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

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.<sup>6</sup>

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<sup>6</sup> See *China Nails Order*.

### III. BACKGROUND

In August 2008, Commerce issued the *China Nails Order*.<sup>7</sup> On June 8, 2017, Midwest filed a complete scope request with Commerce for a scope ruling to determine whether the strike pin anchors it imports from China are subject to the *China Nails Order*.<sup>8</sup>

In its Scope Ruling Request, Midwest described its strike pin anchors as follows:

Strike pin anchors are composed of four components. They are: a threaded body; a steel pin; a nut and a flat washer.

The pins are made of medium carbon steel.... The steel surface of the pin is hardened to give it higher strength and is coated with yellow zinc. The head of the pins is rounded and does not have a standard name like those associated with nails. The head most closely resembles a pan head screw....

The nut and washer are a one-piece unit. They can easily be removed from the anchor using the anchor body threads. The pin is not designed for removal from the anchor. It can only be removed by securing the anchor body in a vise or another device and then pulling the pin out with a claw hammer or pliers.<sup>9</sup>

Midwest further stated: “Midwest Fastener recently began purchasing the pins separately and assembling them with the anchor bodies after importation. Midwest Fastener deposits antidumping duties on the pins at the time of importation.”<sup>10</sup> According to Midwest:

Strike Pin Anchors are used to attach wood, metal, shelf brackets, and other items to concrete, brick and other masonry walls, ceilings and floors. To use the anchor, a hole is drilled into the masonry and cleaned. A hole is also drilled through the board, for example, to be attached to the masonry. The anchor is then inserted through the hole in the board and into the hole in the masonry. The nut and washer are then tightened to move the anchor into the correct position. The steel pin is then struck with a hammer, which causes the body to expand and wedge against the sides of the hole, thus holding the board or other object in place. The nut can then be further tightened to secure the material being fastened.<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See Letter from Midwest to Commerce, “Steel Nails from the People’s Republic of China: Midwest Fastener Scope Request,” dated June 8, 2017 (Scope Ruling Request).

<sup>9</sup> See Scope Ruling Request at 2-3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

On July 14, 2017, following Midwest’s complete scope ruling request, the petitioner, Mid-Continent submitted comments in opposition to Midwest’s scope request.<sup>12</sup> On August 2, 2017, Commerce issued its Final Scope Ruling.<sup>13</sup> Commerce determined that Midwest’s strike pin anchors are covered unambiguously by the scope for the *China Nails Order* based upon the plain meaning of the *China Nails Order*, and that the sources enumerated in 19 CFR 351.225(k)(1) likewise support Commerce’s scope determination.<sup>14</sup> Accordingly, Commerce determined that it was not necessary to consider the criteria under 19 CFR 351.225(k)(2).<sup>15</sup> As a result of its Final Scope Ruling, Commerce issued instructions to CBP to continue to suspend liquidation of Midwest’s strike pin anchors subject to the *China Nails Order*.

Midwest challenged the Final Scope Ruling before the Court, and, on October 19, 2018, the Court remanded Commerce’s scope ruling. In its *Remand Order*, the Court held that Commerce’s scope determination is not supported by substantial evidence.<sup>16</sup> The Court instructed Commerce, on remand, to proceed to an analysis under 19 CFR 351.225(k)(2), and reopen the record if necessary, to clarify the scope of the *China Nails Order*.<sup>17</sup> Accordingly, on December 21, 2018, Commerce reopened the record and provided interested parties with an opportunity to submit comments and new factual information related to 19 CFR 351.225(k)(2).<sup>18</sup> Commerce also requested that interested parties provide “any definitional sources that address the meaning of the scope language ‘certain steel nails...constructed of two or more pieces {,}’”

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<sup>12</sup> See Letter from Mid-Continent, “Certain Steel Nails from the People’s Republic of China: Opposition to Midwest Fastener’s Zinc and Nylon Pin Drive Anchors Scope Ruling Request,” dated July 14, 2017.

<sup>13</sup> See Final Scope Ruling.

<sup>14</sup> *Id.* at 10-13.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Remand Order*, Slip Op. 18-142 at 5.

<sup>17</sup> *Id.*

<sup>18</sup> See Commerce’s Letter, “Certain Steel Nails from the People’s Republic of China: Scope Remand Request for Information,” dated December 21, 2018 (Request for Information).

plus “any other comments or information addressing... the function of the strike pin anchor in relation to the pin.”<sup>19</sup> On January 30, 2019, Commerce clarified and extended the time in which parties could provide these comments due to the partial government shutdown.<sup>20</sup> On February 6, 2019, both Midwest and Mid Continent timely submitted comments and new factual information.<sup>21</sup> On April 11, 2019, Commerce issued a Draft Remand Redetermination, and received comments from Mid Continent and Midwest on April 18, 2019.<sup>22</sup>

### III. ANALYSIS AND FINAL RESULTS OF REDETERMINATION

#### A. Nails Constructed of Two or More Pieces

For purposes of this remand, the key scope language at issue provides that “{c}ertain steel nails may be of one piece construction or constructed of two or more pieces.”

In its *Remand Order*, the Court first examined whether the plain language of the scope of the *China Nails Order* could reasonably be interpreted to include Midwest’s strike pin anchors.<sup>23</sup> After finding that “{s}everal dictionary definitions aid the court in discerning the plain meaning of ‘nail{,}’” the Court determined that:

At issue here, however, are not just nails, but also nails that are ‘constructed of two or more pieces.’ Although dictionary definitions can identify the physical characteristics of a nail, none of the definitions consulted by the court identify or define a nail that is constructed of two or more pieces.”<sup>24</sup>

Further, the Court determined that neither the plain language of the *China Nails Order*, nor any

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<sup>19</sup> *Id.* at 1.

<sup>20</sup> See Memorandum, “Certain Steel Nails from the People’s Republic of China: New Deadline to Submit (k)(2) Comments for Scope Remand,” dated January 30, 2018.

<sup>21</sup> See Letter from Mid Continent, “Certain Steel Nails from the People’s Republic of China: Response to the Department’s December 21, 2018 Letter,” dated February 6, 2019 (Mid Continent (k)(2) Comments); Letter from Midwest, “Steel Nails from the People’s Republic of China: Remand Court No. 17-00231, Slip Op. 18-142,” dated February 6, 2019 (Midwest (k)(2) Comments).

<sup>22</sup> See Draft Remand; see also Mid Continent’s Draft Remand Comments; and Midwest’s Draft Remand Comments.

<sup>23</sup> See *Remand Order*, Slip Op. 18-142 at 6-8.

<sup>24</sup> *Id.* at 7-8.

sources identified under 19 CFR 351.225(k)(1), define or “explain what it means for a product to be a nail constructed of two or more pieces.”<sup>25</sup> The Court therefore held that Commerce’s prior scope rulings did not provide adequate support or explanation of the scope language, and that Commerce’s reliance on the International Trade Commission (ITC) Report was

not helpful because, although the report identifies a masonry anchor as an example of a nail constructed of two or more pieces, it also identifies several other examples of nails constructed of two or more pieces. The words of the PRC Nails Order, however, do not clarify which of these products the order encompasses.<sup>26</sup>

Thus, the Court held that Commerce cannot support its determination that Midwest Fastener’s strike pin anchors are covered by the *China Nails Order* “unless it clarifies the ambiguous phrase, ‘constructed of two or more pieces,’ and supports any subsequent determination with record evidence.”<sup>27</sup>

Commerce continues to believe that the phrase “constructed of two or more pieces” is unambiguous and includes the strike pin anchors at issue. Nonetheless, in accordance with the *Remand Order*, under respectful protest, we have re-examined the record evidence and solicited additional new factual information to assist in clarifying the phrase “nails...constructed of two or more pieces.” In response to Commerce’s request for parties to address the meaning of “nails...constructed of two or more pieces,” Midwest stated that “{t}he only source our research has identified is the ASTM Standard Specification for Driven Fasteners: Nails, Spikes, and Staples{,}” and “{t}his specification identifies several types of nails that consist of a nail and other components.”<sup>28</sup> Mid Continent did not provide any additional record evidence, but

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<sup>25</sup> *Id.* at 8.

<sup>26</sup> *Id.* at 8, n. 5 (citing *Certain Steel Nails from the People’s Republic of China*, USITC Pub. No. 4022, Inv. No. 731-TA-1114 (July 2008) (ITC Report) at I-9).

<sup>27</sup> *Id.* at 10.

<sup>28</sup> See Midwest (k)(2) Comments at 5. Midwest points to the following examples in Exhibit 1: Umbrella Head Roofing Nails, which consist of a leak-resistant umbrella head atop a steel nail (Table 29); Cap Nail-Hand Driven Roofing Nails, which consist of a round or square steel cap atop a steel nail (Table 31); Cap Nail Power-Tool Driven

identified that

A nail of two or more pieces, as the very name indicates, consists of a nail with a one or more components or “pieces.” The additional components are joined, affixed or otherwise combined with the nail. A variety of nails are produced and sold in this manner. Some have plastic or metal washers affixed underneath the head of the nail. Others, like decorative upholstery nails, have a decorative cap attached to the top of the head of the nail. Others have a felt washer underneath the head. Others have anchors made of steel, zinc, or plastic affixed to the nail. The phrase “of two or more pieces” is necessarily general and is used to cover all types of such nails.<sup>29</sup>

We also find instructive language from the ITC Report regarding domestic like product:

Although most steel nails are produced of low-carbon steel, nails are also produced of stainless steel (to resist corrosion) and of hardenable medium- to high-carbon steel. Nails are packaged for shipment in bulk, that is, loose in a carton or other container, or collated, that is, joined with wire, paper strips, plastic strips, or glue into coils or straight strips for use in pneumatic nailing tools. Although most nails are produced from a single piece of steel, some nails are produced from two or more pieces. Examples include a nail with a decorative head, such as an upholstery nail; a masonry anchor that comprises a zinc anchor and a steel wire nail; a nail with a large thin attached head (for nailing roofing felt, for example); and a nail with a rubber or neoprene washer assembled over its shaft (to seal the nail-hole in metal or fiberglass roofing or siding).<sup>30</sup>

We note that the record does not contain a generally-recognized authoritative source such as an industry or trade association, a professional organization, or a standards organization, which could be used to establish a single definition of “nails... constructed of two or more pieces” as that phrase is understood in the scope language. However, we agree with Mid Continent that the phrase is necessarily general and is used to cover all types of such nails, as is the phrase “nails... of one piece construction.” Indeed, the scope language encompasses a wide variety of types of nails, whose physical characteristics may differ. For example, the *China*

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Roofing Nails, which consist of a round or square steel cap atop a steel nail (Table 32); Washered-Aluminum Roofing Nail, which consist of an aluminum roofing nail with a neoprene washer (Table 33); and Washered-Steel Roofing Nails, which consist of a steel roofing nail with an elastomer washer (Table 34).

<sup>29</sup> See Mid Continent (k)(2) Comments at 3.

<sup>30</sup> See ITC Report at I-9.



*Nails Order* includes certain steel nails in varying lengths up to 12 inches; nails including, but not limited to, round wire or cut nails; nails produced from any type of steel; and nails with a variety of finishes, heads, shanks, point types, shaft lengths, and shaft diameters. Thus, not all nails subject to the *China Nails Order*, including “nails... constructed of two or more pieces,” may be identified by the same physical characteristics.

Further, we find that the record provides numerous examples of nails which could be considered “nails... constructed of two or more pieces” as that phrase is commonly understood in the nails industry. Although these particular examples are not before us, and we cannot further evaluate whether such examples would definitively fall within the scope of the *China Nails Order*, we find that these examples nonetheless can assist in identifying key characteristics of “nails... constructed of two or more pieces” that will be useful for our analysis under 19 CFR 351.225(k)(2) discussed below.

We further note that the scope language itself identifies only a few express exclusions, and does not contain any language which indicates that an otherwise in scope nail would be excluded from the scope based on it being constructed with an additional piece or pieces. Indeed, the scope language specifically covers “nails... constructed of two or more pieces.” In this respect, we find useful guidance in the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Mid Continent Nail*, which relates to another scope ruling under the *China Nails Order* with respect to a “mixed-media” product:

First, Commerce must determine whether the potentially-subject merchandise included within the mixed media item is within the literal terms of the antidumping order. If it is, then Commerce must determine whether the inclusion of that merchandise within a mixed media item should nonetheless result in its exclusion from the scope of the order.

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Once Commerce has determined that the included merchandise would be subject to the order if examined in its own right, and that neither the text of the order nor its

history indicates that subject merchandise should be treated differently on the basis of its inclusion within a mixed media item, we believe that a presumption arises that the included merchandise is subject to the order. This presumption arises from the need to recognize that the primary source in making a scope ruling is the antidumping order being applied.<sup>31</sup>

We find that a “mixed-media” analysis is not necessary in this case because the express scope language encompasses “nails... constructed of two or more pieces,” and in light of the Court’s direction to conduct an analysis under 19 CFR 351.225(k)(2). However, we find that the *Mid Continent Nail* discussion does provide useful guidance for our analysis because, in part, it directs us to examine the “literal terms” of the order.

Based on the above, we find it is reasonable to adopt an interpretation of the phrase “nails... constructed of two or more pieces” to encompass a nail which would otherwise satisfy the definition of the scope, were it imported as a stand-alone single-piece nail, plus some additional piece or pieces. With respect to the additional piece(s), we note that the examples on the record reflect the following:

- The additional piece(s) is/are not limited to steel, but may be made of plastic, zinc, rubber, neoprene, or any other material;
- The additional piece(s) is/are not limited to any single part of a nail, including a nail head, but can consist of a cap, washer, an outer-body anchor, or any other piece;
- The additional piece(s) is/are joined, affixed, or otherwise combined with the nail; and
- The additional piece(s) may serve different functions. For example, the piece(s) may be decorative (as is the case with the head of an upholstery nail), be used to seal the nail-hole (as is the case with nails with washers), or assist in the overall function of the product as a whole.

These examples lead us to conclude that the additional piece(s) in the phrase “nails... constructed of two or more pieces,” as commonly understood in the nails industry, can encompass a wide variety of additional pieces, and are not limited with respect to materials or the function of the additional piece(s) in relation to the product as a whole. Further, we intend to

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<sup>31</sup> *Mid Continent Nail Corporation v. United States*, 725 F.3d 1295, 1302, 1304 (Fed. Cir. 2013) (*Mid Continent Nail*) (internal citations omitted).

instruct CBP that only the nail piece of the product is subject to the *China Nails Order*, while the additional piece(s) would not be subject. This reflects our understanding above that a stand-alone nail which would otherwise satisfy the definition of the scope will not be excluded because of its construction with an additional piece or pieces, thereby ensuring that the underlying antidumping duty order – which covers nails – is applied.

B. Analysis Pursuant to 19 CFR 351.225(k)(2)

As noted above, pursuant to the *Remand Order*, under respectful protest, we have re-examined Midwest’s scope request pursuant to the criteria enumerated in 19 CFR 351.225(k)(2)<sup>32</sup> and in light of our findings above. Based on our analysis, discussed below, we have determined that Midwest’s strike pin anchors are within the scope of the *China Nails Order* as “nails... constructed of two or more pieces.” Further, as a result of our analysis, we intend to instruct CBP that only the nail piece, *i.e.*, the pin, of the product is subject to the *China Nails Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject.

To perform a scope inquiry pursuant to 19 CFR 351.225(k)(2), Commerce is required to examine the following five factors:

- (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.

*The Physical Characteristics of the Product*

Midwest states that the strike pin anchors

consist of four components: an anchor body; a pin, a hex nut, and a flat washer...the body is the component which gives the anchor its ability to function. When the pin is driven into the body {,} {t}his causes the body to expand against the sides of the

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<sup>32</sup> *Id.* at 14.

hole into which it is inserted. Once the body expands, it, not the steel pin, along with the nut and washer fastens the board or other object to the masonry.<sup>33</sup>

Based on our review of the scope language, examples on the record discussed above, and record evidence concerning the strike pin anchors, we find that the strike pin anchors have certain physical characteristics which we find common to “nails... constructed of two or more pieces” as that phrase is commonly understood in the nails industry. First, we find that the pin component in the strike pin anchors would otherwise satisfy the definition of the scope, were it imported as a stand-alone single-piece nail. According to Midwest, the pin components in the strike pin anchor are “made of medium carbon steel ...The steel surface of the pin is hardened to give it higher strength and is coated with yellow zinc...The head of the pin is rounded...”<sup>34</sup> This falls directly in line with the language of the scope where nails are described as:

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.<sup>35</sup>

As a result, the plain language of the scope clearly encompasses the pin component of Midwest’s strike pin anchor because the pin is made of steel, has a coated finish, and has a rounded head. Further, the length as detailed by Midwest, 1 ¾ to 7 ½,<sup>36</sup> also fall squarely within the 12-inch parameters outlined in the scope. We note that the scope does not specify that the pin head be made in a specific shape to fall within the scope. Additionally, Midwest’s description of the

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<sup>33</sup> See Midwest (k)(2) Comments at 2; *see also* Scope Ruling Request at 2-3.

<sup>34</sup> See Scope Ruling Request at 2-3.

<sup>35</sup> See *China Nails Order*.

<sup>36</sup> See Scope Ruling Request at 2

component as a “pin” rather than a nail, is not dispositive as we find that the physical characteristics of the component satisfy the definition of subject merchandise, if it were imported as a stand-alone single-piece. This is further confirmed by Midwest: “Midwest Fastener recently began purchasing the pins separately and assembling them with the anchor bodies after importation. Midwest Fastener deposits antidumping duties on the pins at the time of importation.”<sup>37</sup>

Second, with respect to what constitutes a nail of two or more pieces, as noted above, the record contains examples of “nails... constructed of two or more pieces” as that phrase is commonly understood in the nails industry, and reflects the following:

- The additional piece(s) is/are not limited to steel, but may be made of plastic, zinc, rubber, neoprene, or any other material;
- The additional piece(s) is/are not limited to a nail head, but can consist of a cap, washer, an outer-body anchor, or any other piece; and
- The additional piece(s) is/are joined, affixed, or otherwise combined with the nail.

We find that the strike pin anchors, which comprise a pin, outer-body anchor, hex nut, and washer, are consistent with the other examples of “nails... constructed of two or more pieces.” In particular, the ITC Report provides an example of a masonry anchor in discussing “nails... produced from two or more pieces{,}” which supports a finding that the strike pin anchors, which are also masonry anchors, share the same physical characteristics as “nails... constructed of two or more pieces.”<sup>38</sup> Additionally, the ITC Report and the ASTM Standard on the record both provide examples of nails accompanied by a washer, which we consider to be “nails... constructed of two or more pieces” as that phrase is commonly understood in the nails industry.<sup>39</sup> Furthermore, we find that the fact that the nail piece, outer-body anchor, hex nut, and washer

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<sup>37</sup> *Id.*

<sup>38</sup> *See* ITC Report at I-9.

<sup>39</sup> *Id.*

would be considered as separate products, should they be imported separately, does not restrict a finding that the combined product satisfies the scope language for “nails... constructed of two or more pieces{.}” Moreover, the outer-body anchor is permanently affixed to the nail piece, while the “{t}he nut and washer are one-piece unit.... {that} can easily be removed from the anchor using the body threads.”<sup>40</sup> We find that these forms of attachment are consistent with the examples discussed above.

Third, we examined the function of the additional pieces vis-à-vis the nail piece. As discussed above, the examples on the record demonstrate that the additional piece(s) may serve a variety of functions. For example, the additional piece(s) may function purely as decoration (as is the case with the head of an upholstery nail), be used to seal the nail-hole (as is the case with nails with washers), or assist in the overall function of the product as a whole.<sup>41</sup> Here, as noted above, Midwest states that: “When the pin is driven into the body{,} {t}his causes the body to expand against the sides of the hole into which it is inserted. Once the body expands, it, not the steel pin, along with the nut and washer fastens the board or other object to the masonry.”<sup>42</sup> Therefore, we find that the record reflects that the additional pieces, *i.e.*, the anchor body, hex nut, and washer, work with the nail piece to assist in the overall function of the product as a whole, which is to “attach wood, metal, shelf brackets, and other items to concrete, brick and other masonry walls, ceilings and floors.”<sup>43</sup>

We have considered the physical characteristics of the strike pin anchors, including how Midwest’s strike pin anchors and steel nails use their physical characteristics to affix themselves

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<sup>40</sup> See Scope Ruling Request at 3.

<sup>41</sup> See ITC Report at I-9.

<sup>42</sup> See Midwest (k)(2) Comments at 2; *see also* Scope Ruling Request at 2-3.

<sup>43</sup> See Scope Ruling Request at 2-3.

and bind to materials. Both the strike pin anchors in question and steel nails use friction to fasten themselves to a surface. The pin within the Midwest’s strike pin anchor, as Mid-Continent points out,<sup>44</sup> is driven by a hammer into the anchor, which then expands to create added friction. The additional components of the hex nut and washer only serve to further fasten the anchor to a surface. Similarly, nails without an anchor ultimately use friction as they are driven into a surface to affix themselves to that surface, and can have additional components, such as a hex nut and washer, to aid in fastening the nail to a surface. As a result of the above, we find that the descriptions of the physical characteristics of Midwest’s strike pin anchors are consistent with the physical characteristics of “nails... constructed of two or more pieces” based on the record evidence.

*The Expectations of the Ultimate Purchasers and Ultimate Use*

As an initial matter, as discussed above, the scope of the *China Nails Order* covers a wide variety of types of nails, which all have varying applications or uses. This in turn will lead to varying expectations of the ultimate purchasers, depending on the intended application or use. The ITC Report confirms this, as it states, “{a} nail is ‘a slender, typically rod-shaped rigid piece of metal, usually in any of numerous standard lengths from a fraction of an inch to several inches and having one end pointed and the other enlarged and flattened, for hammering into or through wood, other building materials, etc., as used in buildings, in fastening, or in holding separate pieces together.’”<sup>45</sup> With respect to a stand-alone one-piece nail, both Midwest and Mid-Continent agree with the description of ultimate use of a nail provided by the ITC Report: that ultimate purchasers would purchase a nail to allow them to fasten, through striking of a hammer,

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<sup>44</sup> See Mid-Continent (k)(2) Comments at 9.

<sup>45</sup> See ITC Report at I-6.

one object to another.<sup>46</sup> With respect to “nails... constructed of two or more pieces,” the examples discussed above demonstrate that the additional piece(s) provide some use beyond the nail piece, by, for instance, providing decoration, sealing the nail hole, or assisting with the overall function of the product as a whole.<sup>47</sup> However, the additional piece(s) would not alter the main expectation of a purchaser, which is to fasten, through the striking of a hammer, one object to another.

Midwest contends that the ultimate purchaser of Midwest’s strike pin anchors would expect to use the product to “fasten a board or another item to a masonry wall, ceiling or floor{,}” and that “{a} steel nail cannot be used for this purpose{, as} {a}ny attempt to do so would fail and result in damage to the masonry.”<sup>48</sup>

Mid-Continent counters this by stating that customers purchasing strike pin anchors:

expect to obtain a product that will securely fasten different materials together. They expect to use a hammer to drive a nail into the anchor and by so doing, fasten both the anchor in place and the materials being joined. While individual purchasers will purchase specific types of nails for specific uses, they share the characteristic of purchasing the nail, whether of one-piece construction or constructed of two or more pieces, { } to join different materials.<sup>49</sup>

Ultimately, we agree with Mid Continent that the purchaser expects to hammer both strike pin anchors and nails to join together different materials. Additionally, Midwest and Mid Continent both assert that a nail and the pin within the strike pin anchor use friction to fasten two pieces of material together.<sup>50</sup> Nails and strike pin anchors may have differing specific applications, which Mid Continent points out is true for “virtually all steel nails.”<sup>51</sup> But in both

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<sup>46</sup> See Mid Continent (k)(2) Comments at 8-9 and Exhibit 1; see also Midwest (k)(2) Comments at 3 (discussion on strike pin anchors being used to fasten objects to masonry, floors or ceiling).

<sup>47</sup> See ITC Report at I-9.

<sup>48</sup> See Midwest (k)(2) Comments at 3.

<sup>49</sup> See Mid-Continent’s (k)(2) Comments at 7-8.

<sup>50</sup> See Midwest (k)(2) Comments at 3; see also Mid Continent (k)(2) Comments at 8-9.

<sup>51</sup> *Id.* at 9.



instances, customers expect to drive either the nail or the pin in the anchor to fasten materials together. Indeed, although Midwest seeks to distinguish its anchors from other types of subject merchandise by alleging that steel nails cannot be used for the same purpose as its strike pin anchors, Mid-Continent presents evidence demonstrating that certain steel nails are used in masonry or concrete applications.<sup>52</sup> This evidence counters Midwest’s contention that steel nails cannot be used in masonry application because the nails would damage the masonry.<sup>53</sup> Based on the record evidence, Commerce agrees with Mid-Continent that ultimate purchasers of Midwest’s strike pin anchors appear to expect to use the strike pin anchors in a fashion similar to that of purchasers of nails. Specifically, ultimate purchasers expect to use a hammer to strike a pin, either a nail or a pin within an anchor, into a surface to join two or more objects together.

*The Channels of Trade in Which the Product is Sold*

Midwest describes the channels of trade of strike pin anchors as being different than those pertaining to nails because the manufacturing processes of nails and anchors are different.<sup>54</sup> Midwest argues that the channels of trade inquiry commences with the particular production process, contrasting the “single machine” production process for making nails with the “multi-step” process used to manufacture anchors.<sup>55</sup> Midwest Fastener also alleges that neither it, nor its unnamed major competitors, sell nail products in appreciable quantities.<sup>56</sup> However, we find that the manufacturing processes of a strike pin anchor and a nail have little to do with the channels of trade in which both products are sold.

According to the ITC Report, “certain steel nails, whether used by the construction

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<sup>52</sup> *Id.* at 8-9, and Exhibit I.

<sup>53</sup> *See* Midwest Fastener (k)(2) Comments at 3.

<sup>54</sup> *See* Midwest (k)(2) Comments at 4.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

industry, woodworkers, or other sectors, including industrial applications, share certain general physical characteristics and uses, are sold primarily to distributors...”<sup>57</sup> As Mid Continent contends, steel nails are sold through a variety of common channels of trade that include “hardware stores,” { } “retailers like Walmart” { } and lumberyards, building material suppliers, and specialty distributors...”<sup>58</sup> Here, we find that the description of the channels of trade provided by Mid Continent are consistent with the description offered in the ITC Report. Additionally, record evidence suggests that strike pin anchors are sold through similar channels of trade (*i.e.*, hardware stores, larger retailers, building material suppliers, and specialty distributors).<sup>59</sup>

Based on the record evidence, we find that both nails and strike pin anchors are made available for purchase to consumers through a variety of common channels of trade.

#### *The Manner in Which the Product is Advertised and Displayed*

Record evidence shows that the strike pin anchors and nails are advertised in the same or similar manner. Specifically, in their respective responses, Mid-Continent and Midwest both provide evidence that nails and strike pin anchors are advertised in the same mediums. Exhibit 4 of Midwest’s (k)(2) Comments contains online advertisements for nails,<sup>60</sup> while Mid-Continent provided an internet advertisement for various types of anchors.<sup>61</sup> As such, record evidence shows that nails and strike pin anchors can be advertised in the same manner and that sellers have used the same advertising methods to sell nails and strike pin anchors. Accordingly, we

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<sup>57</sup> See ITC Report at 6.

<sup>58</sup> *Id.*

<sup>59</sup> See Midwest (k)(2) Comments at Exhibit 3 (Midwest provides a catalogue in which anchors are sold in volumes that vary from small to large quantities, suggesting that Midwest’s customers, similar to nails customers, also vary in size).

<sup>60</sup> See Midwest (k)(2) Comments at Exhibit 4.

<sup>61</sup> See Mid-Continent (k)(2) Comments at 11 and Exhibit 2.

determine that the manner in which the strike pin anchors and nails are advertised and displayed are shown to be similar, if not the same.

#### IV. ANALYSIS OF COMMENTS FROM INTERESTED PARTIES

##### Mid Continent's Final Remand Redetermination Comments:

- Mid Continent supports Commerce's position that its original ruling on the Midwest strike pin anchors was correct, and, as a result, the Draft Results have been correctly issued under respectful protest.<sup>62</sup>
- Mid Continent agrees that the record evidence supports Commerce's substantive analysis of the factors under 19 CFR 351.225(k)(2) finding that the strike pin anchors are subject.
- Mid Continent disagrees with Commerce's intention to instruct CBP that only the nail piece of the strike pin anchor, *i.e.*, the pin, is subject to the *China Nails Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject.<sup>63</sup> Commerce's stated rationale does not support its determination in this regard.
- The CAFC's decision in *Mid Continent Nail* does not support Commerce's determination because the nails at issue in that case were determined to be subject merchandise, which were readily separated from the other articles in the tool kits. Therefore, only the nail component was subject to duties, similar to the tissue paper in gift bags at issue in *Walgreen*.<sup>64</sup>
- Because the pins within the strike pin anchors cannot be separated, no basis exists to artificially treat the nail and the anchor as separate articles for the purpose of assessing antidumping duties. Additionally, all the components of the strike-pin anchor are intended to be used together, as a single article, which is distinguishable from the tool kits example in *Mid Continent Nail*.<sup>65</sup>
- The *China Nails Order* explicitly covers nails of two or more pieces. The scope language does not then limit the scope coverage only to the nail component of the nail of two or more pieces. There is no exclusion for components attached or affixed to subject nails when they are of two or more pieces.<sup>66</sup>
- Adopting the position proposed by Commerce in the Draft Results would unilaterally and improperly narrow the scope of the *China Nails Order*, and consequently be unlawful.<sup>67</sup>

##### Commerce's Position

Commerce disagrees with Mid Continent that because the nail cannot be separated from

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<sup>62</sup> See Mid Continent's Draft Remand Comments at 2.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 3 (citing *Mid Continent Nail*, 725 F.3d at 1295 and *Walgreen Co. of Deerfield II v. United States*, 620 F.3d 1350 (Fed. Cir. 2010) (*Walgreen*)).

<sup>65</sup> *Id.* at 3-4.

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.*

the anchor, Midwest’s strike pin anchors should be treated as a unitary article and, as such, duties should be assessed on all components of the strike pin anchor. The underlying Final Scope Ruling found that the strike pin anchors, in their entirety, are within the scope of the *China Nails Order*.<sup>68</sup> For purposes of this remand, as discussed above, we have re-evaluated the evidence and find that it is undisputed that the nail piece (*i.e.*, the pin) of Midwest’s strike pin anchors is subject to the *China Nails Order*.<sup>69</sup> Specifically, if the nail piece entered the United States without the additional pieces (*i.e.*, the outer-body anchor, hex nut, and washer), as a stand-alone product, it would be subject merchandise. Moreover, the outer-body anchor is permanently affixed to the nail piece, while the “{t}he nut and washer are one-piece unit.... can easily be removed from the anchor using the body threads.”<sup>70</sup>

With that understanding, in adopting an interpretation of “nails... constructed of two or more pieces” as directed by the *Remand Order*, we have considered the CAFC’s decision in *Mid Continent Nail*, which we find instructive. In *Mid Continent Nail*, the product at issue was a tool kit which contained subject merchandise (*i.e.*, nails subject to the *China Nails Order*) and non-subject components (the remaining items in the tool kit).<sup>71</sup> The CAFC evaluated this as a “mixed-media” product, and held that under this analysis:

First, Commerce must determine whether the potentially-subject merchandise included within the mixed media item is within the literal terms of the antidumping order. If it is, then Commerce must determine whether the inclusion of that merchandise within a mixed media item should nonetheless result in its exclusion from the scope of the order.

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Once Commerce has determined that the included merchandise would be subject to the order if examined in its own right, and that neither the text of the order nor its history indicates that subject merchandise should be treated differently on the basis

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<sup>68</sup> See Final Scope Ruling at 12-13.

<sup>69</sup> See Mid Continent (k)(2) Comments at 3-5; Midwest (k)(2) Comments at 2; and Scope Ruling Request at 2-3

<sup>70</sup> See Scope Ruling Request at 3.

<sup>71</sup> See *Mid Continent Nail*, 725 F.3d at 1302-1304.

of its inclusion within a mixed media item, we believe that a presumption arises that the included merchandise is subject to the order. This presumption arises from the need to recognize that the primary source in making a scope ruling is the antidumping order being applied.<sup>72</sup>

As noted above, we find that a “mixed-media” analysis is not necessary in this case because the express scope language encompasses “nails... constructed of two or more pieces,” and in light of the Court’s direction to conduct an analysis under 19 CFR 351.225(k)(2). However, we find the *Mid Continent Nail* discussion does provide useful guidance for our analysis because, in part, it directs Commerce to examine the “literal terms” of the order to determine whether a component of a “mixed-media” product is within the scope of an order when it is combined with non-subject components. Furthermore, the CAFC recognized that there is a presumption that subject components remain subject, notwithstanding their inclusion within a “mixed-media” product, which “arises from the need to recognize that the primary source in making a scope ruling is the antidumping order being applied.”<sup>73</sup>

Here, the scope of the *China Nails Order* covers “nails... constructed of two or more pieces” which we find can encompass a large variety of products, including the strike pin anchors. As part of our interpretation pursuant to the *Remand Order*, we find it reasonable to instruct CBP that only the nail piece of the product is subject to the *China Nails Order*, while the additional piece(s) would not be subject. This reflects our understanding above that a stand-alone nail which would otherwise satisfy the definition of the scope will not be excluded because of its construction with an additional piece or pieces. This further ensures that the underlying antidumping duty order – which covers nails – is applied appropriately to nails, and not to other components. We therefore disagree with *Mid Continent* that the scope language “does not ...

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<sup>72</sup> *Id.* at 1302, 1304 (internal citations omitted).

<sup>73</sup> *Id.* at 1304.

limit the scope coverage only to the nail component of the nail of two or more pieces {, because} {t}here is no exclusion for components attached or affixed to subject nails when they are of two or more pieces.”<sup>74</sup> We do not believe the scope language needs to adopt a specific exclusion for the non-nail components, because the plain terms of the *China Nails Order* cover nails – nothing more.

Further, although the product at issue in *Mid Continent Nail* was a tool kit with readily separable subject merchandise, nothing in the CAFC’s opinion would preclude Commerce from applying these same principles to its analysis of “nails... constructed of two or more pieces.” Likewise, the CAFC’s opinion in *Walgreen*, which predated *Mid Continent Nail*, evaluated “whether the packaging of the tissue paper in gift bag sets takes it out of the scope of the Final Order.”<sup>75</sup> The CAFC held that “{e}ach case must be decided on the particular facts {,}” and that “the primary source in making a scope ruling is the antidumping order being applied (and the prior scope determinations applying that order), not necessarily the scope rulings made in unrelated antidumping orders.”<sup>76</sup> In this case, Commerce has appropriately based its interpretation of “nails... constructed of two or more pieces” on the scope language and the record evidence in this case, while being guided by the principles discussed above.

For these reasons, we disagree with Mid Continent that we are improperly narrowing the scope of the *China Nails Order* beyond its intended meaning or purpose. Additionally, Mid Continent does not provide any support for its assertion that unitary, assembled articles can only be dutiable in their entirety. For purposes of determining antidumping duties, Commerce may instruct CBP to assess duties on only a portion of a unitary, assembled article, even if CBP

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<sup>74</sup> See Mid Continent’s Draft Remand Comments at 4.

<sup>75</sup> See *Walgreen*, 620 F.3d at 1354.

<sup>76</sup> *Id.* at 1356.

classifies the product differently for its own purposes.<sup>77</sup> Therefore, we continue to intend to instruct CBP that only the nail piece, *i.e.*, the pin, of the product is subject to the *China Nails Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject.

### **Midwest’s Final Remand Redetermination Comments:**

- With respect to the meaning of the phrase “certain steel nails . . . constructed of two or more pieces,” Midwest submitted the ASTM Standard Specification for Driven Fasteners: Nails, Spikes, and Staple, cited several examples in the specification of nails consisting of nail and another component, and noted that the two-piece nails described in this specification do not resemble Midwest’s strike pin anchors. Examination of the specification also confirms that it does not include specification for strike pin anchors.<sup>78</sup>
- The ASTM standard, which embodies the technical standards for the production of nails, should carry more weight than the ITC reference that is not supported by any additional evidence.<sup>79</sup>
- Commerce’s (k)(2) analysis is flawed. The difference in physical characteristics of nails and strike pin anchors is obvious from a visual examination, as there is no similarity except for the pin which looks like a nail. Commerce’s attempts to compare the strike pin anchor to products that are clearly two-piece nails, *e.g.*, upholstery nails and roofing nails, is not supported by any evidence.<sup>80</sup>
- Commerce’s logic is flawed because the use of a nail is simple, while the installation of a strike pin anchor is much more complex and requires additional steps and equipment.<sup>81</sup>
- Commerce ignores evidence establishing that nails and anchors are advertised and displayed in a retail setting in much different ways.<sup>82</sup>

### **Commerce’s Position:**

Commerce disagrees with Midwest that Commerce should exclude its strike pin anchors based on the 19 CFR 351.225(k)(2) criteria and that Commerce should have relied solely on the ASTM Standard put on the record by Midwest to derive an interpretation of “nails . . . constructed

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<sup>77</sup> See, *e.g.*, CBP Clarification – Correct Use of the ADD/CVD Special Value Fields, Multiple Entry Line and Set Provisions, available at [https://csms.cbp.gov/docs/23578\\_922344688/Special\\_Value\\_Memo\\_Attachment.pdf](https://csms.cbp.gov/docs/23578_922344688/Special_Value_Memo_Attachment.pdf) (last visited April 24, 2019) (explaining that special value fields on the entry summary form may be used to calculate antidumping or countervailing duties when a value (or quantity) differs from the CBP appraised value (or quantity).)

<sup>78</sup> See Midwest’s Draft Remand Comments at 2-3).

<sup>79</sup> See Midwest (k)(2) Comments at 3.

<sup>80</sup> *Id.* at 3-4.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 4.

of two or more pieces.” As detailed above, we relied on all the evidence on our record, including the ASTM Standard and the ITC Report, which details the merchandise that the ITC considers to be covered by the *China Nails Order*. The ITC report offers a fulsome explanation of the different types of nail products that were part of the domestic like product, which the ITC defined as “coextensive” with the scope of the investigation (unchanged in the *China Nails Order*).<sup>83</sup> We have identified no reason to discount the ITC Report, nor to give more weight to the ASTM Standard over the ITC Report. Additionally, the scope language itself is not limited to the ASTM Standard, therefore, we do not agree with Midwest that our interpretation of the scope language should be so limited.

Additionally, although Midwest claims that Commerce’s 19 CFR 351.225(k)(2) analysis is flawed and unsupported by the record evidence, Commerce followed the guidelines set forth in 19 CFR 352.225(k)(2), examined the evidence available on record, and made a determination in accordance with 19 CFR 352.225(k)(2) based on the evidence provided.

Specifically, as discussed above, our analysis of the physical characteristics of nails and strike pin anchors appropriately identified key characteristics of what constitutes a nail of two or more pieces based on the record examples of “nails... constructed or two or more pieces” as that phrase is commonly understood in the nails industry. This evidence reflects that one component of the product, if considered as a stand-alone product, would be found within the scope of the *China Nails Order*. Further:

- The additional piece(s) is/are not limited to steel, but may be made of plastic, zinc, rubber, neoprene, or any other material;
- The additional piece(s) is/are not limited to a nail head, but can consist of a cap, washer, an outer-body anchor, or any other piece; and
- The additional piece(s) is/are joined, affixed, or otherwise combined with the nail.

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<sup>83</sup> See ITC Report at I-6.



Our analysis of the additional pieces (*i.e.*, the outer-body anchor, hex nut, and washer) is consistent with these record examples. We therefore disagree with Midwest that our interpretation and analysis is unsupported by the record.

Further, Commerce has not ignored that the installation of a strike pin anchor differs from the use of a nail. As discussed above, based on the record evidence, the ultimate purchasers of Midwest's strike pin anchors appear to expect to use the strike pin anchors in a fashion similar to that of purchasers of nails. Specifically, ultimate purchasers expect to use a hammer to strike a pin, either a nail or a pin within an anchor, into a surface to join two or more objects together. Additionally, both nails and strike pin anchors may be used for masonry or concrete applications. The fact that additional steps and equipment are needed for the strike pin anchor does not take away from our conclusions. As we find above, the scope of the *China Nails Order* covers a wide variety of types of nails, which all have varying applications or uses. This in turn will lead to varying expectations of the ultimate purchasers, depending on the intended application or use.

Finally, we disagree with Midwest that Commerce ignores evidence establishing that nails and anchors are advertised and displayed in a retail setting in much different ways. As discussed above, the record evidence suggests that nails and strike pin anchors are sold through similar channels of trade (*i.e.*, hardware stores, larger retailers, building material suppliers, and specialty distributors), and rely on similar types of advertising and display through online marketing.

As such, we continue to find Midwest's strike pin anchors are within the scope of the *China Nails Order*.

## **V. FINAL RESULTS OF REDETERMINATION**

Consistent with the *Remand Order*, under respectful protest, we have conducted an

analysis pursuant to the criteria set forth in 19 CFR 351.225(k)(2), and find that Midwest's strike pin anchors are within the scope of the *China Nails Order* as "nails... constructed of two or more pieces." Further, as a result of our analysis pursuant to the *Remand Order*, we intend to instruct CBP that only the nail piece, *i.e.*, the pin, of the product is subject to the *China Nails Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer, would not be subject.

4/25/2019

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Signed by: GARY TAVERMAN

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations