



U.S. Customs and Border Protection

PUBLIC VERSION

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7821

To the Counsel and Representatives of the above-referenced entities:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), against VY Industries Inc. (“VY Industries”).¹ CBP is investigating whether VY Industries evaded antidumping duty (“AD”) order A-570-909 on wire coated coil nails (“nails”) from the People’s Republic of China (“China”).² CBP has found that reasonable suspicion exists that VY Industries entered covered merchandise into the customs territory of the United States through evasion, and CBP has imposed interim measures.³

Period of Investigation

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are “those entries of allegedly covered merchandise made within one year before the receipt of an allegation...” Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise

¹ See Letter from Corus Fastening, “EAPA 007821,” dated July 31, 2023 (“Allegation”) at 1. Corus submitted certain information on April 26, 2023; however, it filed the Allegation and supplemental information on July 31, 2023. Corus submitted additional supplemental information on October 4, 2023 (“Allegation Supplement 1”) and October 23, 2023 (“Allegation Supplement 2”).

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

³ See 19 USC 1517(e); see also 19 CFR 165.24.

into the customs territory of the United States.”⁴ CBP acknowledged receipt of the properly filed Allegation against VY Industries on November 29, 2023.⁵ The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from November 29, 2022, through the pendency of this investigation.⁶

Initiation

On December 20, 2023, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated this investigation under EAPA as a result of the allegation submitted by Corus Fastening (“the Alleger” or “Corus”)⁷ concerning the evasion of AD duties by VY Industries.⁸ In the Allegation, Corus asserts that VY Industries evaded the *Order* by importing nails from China into the United States that were transshipped through India and Canada.⁹

Description of the Alleged Transshipment Scheme

In the Allegation, Corus states that it specializes in distributing industrial nails, staples, and the tools associated with their use.¹⁰ They alleged that VY Industries, a Canadian-based company and U.S. importer, sold nails or presented low-cost collated coil nails under HTS code 7317.00.5503 to its customers.¹¹ The nails were packaged in cartons labeled “Made in China” or “Made in India.”¹² A former Corus customer mentioned that they chose to buy nails from VY Industries due to their significantly lower prices.¹³

Photographs submitted in the Allegation depict a carton of nails labeled as “Made in China.”¹⁴ These images were captured by a Corus sales representative on [date], at [entity], a former Corus customer.¹⁵ Additionally at this location, it was reported the presence of nails with boxes marked “Made in India” on [date].¹⁶ Furthermore, similar nails with the “Made in India” markings were

⁴ See 19 USC 1517(a)(4); see also 19 CFR 165.1.

⁵ See CBP email, “EAPA 7835 - Receipt of Properly Filed Allegation,” dated November 29, 2023.

⁶ See 19 CFR 165.2.

⁷ The Alleger is a manufacturer, producer, or wholesaler in the United States of a domestic like product; thus, pursuant to 19 CFR 165.1(2), the Alleger meets the definition of an interested party that is permitted to submit an EAPA allegation.

⁸ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7821,” dated December 20, 2023 (“Initiation Notice”).

⁹ See Allegation at 1-8.

¹⁰ See Allegation.

¹¹ See Allegation at 1.

¹² See Allegation at 1.

¹³ See Allegation at 1.

¹⁴ Exhibit A and notarized statement from [individual and location] sales representative who captured the pictures.

¹⁵ See Allegation at 1.

¹⁶ See Allegation at 1.

discovered at another former customer of Corus, [entity] in [location].¹⁷ In both cases, the country of manufacture was listed on the underside of the cartons.

Corus maintains that VY Industries transships merchandise covered by the *Order*. In support of that assertion, Corus provides photographs of nails with VY Industries labeling and marked “Made in China.”¹⁸ Available trade data identifies imports of nails from Chinese suppliers to Canada with VY Industries as the consignee.¹⁹ The nail shipments were received from [#] Chinese suppliers, with at least one supplier having a direct link to the original antidumping order.²⁰ The data identifies [entity], a supplier based in China, as well as [entity], also based in China.²¹ The Allegor provided vessel manifest data which indicates that VY Industries may also be the U.S. importer of record for several nail shipments.²² Moreover, Corus’ former customers maintained that the nails were shipped to them from Canada by VY Industries.²³

Therefore, Corus concludes *in toto* that all evidence reasonably suggests that VY Industries is transshipping nails from China, through Canada, to the United States to avoid paying duties as per the *Order*.

Initiation Assessment

TRLED will initiate an investigation if it determines that “{t}he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”²⁴ Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”²⁵ Thus, the Allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer through evasion, but that such entry was made by a material false statement or act, or material omission, which resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

¹⁷ See Allegation at 1.

¹⁸ See Allegation at 1.

¹⁹ See Allegation at 1.

²⁰ See Allegation at 1.

²¹ See Allegation at 1.

²² See Allegation at 5 and Exhibit 2.

²³ See Allegation at 1.

²⁴ See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

²⁵ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

In assessing the basis for the Allegation, CBP finds that the information submitted by Corus reasonably suggests that VY Industries entered merchandise covered by the *Order* into the customs territory of the United States through evasion. Specifically, data reasonably available to Corus and submitted to CBP indicates VY Industries imported Chinese nails subject to the *Order* into the United States from Canada. The Alleger provides evidence, an affidavit from a Corus sales representative and photographs of nails in packaging marked made in China from VY Industries, a Canadian based company.²⁶ If VY Industries is reported to be the manufacturer of nails imported into the United States, then it is not unreasonable to infer that nails with “Made in China” markings were produced in China.²⁷ Furthermore, public import data show imports of nails into Canada for which China was declared the country of origin.²⁸ Finally, the Alleger provided vessel manifest data evidencing that VY Industries may be the importer of record for several nail shipments.²⁹ Consequently, TRLED initiated an investigation pursuant to 19 USC 1517(b)(1) and 19 CFR 165.15.³⁰

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based on the record of the investigation if there is reasonable suspicion that merchandise covered by the *Order* was entered into the United States through evasion. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that the importer entered covered merchandise into the United States through evasion by means of transshipment through India.³¹

CBP Form 28 (CF-28)

As noted above, TRLED initiated the investigation based on the evidence that nails in possession of Corus’ U.S. customer had “Made in China” markings, not “Made in Canada,” and other factors supporting the conclusion that nails that entered the United States identified as originating in Canada may have actually originated in China. On January 5, 2024, and January 12, 2024, as part of the investigation process, CBP issued two CBP form CF-28s to request information from VY Industries concerning entry numbers [entry #]4111 and [entry #]2606.³² Specifically, the CF-28s requested information and documentation pertaining to the entry summary package, including but not limited to, the mill test certificates, the steel license, invoices, packing lists, bills of lading, purchase orders, manifest and shipping documents

²⁶ See Allegation.

²⁷ See Allegation.

²⁸ See Allegation at 4 and Attachment 1.

²⁹ See Allegation at 5 and Exhibit 2.

³⁰ See 19 CFR 165.15(d)(2). See also Initiation Notice.

³¹ See 19 CFR 165.24(a).

³² See CF-28 for entries [entry #]4111 dated January 5, 2024 (“CF-28 Request for Information no. 1”) and [entry #]2606 sent to VY Industries, dated January 12, 2024 (“CF-28 Request for Information no. 2”).

for all raw materials or components used in the manufacture of the nails.³³ VY Industries submitted its CF-28 Responses on January 31, 2024 and February 9, 2024.³⁴

In the response for entry [entry #]4111, Corus indicated the manufacturer of the nails was [entity and location].³⁵ The following documents were included: mill certificates for the steel that identified the country of pour for the steel as India, a packing list, and a purchase order which was generated specifically for the CF-28 response, and stated that the company “generally don’t do Pos”, and that “it’s a phone conversation as part of the order process.”³⁶ Also submitted was an invoice to [entity] noting that payment was not received as their business was described as being “slow” and they asked for more time.³⁷ In an effort to establish proof of payment, VY industries requested that [entity] send a picture of the check prior to mailing it to the company.³⁸ Pictures of nails with VY Industries labeling on the boxes as well, as of its packaging, were included in the response.³⁹ Documents that are found in an entry summary package were submitted as well.⁴⁰

For entry [entry #]2606, the response identified the manufacturer for the nails entered as [entity].⁴¹ Supporting documents forwarded included mill certificates for the steel and identified the country of pour for the steel as India.⁴² A packing list and purchase order were included. The response also offered, as in the response for entry [entry #]4111, that VY Industries’ business transactions generally do not generate purchase orders, and that the ordering process consists of a “phone conversation.”⁴³ An invoice to [entity], the company identified in the Allegation, in addition to a copy of proof of payment from the company was also included in the response.⁴⁴ Also included were pictures of nails in boxes with no country of origin markings visible and a limited view of the packaging.⁴⁵ Lastly, there were documents submitted as part of the entry summary package.⁴⁶

This response submitted proof of payment from [entity] on [date] by company official [individual].⁴⁷ The payment corresponds with invoice [#]

³³ See VY Industries Response to CF-28 Request for Information, Entries [entry #]4111 dated, January 31, 2024 (“CF-28 Response no 1”) and [entry #]2606, dated February 9, 2024 (“CF-28 Response no 2”).

³⁴ See CF-28 Response no 1 and CF-28 Response no 2.

³⁵ See CF-28 Response no 1 at page 1.

³⁶ See CF-28 Response.

³⁷ See CF-28 Response.

³⁸ See CF-28 Response.

³⁹ See CF-28 Response.

⁴⁰ See CF-28 Response.

⁴¹ See CF-28 Response.

⁴² See CF-28 Response.

⁴³ See CF-28 Response.

⁴⁴ See CF-28 Response.

⁴⁵ See CF-28 Response.

⁴⁶ See CF-28 Response.

⁴⁷ See CF-28 Response.

issued to company official [individual] by VY Industries.⁴⁸ As noted above, evidence in the Allegation shows that on [date] photos were taken by a Corus employee at [entity] of a box of VY Industries nails with “Made in China” labeling.⁴⁹

The same pictures of nails and proof of packaging was submitted for both CF-28 responses.⁵⁰ The photos show VY Industries labeling on the side of boxes with the description of its contents as bright spiral coil nails 9000 pcs.⁵¹ The top of the box has cautionary wording for the proper use of protective gear when handling the nails.⁵² The responses did not provide pictures of the bottom side of the boxes. In the Allegation, Corus provided photos of the boxes with VY Industries name and logo with the same description of bright spiral coil nails with a piece count of 9000.⁵³ However, Corus also provide picture of the bottom of the boxes that were labeled “Made in China.”⁵⁴

For entry [entry #]4111, VY Industries issued invoice [#] for billing to [individual] of [entity] on October 18, 2023.⁵⁵ The undated pro forma invoice generated by the broker further lists the exporter of the shipment of nails as VY Industries and the consignee as [entity] with the invoice date and sale date as October 18, 2023.⁵⁶ Further, on the CBP form 7501, the entry date, import date and export date are all listed as October 18, 2023.⁵⁷ It is noted that all of these transactions occur on the same date. Additionally, the Pre-arrival Processing System (PAPS) Clearance Advance Notice was submitted on October 19, 2023, to the port of Buffalo on behalf of this transaction with an estimated border crossing on the same day.⁵⁸

Upon review of the mill certificates submitted for both [entry #]4111 and [entry #]2606, it was noted that the submissions were identical.⁵⁹ Prepared by the [entity] located at [location], the test certificates were specific for mild steel wire rods.⁶⁰ The test certificates numbers for both entries was [#].⁶¹ The consignee name and address listed on the certificates [entity and location].⁶² This company has no known association with the identified manufacturer, [entity]. The test certificate date listed on the

⁴⁸ See CF-28 Response.

⁴⁹ See CF-28 Response.

⁵⁰ See CF-28 Response.

⁵¹ See CF-28 Response.

⁵² See CF-28 Response.

⁵³ See CF-28 Response.

⁵⁴ See CF-28 Response.

⁵⁵ See CF-28 Response.

⁵⁶ See CF-28 Response.

⁵⁷ See CF-28 Response.

⁵⁸ See CF-28 Response.

⁵⁹ See CF-28 Response at Attachment 2.

⁶⁰ See CF-28 Response.

⁶¹ See CF-28 Response.

⁶² See CF-28 Response.

form is [date] as well as the shipping date.⁶³ The dates of entry for the nails entered into the U.S. by VY Industries are [date] and [date].⁶⁴ These dates precede the test certificate dates. Further, order number [#], dated [date], also occurs after the nail shipments entered the United States.⁶⁵ This is evidence that the test certificates are not for the entries in question, and therefore, not responsive to the CF-28s.

The information that VY Industries provided aligned with the Allegation of evasion of the *Order*.⁶⁶ Overall, the test certificates were produced after the date of entry for the two nail shipments thus avoiding proof of the steel used by the Indian manufacturer, [entity] to make the product for VY industries to sell. Also, there is photographic evidence that nails in VY industries packaging marked “Made in China” entered the commerce of the United States.

Company Analysis

During the period of investigation, VY Industries imported several shipments of nails into the United States with [entity] as the consignee.⁶⁷ In 2023, the volume of nails imported by VY Industries destined to [entity] was [#] kilograms.⁶⁸ To date in 2024, entry was made on nails sold to [entity] totaling [#] kilograms.⁶⁹ The Allegation established the presence of proof of Chinese nails on [entity] premises.

Although VY Industries reported in its CF-28 response that the manufacturer of its nails is [entity] located in India, record evidence indicates that [entity] transshipped Chinese-origin nails to VY Industries in Canada before entering the United States.⁷⁰ Despite its claims of being a manufacturer of nails among other products, [entity] website [url] does not provide any proof of the company’s ability to produce nails.⁷¹ In its profile, the company reports that it was established in [year] to manufacture, supply and export various tools such as air wrenches, coil nails and pneumatic coil nailers, *etc.*⁷² Further [entity] claims to use optimum quality raw material from authentic vendors,⁷³ however, the CF-28 questions requesting information about the acquisition its raw materials were unanswered.⁷⁴ In 2022, [entity] exported nails classified under 7317.00 to VY Industries in amounts exceeding [#] kilograms.⁷⁵ On [entity] website, it describes the brand of nails sold as [name] by [entity].⁷⁶ A search of the [entity] website

⁶³ See CF-28 Response.

⁶⁴ See CF-28 Response.

⁶⁵ See CF-28 Response.

⁶⁶ See Allegation, 1st Allegation Supplement.

⁶⁷ See CF-28 Response.

⁶⁸ See CF-28 Response.

⁶⁹ See CF-28 Response.

⁷⁰ See CF-28 response.

⁷¹ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 1.

⁷² See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 1.

⁷³ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 1.

⁷⁴ See CF-28 response.

⁷⁵ See trade data.

⁷⁶ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 1, 3 and 2.

revealed that the brand supplies and manufactures a wide range fasteners according to various grades and its customer specific requirements.⁷⁷ A complete search of the website [url] only found the [name] fasteners sold were bolts, screws, nuts and washers.⁷⁸ No nails were listed as a product offered by [entity] as offered by [entity].⁷⁹

In a secondary website at [url] listing [entity] products, it provides drawings of coil nails and wire collated nails with different dimensions.⁸⁰ Here the company again states that it manufactures fasteners with machines equipped with the latest technology.⁸¹ Further, [entity] offers that the quality of raw materials used go through rigid specifications with test certificates confirming that their products pass through rigid tests to insure its quality.⁸² Lastly, [entity] boasts that “the only quality assurance is certificate from our present customers.”⁸³ The test certificates furnished with the CF-28 responses had discrepancies with the dates as well as failed to identify that it was certifying the production of [name] nails.⁸⁴

The Allegation provided 2022 trade data reasonably available that indicated VY Industries was the consignee to shipments of nails received from Chinese shippers [entity] and [entity] on [#] occasions.⁸⁵ On [date], VY Industries imported nails from Chinese supplier [entity] in the amount of [amount] weighing [#] kilograms.⁸⁶ In the CF-28 responses, [entity] failed to provide information about the source of its raw materials which would have established the country of origin or its ability to produce nail.⁸⁷

In [year], VY Industries imported nails from Chinese supplier [entity] in the amount of [amount] weighing [#] kilograms according to trade data.⁸⁸ In the years [years], [entity] with locations in [locations] received shipments of nails from [entity].⁸⁹ [entity] according to its website at [url] is a family owned business in Dubai that “supplies raw materials to the furniture, bedding, upholstery and construction in India” and they have manufacturing facilities in India, Dubai and China.⁹⁰ In the year [year], [entity] exported nails to VY Industries in the amount of [#] kilograms according to trade data.⁹¹

⁷⁷ According to Home Depot, fasteners are defined as hardware devices that join objects together. This includes bolts, screws, nails, *etc.*

⁷⁸ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 2.

⁷⁹ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 2.

⁸⁰ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 3.

⁸¹ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 3.

⁸² See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 3.

⁸³ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 3.

⁸⁴ See CF-28 response.

⁸⁵ See CF-28 response.

⁸⁶ See CBP trade data.

⁸⁷ See CF-28 response.

⁸⁸ See CBP trade data.

⁸⁹ See CBP trade data.

⁹⁰ See CBP trade data.

⁹¹ See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 5.

Another Indian company [entity] located at [location], identified in a CBP trade data search, exported nails to VY Industries on [date] in the amount of [weight].⁹² [entity] according to its website page on [url] claims to be mattress manufacturer.⁹³ There is no evidence of nail sales on the website. The reported Indian manufacturer, [entity] shares a similar address [location] to [entity].⁹⁴

In sum, [entity] has received multiple shipments of nails from China, and while its website alleges the company manufactures nails, record evidence indicates it does not manufacture nails. While the Allegation contains a photo of a box of nails labeled as “Made in India” by VY Industries, record evidence indicates these may be Chinese nails transshipped through India. The Allegation against VY Industries suggests that they were selling nails marked as made in China while transshipping them via India. The evidence includes omitted raw material purchase records, confirmed nail trade transactions with Chinese companies, and lack of indicators of nail production on related websites. Based on this information, there is a reasonable suspicion that merchandise covered by the order was transshipped through India.

Enactment of Interim Measures

Based on the record evidence described above, CBP has determined that reasonable suspicion exists that wire coated coil nails entered into the customs territory of the United States by VY Industries were in fact manufactured in China, and thus, such goods were entered in evasion of the *Order*. Therefore, TRLED is imposing interim measures pursuant to this investigation.⁹⁵ Specifically, in accordance with 19 USC 1517(e)(1)-(3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after December 20, 2023, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner’s authority under section 1504(b) of this title, extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner’s authority under section 1623 of this title, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.⁹⁶

In addition, CBP will require live entry and reject any non-compliant entry summaries, as well as

⁹² See “Memo to the File – Trade Data Printout” dated March 20, 2024, at Attachment 6.

⁹³ See “Memo to the File – Companies Websites” dated March 20, 2024, at Attachment 6.

⁹⁴ See “Memo to the File – Companies Websites” dated March 20, 2024, at Attachments 1,2,3, and 6.

⁹⁵ See 19 USC 1517(e); *see also* 19 CFR 165.24.c.

⁹⁶ See 19 CFR 165.24.

require refiling of entries that are within the entry summary rejection period. CBP will also evaluate VY Industries' continuous bonds to determine sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

Any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation must be made electronically using EAPA's case management system (CMS) at <https://eapallegations.cbp.gov/>. Please provide a business confidential and public version to CBP and serve the public version on the parties to this investigation (*i.e.*, to the parties identified at the top of this notice). Public versions of administrative record documents will be available via the EAPA Portal at <https://eapallegations.cbp.gov/>.⁹⁷

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov and Kareen.Campbell@cbp.dhs.gov with "EAPA Case 7821" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,



Victoria Y. Cho
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade

⁹⁷ See 19 CFR 165.4; see also 19 CFR 165.23(c) and 19 CFR 165.26.