

4 April 2012

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Initiation of a Limited Review Relating to Wire Nails from China

Summary

1. This report assesses an application made by Allied Fastenings Limited (Allied) on 15 November 2011 for a limited review of the anti-dumping duties that currently apply to imports of wire nails from China to determine whether specialised nails for fixing plasterboard should be exempted from the duty.
2. An additional two issues were brought to the Ministry's attention by the NZ Customs Service over whether certain other specialised nails should be exempted from the duty. The assessment team considers that a review of the wording of the goods description is justified.
3. The report recommends that the Chief Advisor, Trade Rules, Remedies and Tariffs Group, acting under delegated authority from the Chief Executive of the Ministry of Economic Development, initiate a review on his own initiative.

Background

4. An investigation into wire nails from China was completed in June 2011. Anti-dumping duties were imposed from 3 June 2011.
5. The description of the wire nails currently subject to anti-dumping duty are described below:

Wire nails of iron or steel, bright (plain) and galvanised (coated), excluding wire nails that meet any of the following criteria:

- *those made of stainless steel;*
- *those equal to or greater than 155mm in length;*
- *those equal to or greater than 7mm in diameter;*
- *those that are collated or for collation,*
- *horseshoe nails.*

6. The investigation resulted in a specific ad valorem rate of duty being set for some Chinese exporters. In addition, a residual rate of duty was imposed for all

other exporters of wire nails that fall under the subject good description. Some Chinese exporters found not to be dumping were exempted from the duty.

Reviews

7. Any interested party that requests a review of the imposition of anti-dumping duties must submit positive evidence justifying the need for a review and in that event, the Chief Executive is required initiate a review¹. In addition the Act allows the Chief Executive to initiate a review on his or her own initiative, and does not limit the grounds on which such a review may be initiated.

8. The assessment team interprets the requirement of section 14(8) of the Dumping and Countervailing Duties Act 1988 (the Act) for an interested party to submit "positive evidence justifying the need for a review" as being a requirement for positive evidence, but not evidence to the same extent as that required under section 10(2) of the Act in respect of new investigations. This interpretation is supported by international jurisprudence² relating to the Anti-Dumping Agreement (the Agreement). Importers are an interested party and are therefore entitled to request a review under section 14(8) of the Act.

9. The assessment team considers that this review need only be a limited review which:

- (a) assesses the extent to which relevant goods being imported and those manufactured by the New Zealand industry are like goods; and
- (b) exempts relevant nails from the duty.

Consideration of Evidence Presented

Allied Claim

10. Allied has requested that the Ministry carry out a review in order to establish whether New Zealand nail producers manufacture nails that are "like" a specialised nail (a GIB Braceline nail) it imports from China or use in fastening GIB plasterboard. Allied submitted to the Ministry that the GIB Braceline nail is the only 'approved' nail for use with Winstones' GIB Braceline Plasterboard product. It believes that the GIB Braceline nail is not a "like good" to other wire nails produced by the domestic industry.

¹ The Dumping and Countervailing Duties Act 1988, section 14(8), states:

The [Chief Executive] may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty...in relation to goods and shall complete that review within 180 days of its initiation.

² World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003, paragraph 7.27.

11. “Like goods” are defined in section 3(1) of the Act³ and Article 2.6 of the Agreement. Both state that “like goods” should be “identical in all respects”, and in the absence of identical goods provide for consideration of products which have characteristics closely resembling those goods.

12. There are three New Zealand manufacturers of wire nails: Wireplus Ltd (Wireplus), NZ Nail Industries Ltd (NZ Nail) and Arrownail Industries Ltd (Arrownail). Two of these companies responded to a Ministry request for comments regarding whether GIB Braceline nails could be considered a “like good”. Wireplus claimed that their technical personnel had stated that such a nail could be manufactured in New Zealand, so they believe that the GIB Braceline nail should be subject to the anti-dumping duty. NZ Nail stated that it manufactured a screw for the same purpose and therefore it was opposed to the GIB Braceline nail being exempted from the anti-dumping duty.

13. Wireplus’ response regarding the possibility that a “like good” could be manufactured in New Zealand referred to a hypothetical ability to manufacture a “like good. Further information will be required to assess their exact position, although the assessment team considers that an assessment of whether the NZ industry produces a like good should be based on products it currently produces rather than those it could hypothetically produce.

14. NZ Nail’s comments give rise to the issue of substitutability with regard to their production of a screw alternative to the GIB Braceline nail. It should be noted that there are ‘approved’ screws sold for specific use with GIB Braceline Plasterboard, in the same way that GIB Braceline nails are. Interchangeability or substitutability is only one factor in considering whether goods are “like” another good and, will also require further investigation.

Macsim

15. The Ministry became aware of Macsim Fastenings (NZ) Pty Limited’s (Macsim) importation of nail-in plugs and drive pin nails from China following an initial query made to NZCS regarding the applicability of the wire nails anti-dumping duty to the products via Macsim’s customs agent. Nail-in plugs are specialised nails housed in a plastic sheath and used as an anchor for light weight applications involving both hollow walls and solid masonry. Drive pin nails, similarly, are a specialised nail with a plastic collar generally used in conjunction with power tools for anchoring in relation to various surfaces.

16. All three New Zealand manufacturers were asked to comment regarding whether they considered they produced a nail “like” the Macsim-imported nail-in plugs and drive pin nails. They all stated that they did not consider they produced a like good to either product, nor did they oppose them being exempted from the anti-

³ Section 3(1) of Dumping and Countervailing Duties Act 1988

like goods, in relation to any goods, means—

(a) other goods that are like those goods in all respects; or

(b) in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods

dumping duty applicable to wire nails from China. The assessment team therefore considers a review should be initiated in respect of these nails in order to exempt them from the duty, given that the New Zealand producers do not oppose such an exemption. The assessment team does not consider a like good determination is required. Rather, the main issue to be determined is how an exemption for these nails will be worded.

Gibson

17. The Ministry also became aware of hammer drive anchor fixings imported by Gibson Anchoring Systems Limited (Gibson) following an initial query made by Gibson to NZ Customs regarding the applicability of the wire nails anti-dumping duty to the products. Hammer drive anchor fixings are also specialised nails which have a zinc alloy housing and are used to anchor items to surfaces.

18. Based, primarily, on the physical characteristics and the apparent function of the product, as recorded in promotional material obtained by the assessment team, it considers that a review of the applicability of the anti-dumping duty to the hammer drive anchor fixings is warranted on the basis that the NZ industry may not manufacture a like good.

19. The assessment team has contacted the three domestic manufacturers to seek their views on whether they produce this type of nail and therefore whether they would have any objection to exempting it from the duty. Only Wireplus responded and advised it did not manufacture a product that performed the same function. Any review will need to determine the views of the other two producers. If these other producers do not object to exempting this type of nail from the duty, the review can proceed on the same basis as for the nails imported by Macsim. If they do object, the review will need consider whether the domestic industry produces a like good to this type of nail.

Conclusion

20. The assessment team is satisfied that a request has been made by an interested party in terms of GIB Braceline nails and that there is sufficient positive evidence to justify the initiation of a review. The assessment team is also satisfied that the circumstances outlined above warrant the Chief Executive initiating on his own initiative a review in respect of nail-in plugs, drive pins and hammer drive anchor fixings.

21. The assessment team considers that the review need only be limited to a review of like goods and that there should be a review of the goods description in order to exempt nail-in plugs and drive pins.

22. The assessment team considers that Allied's application, as an 'interested party' and its provision of positive evidence would be likely to be sufficient to initiate a review regarding GIB Braceline nails. However, to enable all the aforementioned nails to be encompassed in a single review, in the interest of efficiency, it is considered preferable that a review be initiated on the initiative of the Chief Executive pursuant to section 14(8) of the Act.

Recommendation

23. It is recommended, in accordance with section 14(8) of the Act and acting under delegated authority, that you:

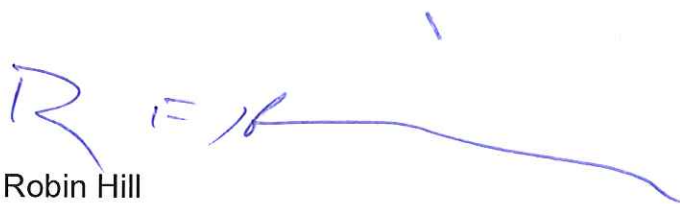
- a. formally initiate a limited like goods review of the imposition of anti-dumping duty on wire nails from China; and
- b. sign the attached notice of the initiation of the review for publication in the *New Zealand Gazette*.



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Agreed/~~Not Agreed~~



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