

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**  
***Midwest Fastener Corp., v. United States***  
**Court No. 17-00231, Slip Op. 20-28 (CIT March 4, 2020)**

**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 (the Court) in *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 20-28 (March 4, 2020) (*Second Remand Order*). These final remand results concern Commerce's Final Scope Ruling,<sup>1</sup> in which we determined that strike pin anchors imported by Midwest Fastener Corp. (Midwest) fall within the scope of the antidumping duty order on certain steel nails (steel nails) from the People's Republic of China (China).<sup>2</sup> In the Second Remand Order, the Court held that Commerce's redetermination on remand continues to be unsupported by substantial evidence and ordered that the final scope determination be remanded for further reconsideration.<sup>3</sup>

In these Final Results of Redetermination, in accordance with the *Second Remand Order*, Commerce finds that Midwest's strike pin anchors, in their entirety, are within the scope of the *Order*.

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<sup>1</sup> See Memorandum, "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) (*Order*).

<sup>3</sup> See *Second Remand Order*, at 4 and 19; see also *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 18-142 (October 19, 2018) (*First Remand Order*).

## II. SCOPE OF THE *ORDER*

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 this *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 this *Order* 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 *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 this *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 this *Order* are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this *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 this *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 this *Order* is dispositive.

### **III. BACKGROUND**

In August 2008, Commerce published the *Order*.<sup>4</sup> On February 10, 2017, Midwest filed a request with Commerce for a scope ruling to determine whether the strike pin anchors it imports from China are subject to the *Order*.<sup>5</sup> On March 23, 2017, following the filing of Midwest's scope ruling request, the petitioner in this proceeding, Mid Continent Steel & Wire (Mid Continent), submitted comments in opposition to Midwest's scope request.<sup>6</sup> On June 8, 2017, following Commerce's rejection of the initial scope ruling request, Midwest refiled a revised scope request with Commerce.<sup>7</sup> On August 2, 2017, Commerce issued its Final Scope Ruling.<sup>8</sup>

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<sup>4</sup> See *Order*, 73 FR at 44961.

<sup>5</sup> See Midwest's Letter, "Steel Nails from the People's Republic of China: Midwest Fastener Scope Request," dated February 10, 2017.

<sup>6</sup> See Mid Continent's Letter, "Certain Steel Nails from the People's Republic of China: Opposition to Midwest Fastener's Strike Pin Anchors Scope Ruling Request," dated March 23, 2017 (Mid Continent Opposition).

<sup>7</sup> See Midwest's Letter, "Steel Nails from the People's Republic of China: Midwest Fastener Scope Request: Strike Pin Anchors," dated June 8, 2017 (Scope Ruling Request).

<sup>8</sup> See Final Scope Ruling.

Commerce determined in the Final Scope Ruling that Midwest’s strike pin anchors were covered by the scope of the *Order* based upon the plain meaning of the scope language, and that the sources enumerated in 19 CFR 351.225(k)(1) further supported Commerce’s scope determination.<sup>9</sup> Accordingly, Commerce determined that it was not necessary to consider the criteria set forth in 19 CFR 351.225(k)(2).<sup>10</sup> As a result of its Final Scope Ruling, Commerce issued instructions to U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of Midwest’s strike pin anchors subject to the *Order*.

Midwest appealed the Final Scope Ruling to the Court and, on October 19, 2018, the Court remanded Commerce’s scope ruling.<sup>11</sup> In its *First Remand Order*, the Court held that Commerce’s scope determination was not supported by substantial evidence.<sup>12</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 *Order*.<sup>13</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 an analysis under 19 CFR 351.225(k)(2).<sup>14</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{,}’” plus “any other comments or information

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<sup>9</sup> *Id.* at 10-13.

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

<sup>11</sup> *See First Remand Order.*

<sup>12</sup> *Id.* at 1-10.

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

<sup>14</sup> *See* Commerce’s Letter, “Certain Steel Nails from the People’s Republic of China: Scope Remand Request for Information,” dated December 21, 2018 at 1.

addressing... the function of the strike pin anchor in relation to the pin.”<sup>15</sup> On February 6, 2019, Mid Continent and Midwest submitted comments.<sup>16</sup>

On April 25, 2019, Commerce issued its Final Results of Redetermination in which, pursuant to the *First Remand Order* and under respectful protest,<sup>17</sup> Commerce conducted an analysis in accordance with 19 CFR 351.225(k)(2). Based on this analysis, Commerce found that the pin component of Midwest’s strike pin anchor was subject to the *Order*, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, were not covered by the scope of the *Order*.

On March 4, 2020, the Court again remanded Commerce’s scope ruling.<sup>18</sup> In its *Second Remand Order*, the Court held that Commerce’s revised scope determination was not supported by substantial evidence.<sup>19</sup> In particular, the Court continued to find that the plain language of the scope did not unambiguously cover strike pin anchors,<sup>20</sup> and it determined that Commerce improperly focused its analysis on only the pin portion of Midwest’s strike pin anchor, rather than the product as a single unit “constructed of two or more pieces.”<sup>21</sup> Pursuant to the Court’s order, Commerce now modifies several aspects of its earlier analysis, including a revised analysis of the factors enumerated under 19 CFR 351.225(k)(2), in order to clarify whether Midwest’s strike pin anchors are covered by the scope of the *Order*.<sup>22</sup>

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<sup>15</sup> *Id.* at 1.

<sup>16</sup> See Mid Continent’s Letter, “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); see also Midwest’s Letter, “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>17</sup> See Final Results of Redetermination Pursuant to Court Remand (First Remand Redetermination), *Midwest Fastener Corp., v. United States Court*, No. 17-00231, Slip Op. 18-142 (CIT October 19, 2018).

<sup>18</sup> See *Second Remand Order*.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 12-16. In its analysis, the Court also identified several specific deficiencies with Commerce’s analysis. *Id.* at 12, 15 (finding that Commerce did not identify specific examples or fully explain how these examples support its interpretation).

<sup>21</sup> *Id.* at 17-19.

<sup>22</sup> *Id.*

#### IV. ANALYSIS

As noted above, in the *Second Remand Order*, the Court found that key language in the *Order* is ambiguous when considered in light of the 19 CFR 351.225(k)(1) factors, and it ordered Commerce to provide an analysis under subsection (k)(2) of Commerce's regulations.

Accordingly, and under respectful protest, we: (A) address the Court's findings regarding the ambiguity of the scope language in question; and (B) proceed to a revised analysis of Midwest's strike pin anchors under 19 CFR 351.225(k)(2).

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

For purposes of this remand, the key scope language provides that the *Order* covers “certain steel nails ... of one piece construction or constructed of two or more pieces.”<sup>23</sup>

In its *First Remand Order*, the Court examined whether the plain language of the scope of the *Order* could reasonably be interpreted to include Midwest's strike pin anchors.<sup>24</sup> As part of its analysis, the Court found in the *First Remand Order* that the plain language of the scope itself did not define “nails” or “nails constructed of two or more pieces.”<sup>25</sup> After finding that “several dictionary definitions aid the court in discerning the plain meaning of the word “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>26</sup>

The Court also held that Commerce's reliance on the International Trade Commission (ITC)

Report was:

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<sup>23</sup> See *Order*, 73 FR at 44961.

<sup>24</sup> See *First Remand Order* at 6-8.

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

<sup>26</sup> *Id.* at 7-8.

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>27</sup>

The Court determined that none of 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>28</sup> Thus, the Court found that Commerce could not support its determination that Midwest’s strike pin anchors were covered by the *Order* “unless it clarifies the ambiguous phrase, ‘constructed of two or more pieces,’ and supports any subsequent determination with record evidence.”<sup>29</sup>

To address the Court’s concerns, Commerce further explained its conclusion that the phrase “nails . . . constructed of two or more pieces” covered the merchandise in question. Additionally, we conducted an analysis under 19 CFR 351.225(k)(2) relating to the pin component of the strike pin anchor.

In the *Second Remand Order*, the Court identified particular areas of Commerce’s decision that required additional citations and discussion,<sup>30</sup> including various aspects of Commerce’s (k)(2) analysis<sup>31</sup> and the fact that Commerce failed to consider the strike pin anchor as a composite product.<sup>32</sup>

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<sup>27</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). We respectfully disagree that the cited passage from the ITC Report is unhelpful, given that: (1) it explicitly identifies “masonry anchors” as a type of “nail” which is “constructed of two or more pieces”; and (2) the scope of the *Order* covers *all* steel “nails” with a shaft length of 12 inches or less except for a handful of explicitly-identified exceptions. Further, the ITC Report clearly includes “nails” used for “masonry” or “concrete” applications in its injury analysis. *See, e.g.*, ITC Report at I-10 (“Cut nails are used primarily for joining to masonry or concrete); and III-6 (at Table III-6 which includes the category “concrete masonry”).

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.* at 10.

<sup>30</sup> *See, e.g., Second Remand Order* at 12 (“Commerce also asserts that the record provides numerous examples of nails which could be considered ‘nails . . . constructed of two or more pieces’ which could aid in clarifying the phrase at issue. Commerce does not provide these examples or a citation to them. Commerce does not explain how these examples support its interpretation.”) (internal citations omitted).

<sup>31</sup> *Id.* at 17-18.

<sup>32</sup> *Id.* at 12-13 and 19.

(i) *Commerce Is Issuing this Remand Under Protest*

In the First Remand Redetermination, Commerce respectfully disagreed with the Court’s conclusion that the scope was ambiguous, including the Court’s reliance on dictionary definitions of “nail” in reaching that conclusion.<sup>33</sup> Commerce agreed “that the record does not contain {information from} 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,” but explained in detail the reasons it concluded that the term as used in the context of the scope of the *Order* included the strike pin anchors at issue.<sup>34</sup> In the Court’s *Second Remand Order*, the Court relied yet again on dictionary definitions to find that the term was ambiguous, this time citing to dictionary definitions of the terms “construct” and “constructed.”<sup>35</sup> For the same reason we respectfully disagree with the Court’s reliance on dictionary definitions in the *First Remand Order* to find ambiguity where we believe no ambiguity exists, we continue to respectfully disagree with the Court’s same method of analysis in reaching a similar conclusion in the *Second Remand Order*.<sup>36</sup>

We believe that the Court’s use of dictionary definitions supersedes and ignores the deference given to Commerce in interpreting the scope of antidumping and countervailing duty orders. As the Court of Appeals for the Federal Circuit (CAFC) has held, first and foremost, “the language of a scope is the ‘cornerstone’ of any scope determination.”<sup>37</sup> As the CAFC explained

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<sup>33</sup> See First Remand Redetermination at 7.

<sup>34</sup> *Id.* at 8.

<sup>35</sup> See *Second Remand Order* at 12-13.

<sup>36</sup> See *Viraj Grp., Ltd. v. United States*, 343 F. 3d 1371, 1376 (Fed. Cir. 2003).

<sup>37</sup> See *Shenyang Yuanda Aluminum Industry Engineering Co. v. United States*, 776 F. 3d 1351, 1353 (Fed. Cir. 2015) (*Yuanda*) (quoting *Walgreen Co. of Deerfield, IL v. United States*, 620 F. 3d 1350, 1357 (Fed. Cir. 2010) (*Walgreen*) and *Duferco Steel Inc. v. United States*, 296 F. 3d, 1087, 1097 (Fed. Cir. 2002) (*Duferco*)).

in *Yuanda*, in interpreting the words and meanings of terms in the scope of an order, “this court ‘grant{s} significant deference to Commerce's own interpretation of {scope} orders.’”<sup>38</sup> The CAFC has explained that “this deference is appropriate because the meaning and scope of ... orders are issues ‘particularly within the expertise’ and ‘special competence’ of Commerce.”<sup>39</sup>

Although we do not disagree that dictionary definitions, in the appropriate circumstance, may be beneficial as an instrument to assist in understanding certain words, the scopes of antidumping and countervailing duty orders are specific to particular industries and particular products, and relying on a dictionary to ascertain the “plain meaning” for any particular word in a scope has the potential to essentially create ambiguities where none exist. This is why the criteria which Commerce considers under 19 CFR 351.225(k)(1) should take precedence over any generalized dictionary definition, which may be too broad and subject to shifting interpretations from one dictionary to the next. This is also why Commerce, in its practice of interpreting antidumping and countervailing duty scopes, uses dictionary definitions sparingly; we prioritize the intentions of those drafting the petitions and acknowledge that industries may use terminology that does not clearly align with language as reflected in a dictionary.<sup>40</sup>

We, therefore, respectfully protest the issuance of this remand, as we continue to disagree with appropriateness of the Court’s reliance in the *First Remand Order* on generalized dictionary definitions of the term “nail” in remanding Commerce’s interpretation of the scope in the Final

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<sup>38</sup> See *Yuanda*, 776 F. 3d at 1357 (citing *Duferco*, 296 F. 3d at 1094-95; and *Ericsson GE Mobile Commc'ns, Inc. v. United States*, 60 F. 3d 778, 782 (Fed. Cir. 1995) (*Ericsson*)).

<sup>39</sup> See *King Supply Co. v. United States*, 674 F. 3d 1343, 1348 (Fed. Cir. 2012) (*King Supply*) (quoting *Sandvik Steel Co. v. United States*, 164 F. 3d 596, 600 (Fed. Cir. 1998) (*Sandvik*)).

<sup>40</sup> In describing the problem of looking to dictionary definitions to determine “the plain meaning” of a word, “the plain meaning rule ... relies upon the notion that words and phrases can, standing alone, have a single unequivocal meaning--a notion that has been thoroughly debunked by modern scholars who study language.” Aaron D. Goldstein, *The Public Meaning Rule: Reconciling Meaning, Intent and Contract Interpretation*, 53 SANTA CLARA L. REV. 73, 75 (2013).

Scope Ruling, which relied on the (k)(1) criteria, including previous scope determinations by Commerce, as well as the plain language of the scope.<sup>41</sup> In addition, we further believe the Court's reliance on dictionary definitions of the general terms "construct" and "constructed" in the *Second Remand Order* to find that the scope is ambiguous is also problematic for similar reasons and in conflict with the criteria given priority in interpreting the scope under 19 CFR 351.225(k)(1).<sup>42</sup>

(ii) *Applying the Court Ordered Analysis, We Have Found the Strike Pin Anchors Are Covered by the Scope*

In the Court's *Second Remand Order*, the Court described the product at issue here as follows:

Midwest's strike pin anchors have four components -- a steel pin, a threaded body, a nut and a flat washer. Midwest avers that the pin component is not meant to be removed from the anchor and can only be removed with the aid of a claw hammer or pliers. The strike pin anchor is prepared for use by first drilling a hole through an object, and then drilling another hole into the masonry upon which the object is to be attached. After the two holes are aligned, the anchor is pushed through the hole in the object and into the hole in the masonry. The nut and washer components are then tightened to orient and position the anchor, and the pin component is subsequently struck with a hammer. The action of striking the pin component expands the anchor body and results in the fastening of the desired item against the masonry.<sup>43</sup>

The Court concluded in its holding that "{t}he nail covered by the scope must be one that is constructed of pieces, not one where a nail is merely part of another object."<sup>44</sup> Further, the Court held that if Commerce conducted an analysis under 19 CFR 351.225(k)(2) consistent with this interpretation on remand, "it must consider not only the pin, but also the anchor body, the hex

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<sup>41</sup> See First Remand Order at 6-8.

<sup>42</sup> See Second Remand Order at 12-13.

<sup>43</sup> *Id.* at 4-5 (citations to the record omitted).

<sup>44</sup> *Id.* at 13.

nut and the flat washer. It should also consider how those physical characteristics function,” essentially, together as one whole product.<sup>45</sup>

Per the Court’s instructions, on remand, we find that the record provides numerous examples of “nails...constructed of two or more pieces” as that phrase is commonly understood in the nails industry. We also determine that an analysis under 19 CFR 351.225(k)(2), as directed by the Court, results in a finding that Midwest’s strike pin anchors, in their entirety, are covered by the scope of the *Order*.

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

In accordance with the Court’s *Second Remand Order*, we have re-examined whether Midwest’s strike pin anchors, as a whole, are in-scope merchandise based on the criteria outlined in 19 CFR 351.225(k)(2). Based on our analysis of the (k)(2) factors, we find that Midwest’s strike pin anchors are within the scope of the *Order*.

Under 19 CFR 351.225(k)(2), Commerce must take into account 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.

We consider each factor in turn.

##### *(i) Physical Characteristics*

As noted above, the scope of the *Order* describes the physical characteristics of in-scope merchandise as follows:

The merchandise covered by the *Order* includes certain steel nails having a shaft length up to 12 inches. . . Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any

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<sup>45</sup> *Id.* at 17.

type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters.

The product covered by Midwest's scope request is a strike pin anchor constructed of four components which form an integrated whole: an anchor body; a pin; a hex nut; and a flat washer.<sup>46</sup> Each of the components is made of steel, and the shaft of the pin is less than 12 inches.<sup>47</sup> Although the anchor itself has four parts, these parts form a single item which function as a unit (*e.g.*, the pin is a permanent and integral part of the anchor, requiring pliers or a claw hammer to remove).<sup>48</sup>

While many nails may have only one component (*i.e.*, a single unit with a head and shaft),<sup>49</sup> the scope of the *Order* explicitly includes nails "constructed of two or more pieces,"<sup>50</sup> and record evidence in this proceeding provides a number of examples of multi-component nails. In particular, an affidavit supplied by Mid Continent discusses various types of nails constructed of two or more pieces. The nails described include "nails that have a plastic or metal washer mounted underneath the head, or nails that have a plastic or zinc anchor affixed over the shaft of the nail" as well as nails with "a felt or neoprene washer underneath the head," or "decorative upholstery nails {which} have a decorative cap attached to the top of the head of the nail."<sup>51</sup>

In the *Second Remand Order*, the Court stated that, while Commerce asserted that the "record provides numerous examples of nails which could be considered 'nails . . . constructed of two or more pieces,'" it "does not provide these examples or a citation to them. Commerce does not explain how these examples support its interpretation."<sup>52</sup> We find that the various nails

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<sup>46</sup> See Scope Request at 8.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.*

<sup>49</sup> See, *e.g.*, Midwest k(2) Comments at 2.

<sup>50</sup> See *Order*, 73 FR at 44961.

<sup>51</sup> See Mid Continent Opposition at Exhibit 1.

<sup>52</sup> See *Midwest Fastener Corp. v. United States*, Court No. 17-00231, Slip Op. 20-28 (CIT March 4, 2020).

discussed above, which are referenced in record evidence provided by both Mid Continent and Midwest, clearly demonstrate that a nail can be a composite article made of more than one piece. This is true regardless of the exact application of the various pieces in the overall nail product. For instance, some of the nails described above have components that assist in the fastening function,<sup>53</sup> other have leak-preventing elements,<sup>54</sup> and other have purely aesthetic components.<sup>55</sup> Regardless, these products illustrate that a wide variety of nails are “constructed of” multiple pieces and parts.

In the *Second Remand Order*, the Court also stated that:

If Commerce were to compare the physical characteristics of the product it must consider . . . how those physical characteristics function. Comparison of physical characteristics logically includes a comparison of the function of those characteristics. Commerce must address record evidence that demonstrates that it is the anchor body of the strike anchor pin, not the pin, that provides the fastening function.<sup>56</sup>

In response to the Court’s directive, we have also considered how the anchor functions, including the degree to which this function is similar to the function of other nails. The anchor in question is designed to fasten objects to masonry through pinning, *i.e.*, creating friction between the anchor and the material into which it is inserted. To accomplish this, the body of the anchor is inserted into a pre-drilled hole, then the pin is forced into the body; this process expands the body and, along with the nut and bolt, secures the anchor in place.<sup>57</sup> Like many subject nails, strike pin anchors have a head that is first entered into a material, a shaft/body that provides friction to secure the product in the material, and a posterior that is struck in order to

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<sup>53</sup> See Midwest k(2) Comments at Exhibit 1-Table 42.

<sup>54</sup> *Id.* at Exhibit 1-Table 31.

<sup>55</sup> See Mid Continent Opposition at Exhibit 1.

<sup>56</sup> See Second Remand Order at 17.

<sup>57</sup> See Mid Continent Opposition at 8 and 9.

trigger the fastening effect. Therefore, although there are multiple components, the entire unit operates in unison to perform a fastening function.

Midwest argues that a strike pin anchor's fastening function varies from a nail's fastening function in that "the body is the component which gives the anchor its ability to function ... when the pin is driven into the body."<sup>58</sup> A nail, Midwest asserts, is different because it "fastens two articles together by means of itself alone." We disagree.

First, Midwest's assertion that the body of the anchor, "alone," gives strike pin anchors their functionality is simply incorrect. The pin must be driven into the anchor for the product to work.<sup>59</sup> Further, the pin is not designed to be removed from the anchor, as the pin and the anchor (and the bolt and washer) function together as a single entity. In fact, removing the pin will damage the product.<sup>60</sup>

Second, Midwest's assertion that a nail performs a function "by means of itself *alone*," implies that a nail must be a singular object. That is plainly incorrect, considering the language of the scope, which explicitly contemplates nails comprised of two or more pieces. In fact, the ASTM standard that Midwest itself placed on the record<sup>61</sup> undermines this interpretation.

The ASTM standard lists numerous products as "nails" which are composed of more than one component. For instance, the following products are defined as nails in the standard: (1) Umbrella Head Roofing Nails, which consist of a leak-resistant umbrella head atop a steel nail (Table 29); (2) Cap Nail-Hand Driven Roofing Nails, which consist of a round or square steel cap atop a steel nail (Table 31); (3) Cap Nail Power-Tool Driven Roofing Nails, which consist of a round or square steel cap atop a steel nail (Table 32); (4) Washered-Aluminum Roofing Nail,

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<sup>58</sup> *Id.* at 8.

<sup>59</sup> See Midwest k(2) Comments at 2.

<sup>60</sup> See Scope Ruling Request at 2.

<sup>61</sup> See Midwest k(2) Comments at Exhibit 1.

which consist of an aluminum roofing nail with a neoprene washer (Table 33); and (5) Washered-Steel Roofing Nails, which consist of a steel roofing nail with a elastomer washer (Table 34).<sup>62</sup> Thus, all of the above fasteners – which are explicitly labeled as “nails” in an authoritative source -- have more than one part.<sup>63</sup> In fact, as these examples illustrate, the ASTM standard demonstrates that such multi-component nail variants are common.

In the *Second Remand Order*, the Court noted that the above examples appeared to detract from Commerce’s conclusion, instead of support it, because: (1) the ASTM standard does not mention anchors or strike pin anchors; and (2) in each of the cited examples, the shank or pin component serves to secure the fastener.<sup>64</sup> As an initial matter, the scope language does not indicate that it is coextensive with the ASTM F1667 standard. Therefore, the fact that strike pin anchors were not explicitly referenced in the ASTM standard does not lead to a conclusion that such merchandise is out of scope. Additionally, the ASTM standard *does* describe products that share certain key similarities with strike pin anchors. For example, a “masonry drive nail” closely resembles the anchor in question in that it has a steel pin-like head that connects to a wider body of steel and is used to fasten in a masonry context.<sup>65</sup> Regarding the cited examples, in which the pin component or shank secures the fastener rather than an anchor body, we do not believe this is a meaningful distinction in light of the Court’s guidance that we consider the strike pin anchor as a single integrated product;<sup>66</sup> in any event, as noted above, the shank or pin component in strike pin anchors is also essential in securing the fastener, just as it is with other nails.

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<sup>62</sup> *Id.* at Exhibit 1 (showing multipart nails in Tables 29, 31, 32, 33, and 34).

<sup>63</sup> We note that roofing nails are excluded from the scope of the order. However, this does not detract from our observation that the above-referenced products are multi-part fasteners that are explicitly defined as nails. In fact, the very presence of the exclusion presupposes that such products would, otherwise, be covered by the *Order*.

<sup>64</sup> *See* Second Remand Order at 14.

<sup>65</sup> *See* Midwest k(2) Comments, at Exhibit 1-Table 22 and 42.

<sup>66</sup> *See* Scope Request at 3.

For the foregoing reasons, we find that strike pin anchors have the same overall physical characteristics as compared with other steel nails, as defined in the scope, and these components also operate in an analogous manner in performing the products' ultimate function, *i.e.*, fastening two objects together. As a result, we find that the physical characteristics of strike pin anchors are similar to the physical characteristics of nails more broadly.

(ii) *Ultimate Purchaser Expectations*

At the most basic level, purchasers buying and/or using strike pin anchors expect to obtain a product that will securely fasten different materials together using force. Typically, these purchasers expect to use a hammer to drive the anchor into a wall or other surface and, thereby, perform the fastening function.<sup>67</sup> These are the same expectations as the expectations for other in-scope nails.

The scope of the *Order* covers a wide range of nails which have varying applications, and, thus, a purchaser's expectations with respect to specific products can differ to some degree. As explained in the ITC Report, “{w}hile there are limitations in interchangeability among types of steel nails, this is not unexpected when a product is part of a continuum with no clear dividing lines between different types of nails.”<sup>68</sup> As a result, purchaser expectations depend, in large part, on the intended application or use of the nail in question.

Midwest contends that the ultimate purchaser of strike pin anchors would know that in-scope nails and anchors, such as the product subject to this scope request, are used for different purposes. Midwest asserts that “an anchor is used to fasten a board or another item to a masonry wall, ceiling or floor” while “{a} steel nail cannot be used for this purpose {and} would fail and

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<sup>67</sup> See Mid Continent k(2) Comments at 7-8.

<sup>68</sup> See ITC Report at I-6.

result in damage to the masonry.”<sup>69</sup> Therefore, Midwest argues, the ultimate purchaser of a nail would not expect to use it as a masonry anchor; nor would the purchaser of a strike pin anchor expect to use it as a nail to fasten together two pieces of wood.<sup>70</sup>

Midwest construes the applicable consumer expectations in an artificially narrow manner. Of course, consumers do not expect to use all nails for precisely the same purpose. A consumer does not have identical expectations, in terms of application, for 12-inch nails with a wide diameter as it would have for one-inch fine point nails with a narrow diameter. Strike pin anchors, like any other nail, have specific applications, and purchasers expect to use them in those applications. Thus, we do not find that the narrow differences in expectations surrounding strike pin anchors, as compared with other steel nails, are unique or otherwise determinative here.

Moreover, strike pin anchors are not unique simply because they are used in masonry applications. Although Midwest asserts 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, in fact, used in masonry or concrete applications. For example, steel nails used in powder-actuated nailers are specifically designed to join materials to concrete.<sup>71</sup> Mid Continent provided product literature that describes “nails for powder-actuated tools” as “premium collated nail for use with powder actuated tools on concrete and other base materials.”<sup>72</sup> Additionally, the ASTM standard provided by Midwest lists masonry nails among the “nail” products covered by the standard.<sup>73</sup>

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<sup>69</sup> See Midwest k(2) Comments at Exhibits 1 and 3.

<sup>70</sup> *Id.* at 3-4.

<sup>71</sup> See Mid Continent k(2) Comments at 9.

<sup>72</sup> *Id.* at Exhibit 1.

<sup>73</sup> See Midwest k(2) Comments at Exhibit 1-Table 22.

We also do not find that the installation process for strike pins anchors leads to a great difference in consumer expectations as compared with other steel nails. The installation process involves striking the product, or some portion of the product, with a hammer in order to fasten two materials together. Midwest states that the installation of a strike pin anchor is more complex, because:

The ultimate purchaser must obtain the anchor, a hammer, a masonry drill, a masonry drill bit, something to clean the drill dust from the hole in the masonry, and a wrench to tighten the nut. The steps to install the anchor are equally involved. The striking of the pin is only one step {and} is not the one that fastens the objects together. That step occurs when the nut on the anchor is tightened.<sup>74</sup>

In opposition, however, Mid Continent notes that consumers 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.<sup>75</sup> This installation process, therefore, is broadly similar to that of other nails.<sup>76</sup>

Similarly, we disagree that the fact that purchasers must drill holes prior to using strike pin anchors signifies that customers cannot view strike pin anchors as nails. While it is true that the end user inserts the strike pin anchor into aligned, predrilled holes, it is also true that the pin is driven with a hammer to fasten both the anchor into the substrate and to fasten the other materials being joined. The pin mechanically forces the anchor to expand against the walls of the pre-drilled hole, where it is held in place by friction – exactly as a nail that is driven into wood or other material is held in place.<sup>77</sup> In any case, Mid Continent also provided evidence demonstrating that other in-scope nails are installed through the use of pre-drilled holes.<sup>78</sup>

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<sup>74</sup> See Midwest Comments on Draft Results at 4.

<sup>75</sup> *Id.* at 7-8.

<sup>76</sup> *Id.* at 8.

<sup>77</sup> See Mid Continent k(2) Comments at 7.

<sup>78</sup> See Mid Continent Opposition at Exhibit 2.

Ultimately, the purchaser expects to hammer both strike pin anchors and other types of nails to join different materials together. Based on the record evidence, Commerce finds that ultimate purchasers of strike pin anchors expect a product that performs, and is installed, in a fashion similar to many other types of nails. Specifically, ultimate purchasers expect to use a hammer to strike a pin, alone or in conjunction with other elements, into a surface to join two or more objects together.

(iii) *Ultimate Use of the Product*

Strike pin anchors – as with many other types of nails – are used to join materials together. The end user inserts the strike pin anchor nail into a predrilled hole, the pin is then driven with a hammer to fasten the anchor into the substrate and to fasten the other materials being joined. The anchor is held in place by friction – exactly as other types of nails, driven into wood or other materials, are held in place. The nail is not removed and is the means by which the entire fastening operation occurs.<sup>79</sup>

As noted above, to the extent strike pin anchors have specific uses, the same is true for virtually all steel nails. Duplex nails (nails with two heads), for example, are used to erect temporary structures such as scaffolding or concrete forms.<sup>80</sup> Finish nails are used to attach trim and are designed with a small head that is intended to essentially disappear.<sup>81</sup> Galvanized nails are used in applications that require corrosion resistance.<sup>82</sup> Painted nails are used to affix identically-colored materials.<sup>83</sup> Machine-quality screw shank pallet nails, which have a blunt or no point, are used in automated pallet production.<sup>84</sup> As one can readily see from reviewing the

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<sup>79</sup> See Mid Continent k(2) Comments at 7.

<sup>80</sup> *Id.* at 9.

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

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

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

ASTM standard for nails, provided by Midwest (*i.e.*, ASTM F1667), the term steel “nail” encompasses thousands of different, specialized types of nails.<sup>85</sup> Because strike pin anchors are typically used to perform the same functions as nails more generally, this factor supports a finding that strike pin anchors are a type of nail covered by the *Order*.

(iv) *Channels of Trade*

Strike pin anchors, and steel nails more broadly, are typically sold through similar channels of trade. The channels include retail stores that sell to both consumers and professional users, such as hardware stores and “big box” retailers, as well as channels that sell to professional users but not to consumers, such as lumberyards, building material suppliers, and distributors that sell directly to professional end-users.<sup>86</sup>

Midwest acknowledges that anchors and other types of steel nails fall within the general “fastener” category in the hardware section of retail outlets.<sup>87</sup> However, Midwest also asserts that each type of fastener is considered a distinct sub-category of fastener.<sup>88</sup>

Based on the record evidence, although there may be sub-categories within the broader fastener category (*see* below), the channels of trade for strike pin anchors and steel nails more generally are similar. Therefore, this factor supports a finding that strike pin anchors are within the scope of the *Order*.

(v) *Method of Advertising and Display*

Strike pin anchors are marketed along with other fastener products, including other types of nails, bolts, and screws.<sup>89</sup> Strike pin anchors are advertised and displayed in various media,

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<sup>85</sup> *Id.*; *see also* Midwest k(2) Comments at Exhibit 1.

<sup>86</sup> *See* Mid Continent Opposition at Exhibits 1.

<sup>87</sup> *See* Midwest k(2) Comments at 5.

<sup>88</sup> *Id.*

<sup>89</sup> *See* Mid Continent k(2) Comments at 9.

including printed catalogs, on the Internet, at trade shows, in sales calls, and at point-of-sale displays.<sup>90</sup>

As noted above, Midwest asserts that anchors and nails constitute distinct sub-categories of fasteners, and that this fact is reflected in their manner of display. Midwest provides information showing how strike pin anchors are listed on websites of the three major home improvement big box retailers: The Home Depot; Lowes; and Menards.<sup>91</sup> Two of the websites separately list “anchors” from “nails” and/or “collated nails,” “bolts,” “screws,” or other fasteners parts (such as washers and nuts), while the third website (for Menards) lists only “nails,” without a category for “anchors.”<sup>92</sup> We note that the “nails” category on one of the websites does not correlate precisely with the definition of nails as defined by the scope of the *Order*, since certain collated fasteners (*i.e.*, collated nails) are explicitly covered by the scope. We also note that “anchors” are not separately identified on all three websites, according to the information on the record. Therefore, we find that these websites do not provide a clear indication that there is a distinction in marketing between anchors and other in-scope nails, or between the various subtypes of in-scope nails more broadly. As a result, this information does not lead to the necessary conclusion that anchors and nails are typically advertised or displayed differently.<sup>93</sup>

In sum, we find that four of the five factors (physical characteristics, consumer expectations, ultimate uses, and channels of trade) weigh in favor of finding the subject anchors to be nails, as defined by the scope of the *Order*, while the final factor is inconclusive on this

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<sup>90</sup> *Id.*

<sup>91</sup> See Midwest k(2) Comments at Exhibit 5.

<sup>92</sup> *Id.*

<sup>93</sup> In any event, we do not find that these categories are necessarily dispositive of clear dividing lines between in- and out of scope products, given that in-scope nails can clearly fall into more than one category.

point. Thus, for the reasons discussed above, and based on the totality of our analysis of the criteria set forth under 19 CFR 351.225(k)(2), we find that Midwest’s strike pin anchors are within the scope of the *Order*.

## V. COMMENTS ON THE DRAFT RESULTS OF REDETERMINATION

On May 21, 2020, Mid Continent and Midwest submitted comments on the draft results of redetermination.<sup>94</sup> We address interested parties’ comments below.

### *Midwest’s Comments:*

- Commerce continues to insist that the phrase “nails constructed of two or more pieces” is unambiguous, and that strike pin anchors are covered by the scope of the *Order*.

Commerce’s assertion that the record contains numerous examples of “two-piece nails,” as that phrase is commonly understood in the industry, is incorrect and record evidence counters Commerce’s conclusion.

- Commerce’s revised k(2) analysis is unsupported by record evidence.
- Physical Characteristics: Commerce’s comparison of the physical characteristics of strike pin anchors and nails is flawed. The difference in physical characteristics between in-scope nails and strike pin anchors is obvious from a simple visual examination. They do not resemble each other in any way except for the pin component of the strike pin anchor, which looks like a nail. Additionally, strike pin anchors are distinct from the assorted two-piece nails identified by Commerce.

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<sup>94</sup> See Mid Continent’s Letter, “Certain Steel Nails from the People’s Republic of China: Comments on Second Draft Results of Redetermination Pursuant to Court Remand (Slip Op. 20-28),” dated May 21, 2020; and Midwest’s Letter, “*Midwest Fastener Corp. v. United States and Mid Continent Steel & Wire Inc.*, Court No. 17-00231, Slip Op. 20-28 (CIT March 2020): Comments on Draft Results of Redetermination Pursuant to Court Remand,” dated May 21, 2020 (Midwest Comments).

- Expectations of the Ultimate Purchaser: Commerce correctly concludes that the ultimate purchaser's expectations for the product is to fasten one object to another, but then decides that a strike pin anchor is a nail because one step in the process of installing it is to strike it with a hammer. For a nail, the purchaser must obtain the nail and a hammer, position the pieces of wood to be fastened together, hold the nail with one hand and repeatedly strike it with a hammer until it is in position. The installation process of strike pin anchors is much more complex than that of a simple nail and includes drilling and tightening of a nut/washer.
- Ultimate Use of the Product: Commerce focuses on the fact that nails and anchors are held in place by friction. However, various products, including wood and metal screws and nuts and bolts, are also held in place by friction, but that does not make them nails. Thus, Commerce's analysis of this factor is incorrect.
- Channels of Trade: Commerce asserts that strike pin anchors and steel nails more broadly are sold through similar channels of trade, such as hardware stores and lumberyards. However, many other types of merchandise are also sold in these channels of trade. As a result, Commerce's analysis of this factor is unsupported by evidence.
- Manner of Advertising and Display: Commerce acknowledges the record evidence submitted by Midwest establishing that nails and anchors are advertised and displayed in a retail setting in very different ways. Commerce then latches onto the fact that anchors are not separately identified on all three websites cited by Midwest to determine that anchors and nails are not advertised or displayed differently. This error must be corrected in the final results of redetermination.

*Mid Continent's Comments:*

- Commerce's determination that strike pin anchors, in their entirety, are within the scope of the *Order* is supported by substantial evidence.
- Commerce properly determined that the Court-directed analysis, under 19 CFR 351.225(k)(2), supports a finding that Midwest's strike pin anchors are within the scope of the *Order*.
- Commerce correctly determined that the scope language referencing "nails...constructed of two or more pieces" includes nails such as Midwest's strike pin anchors, because the record provides numerous examples of such multi-piece nails. Therefore, although strike pin anchors have four parts, these parts form a single item (*i.e.*, a nail) which functions as a fastening unit.

**Commerce's Position:**

Commerce continues to find that Midwest's strike pin anchors are covered by the scope of the order. As an initial matter, we disagree with Midwest that the administrative record lacks evidence clarifying the phrase "nails of two or more pieces." We described at length the basis for our conclusion above, citing k(1) factors and the numerous examples of multi-part nails on the record. Although Midwest cites to ASTM F1667 standard in support of its assertion that "there is record evidence to counter" Commerce's conclusion regarding two-piece nails,<sup>95</sup> our reading of the document leads to a different conclusion. Specifically, we noted that the standard explicitly covers various "nails" consisting of more than one piece, including: (1) Umbrella Head Roofing Nails, which consist of a leak-resistant umbrella head atop a steel nail (Table 29); (2) Cap Nail-Hand Driven Roofing Nails, which consist of a round or square steel cap atop a

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<sup>95</sup> See Midwest Comments at 3.

steel nail (Table 31); (3) Cap Nail Power-Tool Driven Roofing Nails, which consist of a round or square steel cap atop a steel nail (Table 32); (4) Washered-Aluminum Roofing Nail, which consist of an aluminum roofing nail with a neoprene washer (Table 33); and (5) Washered-Steel Roofing Nails, which consist of a steel roofing nail with a elastomer washer (Table 34).<sup>96</sup>

Furthermore, although a specific definition of a product taken from a specific dictionary may, at times, be helpful in understanding words in the scope, Commerce is in no way lawfully restricted by that selected dictionary definition in its analysis of a scope of an order from considering the substantial evidence on the record. There are many dictionaries which cover the English language, and within those multiple versions of dictionaries, there are frequently numerous definitions of specific words. Accordingly, we respectfully disagree that the “plain meaning” of words found in a given antidumping or countervailing duty order scope can be determined dispositively by one or more selected dictionary definitions, and as a result of that finding that Commerce is legally restricted from considering the sources listed in (k)(1) or the factors listed in (k)(2) (if necessary).

As the CAFC has held, first and foremost, “the language of a scope is the ‘cornerstone’ of any scope determination,”<sup>97</sup> and in interpreting the scope of an order, “this court ‘grant {s} significant deference to Commerce’s own interpretation.’”<sup>98</sup> The CAFC has explained that “this deference is appropriate because the meaning and scope of ... orders are issues ‘particularly within the expertise’ and ‘special competence’ of Commerce.”<sup>99</sup> As we explained above, we have concluded, in accordance with our expertise and “special competence,” that the record supports the argument that the language of the scope is unambiguous. However, as explained at

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<sup>96</sup> See Midwest k(2) Comments at Exhibit 1 (showing multipart nails in Tables 29, 31, 32, 33, and 34).

<sup>97</sup> See *Yuanda*, 776 F. 3d at 1353 (quoting *Walgreen*, 620 F. 3d at 1357 and *Duferco*, 296 F. 3d at 1097).

<sup>98</sup> *Id.* at 1357 (citing *Duferco*, 296 F. 3d at 1094-95; and *Ericsson*, 60 F. 3d at 782).

<sup>99</sup> See *King Supply*, 674 F. 3d at 1348 (quoting *Sandvik*, 164 F. 3d at 600).

length above, in accordance with the Court’s remand order, we have conducted a k(2) analysis on remand.

Midwest makes a series of brief assertions in its submission regarding Commerce’s k(2) analysis, none of which undermine the lawfulness and validity of our conclusions. Midwest states that Commerce’s comparison of the physical characteristics of strike pin anchors and other in-scope nails is flawed and that the difference in the physical characteristics is obvious from a simple visual examination. However, the *Order* was deliberately drafted to cover a broad range of nails, and not all “nails” simply resemble the pin component of the strike pin anchor, as Midwest asserts. The record contains numerous examples of nails that look decidedly different from solely the pin element – in particular, the multitude of multi-part nails discussed on the record clearly do not resemble the pin, as they have two or more pieces and are not simple one-piece shafts with points.<sup>100</sup> Additionally, the record contains a clear example of a “masonry drive nail” which resembles Midwest’s strike pin anchor in shape. Finally, were Commerce to adopt Midwest’s proposed definition, the result would effectively be to eliminate nails constructed of “two or more” pieces from the scope, an outcome clearly unintended by the domestic industry in this case.

Midwest’s assertions regarding the expectations of the ultimate purchaser are, similarly, unavailing. Midwest claims that the ultimate purchaser simply obtains a nail and a hammer, positions pieces of wood to be fastened together, holds the nail with one hand and repeatedly strikes it with a hammer until the wood is in position. This is a mischaracterization of consumer

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<sup>100</sup> See Mid Continent Opposition at Exhibit 1 (providing an affidavit discussing various types of nails constructed of two or more pieces, including “nails that have a plastic or metal washer mounted underneath the head, or nails that have a plastic or zinc anchor affixed over the shaft of the nail” as well as nails with “a felt or neoprene washer underneath the head,” or “decorative upholstery nails {which} have a decorative cap attached to the top of the head of the nail.”); see also Midwest k(2) Comments at Exhibit 1.

expectations for two reasons: first, there is record evidence indicating that certain applications for other in-scope nails require additional processes, *e.g.*, pre-drilling;<sup>101</sup> second, nails that are subject to the *Order* are not exclusively used in wood applications.<sup>102</sup> In any case, Midwest's assertion do not undermine Commerce's basic finding that a consumer expects to fasten two materials together through a process that involves striking the product, or some portion of the product, with a hammer. That is precisely the process required for strike pin anchors. Midwest urges Commerce to adopt a narrow definition of the term nail that clearly conflicts with the scope as drafted.

With respect to the ultimate use of the product, Midwest takes issue with Commerce's emphasis on the fact that nails and anchors are held in place by friction, asserting that several other examples of non-subject merchandise also function in a similar manner, *e.g.*, screws. However, the fact that additional products may rely on friction to fasten does not detract from our observation that there are clear parallels between the use of strike pin anchors and other merchandise falling within the scope of the *Order*.<sup>103</sup> The focus on friction is a red herring; the ultimate use of nails – including both single piece nails and multi-part ones like strike pin anchors – is to fasten two or more objects together.

Regarding channels of trade, Midwest disputes Commerce's conclusion and notes that several other products are also sold via the same channels of trade, *e.g.*, big box retailers, hardware stores, *etc.* We again find this argument unconvincing; the simple fact that these

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<sup>101</sup> *Id.* at Exhibit 2. In any case, pre-drilling a hole is not inconsistent with the foundational expectations regarding the usage of nails: striking a nail into place to fasten materials together.

<sup>102</sup> See Midwest k(2) Comments at Exhibit 1-Table 16.

<sup>103</sup> In fact, in its own comments on the k(2) factors following the Court's initial remand, Midwest highlighted that a nail "directly accomplishes its use of connecting two objects" and "{a}s it is driven through one object into another, usually wood, *the friction of the nail against the objects is what holds them in place.*" *Id.* at 3 (emphasis added).

channels of trade are broad and encompass numerous other products does not support a finding that the channels of trade for strike pin anchors and in-scope steel nails are distinct.

Finally, regarding method of advertising/display, we disagree with Midwest's characterization of our prior analysis. As we explain above, we find the evidence Midwest provided to Commerce relating to this factor to be inconclusive. Specifically, this information does not establish that retailers draw clear lines between "nails" and "anchors" in terms of displaying the products for sale. As a result, we find that the method of advertising and display for strike pin anchors and other in-scope nails does support Midwest's argument that these products are clearly distinct.

To summarize, we find that four of the five factors (*i.e.*, physical characteristics, consumer expectations, ultimate use, and channels of trade) support a finding that strike pin anchors are nails, as defined by the scope of the *Order*.

**VI. FINAL RESULTS OF REDETERMINATION**

Consistent with the *Second Remand Order*, under respectful protest, we have conducted an analysis pursuant to the criteria set forth in 19 CFR 351.225(k)(2). We continue to find that Midwest’s strike pin anchors are within the scope of the *Order* as they are “nails...constructed of two or more pieces.” If these final results of redetermination are accepted by the Court, we intend to issue a *Federal Register* notice of court decision not in harmony with the *Final Results*, as well as customs instructions relating to entries of the product in question.

6/17/2020

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Signed by: JOSEPH LAROSKI

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Joseph A. Laroski Jr.  
Deputy Assistant Secretary  
for Policy and Negotiations