

UNITED STATES COURT OF INTERNATIONAL TRADE

<hr/>)	
OMAN FASTENERS, LLC,)	
)	
	Plaintiff,)	
)	
	v.)	Court No. 20-00037
)	
UNITED STATES, <i>et al.</i> ,)	
)	
	Defendants.)	
<hr/>)	

MOTION TO INTERVENE

Pursuant to Rule 24 of the Rules of the United States Court of International Trade, American Steel Nail Coalition (the “Coalition”),¹ by and through its attorneys, respectfully requests that the Court grant this Motion to Intervene in the above-captioned action as Defendant-Intervenor. The Coalition accounts for a super-majority of the production of the steel nails included in Annex 2 to Presidential Proclamation 9980 issued on January 24, 2020 entitled, “Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States” (the “Proclamation”). *See* Proclamation No. 9980, 85 Fed. Reg. 5,281 (Jan. 29, 2020).

I. CONSENT OF THE PARTIES

As required by Rule 7 of this Court, on February 20, 2020, Adam H. Gordon, counsel to the Coalition, consulted with the parties to this action regarding this Motion. Counsel for Plaintiff, Andrew Caridas of Perkins Coie LLP, declined to consent. Counsel for Defendants,

¹ The members of the Coalition are: Mid Continent Steel & Wire, Inc.; KYOCERA SENCO Industrial Tools, Inc.; Tree Island Wire (USA) Inc.; Specialty Nail Company; Legacy Fasteners, LLC; and American Fasteners Co., Ltd.

Tara K. Hogan of the United States Department of Justice, had not indicated Defendants' position with respect to this Motion as of the time of filing.

II. DISCUSSION

Plaintiff Oman Fasteners, LLC ("Oman Fasteners" or "Plaintiff") instituted this action to challenge the issuance and implementation of the Proclamation as applied to Plaintiff. *See* Oman Fasteners' Compl. (Feb. 7, 2020), ECF No. 2.

The Coalition meets the standard for intervention as of right under Rule 24(a) of the Rules of this Court. Pursuant to Rule 24(a), this Court must permit intervention by anyone who:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

USCIT R. 24(a)(2). To succeed on a motion to intervene as of right, a movant must satisfy the following four-factor test:

{f}irst, the application for intervention must assert an interest in the subject matter of the primary litigation; second, it must appear that the applicant's interest will be impaired by disposition of the suit; third, the applicant's interest must not be adequately represented by the existing parties to the suit; and finally, the application for intervention must be timely filed.

Dixon v. Ticonderoga Co. v. United States Customs & Border Protect., 391 F. Supp. 1294, 1296 (Ct. Int'l Trade 2005) (internal citations omitted). The nature of the movant's interest "must be a significantly protectable {one}," and cannot be "indirect," "remote {,}" or "contingent." *Vivitar Corp. v. United States*, 585 F. Supp. 1415, 1417-18 (Ct. Int'l Trade 1984) (internal citations omitted). This Court has considered the second factor (*i.e.*, impairment of movant's interest by disposition of the suit) to be "a flexible one." *Id.* at 1418.

This Court granted a motion to intervene as of right under Rule 24(a)(2) in *Vivitar Corp.*, 585 F. Supp. 1415. With respect to the first factor, this Court found the movant's "obvious

economic interests,” and “its interest in avoiding significant changes in the conduct of its business,” to be significantly protectable. *Id.* at 1418. As to the second, “flexible” factor, the Court considered the fact that the movant could be “forced out” of the market as a result of the action to be sufficient. *Id.* Regarding the third factor, the Court noted its reluctance to view the Government’s and the movant’s interests as “coincident.” *Id.* at 1419. In its analysis, the Court emphasized that the movant’s interests were “purely private, commercial ones relating to monetary and business concerns,” whereas the Government’s interests “{we}re public and enforcement oriented.” *Id.* at 1419.

Like the movant in *Vivitar Corp.*, the Coalition satisfies each of the factors required for a motion to intervene as of right under Rule 24(a)(2). First, the Coalition has “obvious economic interests” in this action. Oman Fasteners’ Complaint relates to Proclamation 9980, which imposes a 25 percent *ad valorem* tariff on imports of “derivative” steel products, and a 10 percent *ad valorem* tariff on imports of “derivative” aluminum products. *See* 85 Fed. Reg. 5,281, 5,283; Oman Fasteners’ Compl., ECF No. 2.

Paragraph 6 of the Proclamation provides three criteria for an article to be considered “derivative” and thus covered by the duties: (a) the aluminum article or steel article represents, on average, two-thirds or more of the total cost of materials of the derivative article; (b) import volumes of such derivative article increased year-to-year since June 1, 2018, in comparison to import volumes of such derivative article during the two preceding years; and (c) import volumes of such derivative article following the imposition of the tariffs exceeded the four percent average increase in the total volume of goods imported into the United States during the same period since June 1, 2018. *See id.* at 5,282.

Steel comprises, on average, two-thirds or more of the total cost of materials of the derivative article here, steel nails, thereby meeting criterion (a). Being composed of the largest producers of steel nails in the United States, the Coalition clearly has an economic interest in an action challenging the Proclamation. *See* Katie Lobosco, *Largest US Nail Manufacturer Clings to Life under Steel Tariffs*, CNN Business, Sept. 4, 2019 (*available at* <https://money.cnn.com/2018/09/04/news/companies/tariffs-layoffs-mid-continent-nail/index.html> (stating that Mid Continent is the “largest U.S. producer of nails”) (attached hereto as Exhibit 1).

Second, the interests of the Coalition may be impaired by disposition of this action. To properly assess such impairment, the purpose behind Proclamation 9980 must be understood.

According to Proclamation 9980, Section 232 duties on derivative articles are:

necessary and appropriate to address circumvention that is undermining the effectiveness of the adjustment of imports made in Proclamation 9704 and Proclamation 9705, as amended, and to remove the threatened impairment of the national security of the United States found in those proclamations.

85 Fed. Reg. at 5,283.

Since issuance of the Proclamation, Coalition members have experienced significant increases in orders, leading to increases in production, employment, and purchases of raw materials from upstream basic steel producers. These are directly intended benefits of the Proclamation. Enjoining the tariffs imposed by the Proclamation, an Executive Proclamation entitled to a presumption of legality and regularity, will allow circumventing imports to continue to enter the United States, and cause the Coalition to lose sales and likely orders that have been placed. This in turn will result in reductions in employment, as workers hired in response to the intended effects of the Proclamation will be terminated. This also will cause Coalition members

to reduce purchases of basic steel products and potentially orders placed in response to the significant increase in demand following issuance of the Proclamation.

Importantly, imports from Oman, which means imports from Oman Fasteners given that it is the only producer in Oman, are a major cause of the surge in imports of steel nails into the United States that led to the Proclamation. The volume of nails from Oman that are identified in Annex 2² increased by 64.9 percent in the comparison period of June 2018 to May 2019 against imports from June 2016 to May 2017 and by 95.6 percent in the comparison period of June 2018 to May 2019 against imports from June 2017 to May 2018. Analysis of official U.S. import data demonstrating this surge in imports from Oman is provided as Exhibit 2 hereto. These levels of growth significantly exceed any “increase” required by criterion (b) of Proclamation 9980 as well as the total increase (33 percent) identified in the Proclamation. *See* 85 Fed. Reg. at 5,282.

Similarly, imports from Oman greatly exceed the required four percent increase required by criterion (c) of the Proclamation. Indeed, import volumes from Oman increased by an extraordinary 95.6 percent in aggregate over the comparison period of June 2018 to May 2019 against imports from June 2017 to May 2018. *See* Exhibit 2 hereto.

Further, nails from Oman alone comprised 20.1 percent of all imports from June 2018 through May 2019, meaning that they represent a huge driver of the overall 33 percent increase. *See* Exhibit 2 hereto. In fact, if imports of nails from Oman are excluded, the total increase in imports decreases by nearly one-third, dropping from 33 percent to 22.6 percent. *See id.* In sum, **imports of steel nails from Oman Fasteners alone were responsible for one-third of the total**

² Imports of nails from Oman fall into three HTSUS subcategories that are included in Annex II. *See* Exhibit 2 hereto.

increase in imports of nails that led to the Proclamation. *See id.* These figures demonstrate the need for and the rationale behind the Proclamation.

The purpose of Proclamation 9980, an Executive Proclamation entitled to a presumption of legality and regularity, will be substantially undermined if the Court enjoins the implementation or enforcement of the Proclamation against Oman Fasteners. Allowing Oman Fasteners to avoid paying the tariffs imposed via the Proclamation will cause irreparable harm to the Coalition's members. Imposition of tariffs on derivative products has had important economic benefits for Coalition members, who have received increased orders, leading to increased purchases of upstream steel inputs from basic steel producers and the hiring of new employees. If the tariffs ordered by the Proclamation are not allowed to continue in effect, it is likely, if not certain, that members of the Coalition will suffer irreparable harm in the form of cancelled orders and job losses. This in turn will harm basic steel producers who will not receive increased orders from Coalition members. Oman Fasteners, on the other hand, will incur harm in the form of duties, which will be refunded if Plaintiff prevails in this litigation. On balance, the harm the Coalition will experience if Proclamation 9980 is not enforced significantly outweighs any potential harm to Oman Fasteners if the Section 232 duties are allowed to remain in full force and effect.

Third, the interests of the Coalition will not be adequately represented by the existing parties to the action. As this Court stated in *Vivitar Corp.*, 585 F. Supp. 1415, the "private, commercial" interests of the Coalition are not "coincident" to the Government's "public and enforcement oriented" interests. *Id.* at 1419. Thus, on this basis alone, the interests of the Coalition may not be represented in this action.

Even with respect to the aligning enforcement interests, however, evidence exists that the interests of the Coalition may not be adequately represented in this action.³ Earlier this month, in *PrimeSource Building Products, Inc. v. United States*, CIT Court No. 20-00032, the Government consented to an Order enjoining U.S. Customs and Border Protection from collecting the duties ordered in the Proclamation on imports by that Plaintiff. *See PrimeSource Bldg. Prods., Inc. v. United States*, CIT Court No. 20-00032, Order (Feb. 13, 2020) (attached hereto as Exhibit 3). This Order immediately and directly undermines the intended effects of the Proclamation, including the economic benefits members of the Coalition are intended to receive. Moreover, the Order almost certainly will encourage other companies to seek to avoid the duties ordered in the Proclamation, undermining the purpose and effect of the Proclamation and potentially flooding the Court's docket with multiple appeals.⁴

Fourth, this Motion is timely filed under Rule 24(a). “In order to determine whether an application for intervention is timely, consideration must first be given to when the right to intervene actually arose. . . . Under Rule 24(a)(1), a person's right to intervene arises upon institution of the proceeding.” *Silver Reed Am., Inc. v. United States*, 600 F. Supp. 846, 849-850 (Ct. Int'l Trade 1984) (internal citations omitted). This Court has held that a motion to intervene made “nearly a month after the filing of plaintiff's complaint and summons were filed” was timely pursuant to Rule 24. *Vivitar Corp.*, 585 F. Supp. at 1417. Here, Oman Fasteners filed its

³ The Government has not yet filed its Answer in this action. Therefore, the Coalition is unable to ascertain the Government's claims and interests, further calling into question any suggestion that the Coalition's interests will be adequately represented in this action by the Government.

⁴ Indeed, we note that on February 18, 2020, counsel to Oman Fasteners in the instant litigation filed another appeal challenging the Proclamation on behalf of a different importer. *See Huttig Bldg. Prods., Inc. v. United States.*, CIT Court No. 20-00045 (appeal docketed Feb. 18, 2020).

Complaint on February 7, 2020, merely 14 days prior to the filing of this Motion. *See* Oman Fasteners' Compl. (Feb. 7, 2020), ECF No. 2.

In the alternative, under Rule 24(b) of this Court, the Court has discretion to permit intervention by a party who “(A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.” USCIT R. 24(b)(1). Both grounds for permissive intervention require that intervention “will not unduly delay or prejudice the rights of the original parties,” and that the motion be timely made. USCIT R. 24(b)(1), (3).

The Coalition satisfies both criteria for permissive intervention. First, 28 U.S.C. § 2631(j) provides a statutory basis that creates a conditional right to intervene, in accordance with Rule 24(b)(1)(A).⁵ This Court has held that, under section 2631(j), permissive intervention is appropriate where “the proposed intervenor would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade. . . .” *Ontario Forest Indus. Ass’n v. United States*, 444 F. Supp. 2d 1309, 1321-22 (Ct. Int’l Trade 2006). “{A}dversely affected or aggrieved . . . represents a congressional intent to cast the {intervention} net broadly — beyond the common-law interests and substantive statutory rights traditionally known to law.” *Id.* at 1322 (internal citations omitted).

As discussed above, the Coalition will be adversely affected or aggrieved by a decision in this action if Oman Fasteners’ motions for a temporary restraining order and/or for preliminary injunction are granted. Among other things, the Coalition will experience severe and irreparable economic harm in the form of lost sales, cancelled orders, and potential reductions in workforce

⁵ The Court’s jurisdiction in this action is founded under 28 U.S.C. § 1581(i). Section 2632(j) of Title 28 allows for permissive intervention in such suits.

added in response to the intended increase in orders resulting from the Proclamation. In comparison, any duties that Oman Fasteners will incur under the Section 232 tariffs can be recovered. Therefore, the harm the Coalition will incur if Proclamation 9980 is not allowed to remain in effect significantly outweighs any potential harm to Oman Fasteners if the Section 232 duties are imposed.

Second, the Coalition “has a claim or defense that shares with the main action a common question of law or fact,” USCIT R. 24(b)(1)(B), specifically defenses regarding the lawfulness of the Proclamation and the duties on derivative articles.

Third, intervention by the Coalition will not unduly delay or prejudice the rights of the original parties. This Court has stated that opponents of a motion to intervene “must allege that the delay would be more than is due or proper: excessive{.}” *Ontario Forest Indus. Ass’n*, 444 F. Supp. 2d at 1322 (internal citations omitted). The Coalition’s intervention in this action will not cause an excessive delay. This Motion is filed 14 days after Oman Fasteners filed its Complaint, and predates Defendants’ filing of an Answer. *See* Oman Fasteners’ Compl. (Feb. 7, 2020), ECF No. 2.

Fourth, this Motion is timely filed. As discussed above, this Court has held that a motion to intervene made “nearly a month after the filing of plaintiff’s complaint and summons were filed” was timely pursuant to Rule 24. *Vivitar Corp.*, 585 F. Supp. at 1417. Here, this Motion is filed only 14 days after Plaintiff filed its Complaint. *See* Oman Fasteners’ Compl. (Feb. 7, 2020), ECF No. 2.

As a final matter, pursuant to Rule 24(c)(1), the Coalition has filed an Answer to Plaintiff’s Complaint simultaneously with this Motion.

* * *

III. CONCLUSION

For the reasons above, the Coalition respectfully requests that the Court grant this Motion to Intervene as Defendant-Intervenor in the above-captioned action.

Respectfully submitted,

Dated: February 21, 2020

/s/ Adam H. Gordon

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, I electronically filed the Motion to Intervene with the Clerk of the Court using the CM/ECF system, which will send notification of such to counsel of record.

/s/ Adam H. Gordon

Adam H. Gordon

EXHIBIT 1



Largest US nail manufacturer clings to life under steel tariffs

by [Katie Lobosco](#) [@KatieLobosco](#)

September 4, 2018: 2:32 PM ET

Recommend 4.8K

Personal Finance

SmartAsset

P

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[The Top 7 Balance Transfer Credit Cards On The Market Today](#)

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US nail company on 'brink of extinction' because of tariffs

The largest nail manufacturer in the United States, Mid Continent Nail, continues to lay off workers as it fights against crippling steel tariffs.

The Missouri company may not be able to keep its doors open through the end of September.

"I can tell you that if we don't get immediate relief, we could be shut down in the next 20 to 30 days," said Chris Pratt, Mid Continent's general operations manager, on a call with reporters Tuesday.

The company said in June that it [would have to close by Labor Day](#) if it wasn't granted an exclusion from the tariffs. But a recent meeting with Commerce Secretary Wilbur Ross left them with hope that they would be granted the exclusion.

"Secretary Ross was very sympathetic to our situation, especially the 500 job losses it could cause," Pratt said.

Since [the tariffs went into effect in June](#), Mid Continent has laid off 150 of its 500 employees.

Tariffs pushed up the cost of its raw materials and the company was forced to raise prices on its own customers. When it did, orders plummeted, Pratt said.

The Commerce Department could rule on Mid Continent's exclusion request as soon as Tuesday. But it has been inundated with [more than 20,000 requests from companies](#) that say they cannot



President Donald Trump imposed 25% tariffs on imported steel and aluminum earlier this year. The administration said it wants to protect those industries because they are vital to national security. [Steelmakers have already benefited from the trade policy](#), adding jobs and enjoying higher profits.

In its exclusion request, Mid-Continent Nail said it has encountered "significant issues" finding a US company that could supply enough steel wire needed for them to continue production. Plus, finding another supplier requires a "lengthy process of qualification" that could take at least six months, it said.

But Nucor Corporation, the nation's largest steelmaker, objected to Mid Continent's exclusion request. Nucor said it "readily produces" the product as do other domestic steel producers. Mid-South Wire Company, which operates plants in Tennessee and Missouri, also said it could produce what Mid-Continent needs.

Pratt said that neither company on its own could supply enough raw material for Mid Continent.

Mid Continent said it could move production to Mexico, where its parent company Deacero, is based, and then export the finished nails back to the United States without tariffs. The tariffs only apply to the raw materials.

Mid Continent has had a presence in Missouri for more than 25 years. It has roughly doubled in size since it was bought by Deacero in 2012.

It was the second largest employer in the Poplar Bluff, Missouri, area before the layoffs, Pratt said.

"The loss of a company our size in a community this size ... it's going to be detrimental to this economy," he said.

CNNMoney (New York)
First published September 4, 2018: 1:49 PM ET

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EXHIBIT 2

**World Imports in Comparison Period of June 2018 to May 2019 against imports
from June 2016 to May 2017**

Annex 2 Nails Import Data **Including** Oman (Kilograms)

World Total Imports from June 2017 to May 2018	World Total Imports from June 2018 to May 2019	Percent Change in Comparison Period
225,590,682	299,034,591	32.56%

Annex 2 Nails Import Data **Excluding** Oman (Kilograms)

World Total Imports from June 2017 to May 2018	World Total Imports from June 2018 to May 2019	Percent Change in Comparison Period
194,918,571	239,046,778	22.64%

Annex 2 Nails Import Data (Kilograms)

World Total Imports from June 2018 to May 2019	Oman Total Imports from June 2018 to May 2019	Oman's Share of world Imports from June 2018 to May 2019
299,034,591	59,987,813	20.06%

Amount of 32.56% increase attributable to Oman Fasteners

30.46%

Source: Official Import Data Obtained from USITC DataWeb

Imports from Oman during June 2016 to May 2019

Oman HTS Specific Import Data for Nails covered in Annex 2 (Kilograms)

HTS Number	Total Imports from June 2016 to May 2017	Total Imports from June 2017 to May 2018	Total Imports from June 2018 to May 2019	Percent Change from June 2016 to May 2017 to June 2018 to May 2019	Percent Change from June 2017 to May 2018 to June 2018 to May 2019
7317.00.5503	5,204,062	5,817,043	11,427,213	119.58%	96.44%
7317.00.5505	2,058,682	2,846,887	12,339,427	499.38%	333.44%
7317.00.5507	29,114,509	22,008,181	36,221,173	24.41%	64.58%
Total	36,377,253	30,672,111	59,987,813	64.90%	95.58%

Source: Official Import Data Obtained from USITC DataWeb

Annex 2 Nails Import Data (Kilograms)

Country	JAN 17	FEB 17	MAR 17	APR 17	MAY 17	JUN 17	JUL 17	AUG 17	SEP 17	OCT 17
Oman	3113864	2960582	2646362	1890921	2504912	2057805	2241352	2350811	2172685	3030712
Turkey	1885810	1484696	2284452	1585168	2497550	3288182	1839729	2288707	2084499	1707424
South Korea	3185486	1969447	3137434	2511447	2404610	2246575	2374837	2275691	2502609	2339617
Thailand	637013	543879	582022	883576	983669	735982	1195378	1109477	1028884	1141423
India	1733767	1439583	1848360	1653621	1818033	1884056	2037615	2124558	1817447	1239427
Taiwan	3343818	2955388	3489624	2814067	2381980	2336789	1638335	2521393	2077424	2598494
Sri Lanka	0	0	0	0	0	0	69210	343932	381048	906492
Malaysia	2099886	1123400	1444031	911812	885537	855432	1078175	445958	148803	200313
Mexico	338396	367645	401714	389930	381246	684092	603805	571692	590108	556378
Saudi Arabia	39110	0	18188	0	19611	63180	22272	0	0	0
China	1038715	1094115	1063701	1813496	1413986	1419789	1256421	1299720	1074483	1193644
Egypt	644355	736318	451987	481058	389270	866599	756174	445483	1138745	898767
Canada	926831	742289	769072	1021934	813622	888316	952922	991451	730365	1015289
Austria	285992	150914	266869	200179	254601	230808	336946	232739	224290	257348
Poland	540713	781293	1674690	713238	832738	933376	782951	762275	1009727	963779
Lithuania	22368	44736	53400	17245	70842	142666	99584	15576	0	74128
Angola	0	0	0	0	0	0	0	0	0	0
United Arab Emirates	1252324	1317361	164908	36794	0	0	0	0	0	0
Colombia	52626	54719	53106	70460	117874	101198	0	92621	66582	119637
Liechtenstein	10381	15540	15719	18937	18882	13793	25091	17666	30216	17362
Italy	205	1890	450	2	0	205	9	2834	15729	14
Japan	1850	1763	2970	3363	2774	4938	4596	2399	313	3321
Germany	1706	20935	42208	19088	2273	18330	46873	20532	6613	2187
Dominican Republic	0	47797	22849	0	3128	3532	2028	9420	0	9381
Czech Republic	0	16840	50220	72712	0	35995	116153	0	0	2320
Indonesia	0	0	0	0	0	0	0	0	0	0
Spain	1771	0	0	770	73	20138	6	2333	0	19600
United Kingdom	0	1353	11796	1524	587	1593	9868	7947	5901	1564
Slovakia	0	0	0	0	0	0	0	0	0	0
Belgium	0	0	0	0	0	0	0	0	0	0
France	0	0	413	0	0	65	0	0	3715	2
New Zealand	0	0	0	0	0	0	0	0	0	0
Hong Kong	0	9766	0	0	0	4229	0	2341	0	0
Sweden	0	1758	4576	0	0	0	0	0	0	0
Australia	0	0	0	0	0	0	0	0	0	0
Switzerland	1822	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0
Netherlands	0	0	0	0	10	479	0	0	0	0
Vietnam	0	0	0	0	0	0	0	0	0	0
Curacao	0	0	0	0	0	0	0	0	0	0
Brazil	0	0	0	0	0	0	0	990	0	0
Costa Rica	0	0	0	0	14852	0	0	0	0	0
Estonia	58974	0	5544	0	0	0	0	0	0	0
Finland	0	0	0	0	0	0	0	0	0	0
Israel	0	0	0	0	0	0	0	0	0	0
Luxembourg	0	0	0	0	0	0	0	0	607	0
Moldova	0	0	0	0	0	0	0	0	0	21772
Norway	0	0	0	0	0	0	0	0	0	19
Singapore	30	0	0	0	0	0	0	0	0	0
Suriname	0	0	0	0	0	0	0	0	0	0
Tajikistan	0	0	0	0	17000	0	0	0	0	0
Total	21217813	17884007	20506665	17111342	17829660	18838142	17490330	17938546	17110793	18320414

Annex 2 Nails Import Data (Kilograms)

Country	NOV 17	DEC 17	JAN 18	FEB 18	MAR 18	APR 18	MAY 18	JUN 18	JUL 18	AUG 18
Oman	3462857	2222719	2161974	2297003	2626380	2620207	3427606	4315421	4535008	4571322
Turkey	1727149	1463859	1234803	1246465	2486379	2217968	1975779	2150727	2093434	1635934
South Korea	2590266	3023241	2630960	2396215	2833461	3370300	3310917	3780700	3445286	3286891
Thailand	1132262	1111016	1197033	868703	1333831	1420379	1015642	1452953	1964523	2254547
India	2082028	2010187	2024671	1768247	2294909	2075907	2320967	2557652	2622601	2010780
Taiwan	3121423	1717504	1275980	1463566	1419167	1710665	2544562	1939128	1999374	1646663
Sri Lanka	1118605	928538	860022	816550	1112454	1099486	881612	927961	1017051	1328036
Malaysia	310739	335353	284800	334357	735993	820387	1281377	1099588	1406261	1363051
Mexico	550503	467748	751139	799459	584373	635211	690708	595416	504851	602336
Saudi Arabia	0	43562	23950	0	73618	52450	63828	21792	114591	254372
China	1284529	1546351	1758161	1406676	1246263	1343991	1044429	977443	1182370	1649816
Egypt	1018711	691994	432280	999423	917293	457372	1540671	868963	604104	569929
Canada	740959	792747	1359341	967113	1176903	1091450	1104280	1203497	1512430	1313639
Austria	301848	265092	346370	173818	273180	371251	251208	354712	366601	440945
Poland	1136040	512853	775088	728537	992488	1092544	577315	1203735	1087037	668143
Lithuania	74008	37124	18442	55326	120475	156057	205603	151322	177939	418081
Angola	0	0	0	0	0	0	38290	0	18890	38955
United Arab Emirates	0	0	0	0	0	0	0	0	0	74865
Colombia	51402	37302	70126	70165	35362	69934	167902	94860	158767	85970
Liechtenstein	24909	16654	28955	22600	27862	24676	40623	31704	27215	30211
Italy	1548	11861	1	204	4324	14741	226	0	0	0
Japan	555	4120	1141	1787	1922	989	5047	3082	188	5945
Germany	5636	26666	24196	64693	24287	3770	21140	11609	20015	19747
Dominican Republic	34782	704	24632	0	10692	18869	0	23790	34012	27059
Czech Republic	0	0	6591	9	0	2457	0	0	0	3776
Indonesia	0	0	0	0	0	0	0	0	0	0
Spain	0	0	1323	0	288	0	0	0	0	0
United Kingdom	2259	3355	311	3784	2103	1416	980	917	1905	1379
Slovakia	0	0	0	0	0	0	18560	0	0	0
Belgium	0	0	0	0	0	0	0	0	0	0
France	0	0	0	0	0	0	2316	1250	0	0
New Zealand	0	0	0	0	0	0	0	0	0	0
Hong Kong	0	3104	44626	84498	190751	6612	178408	180191	458586	521037
Sweden	0	0	0	0	0	0	0	0	0	0
Australia	0	0	2000	0	0	0	0	0	0	0
Switzerland	0	0	0	0	6	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0
Netherlands	0	0	0	0	0	0	0	0	0	0
Vietnam	0	0	0	0	0	0	0	0	0	0
Curacao	0	0	0	0	0	0	0	0	0	0
Brazil	0	0	0	0	0	0	0	0	0	0
Costa Rica	0	0	0	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	0	0	0
Finland	0	0	160	0	0	0	0	0	0	0
Israel	0	0	0	0	0	0	0	0	0	0
Luxembourg	0	0	0	0	0	0	0	0	0	0
Moldova	0	0	0	0	0	0	0	0	0	0
Norway	0	0	0	0	0	0	0	0	0	0
Singapore	0	0	0	0	0	0	0	0	0	0
Suriname	0	0	0	0	18732	0	4930	0	0	0
Tajikistan	0	0	0	0	0	0	0	0	0	0
Total	20773018	17273654	17339076	16569198	20543496	20679089	22714926	23948413	25353039	24823429

Annex 2 Nails Import Data (Kilograms)

Country	SEP 18	OCT 18	NOV 18	DEC 18	JAN 19	FEB 19	MAR 19	APR 19	MAY 19	JUN 19
Oman	4806457	5253736	6368894	4730890	6576979	4263602	4369258	5118369	5077877	4432081
Turkey	1295038	2226356	1568494	2004006	2356015	2293274	3152799	2309010	2864861	2520005
South Korea	2997339	3350177	3500960	4021384	3656143	2379848	2824506	2646906	2284006	2400249
Thailand	2009512	1942283	2487962	2115429	2002623	1825011	3099118	2029473	1990841	1523296
India	2284789	2421469	2170846	2189418	2118988	1865637	2312172	1250019	2000588	1819752
Taiwan	1932837	1421702	1529119	1758204	2185652	1721471	1602913	2304974	2506605	1817982
Sri Lanka	1308895	1930673	1346664	1874466	1618427	1287643	2109589	1863891	1555879	1354665
Malaysia	1522473	1919338	1477221	1369592	1608860	1675118	1457885	844380	1379687	1383502
Mexico	594914	729253	620801	529899	899508	596344	811291	876674	822209	839485
Saudi Arabia	392105	422815	542678	520640	458492	848528	1008116	701362	1177458	837064
China	1511355	1363595	1343016	1640689	3879431	786230	617507	562658	633391	481325
Egypt	398642	656793	556154	855403	583663	528107	485656	779588	885546	355741
Canada	1144265	992152	680352	400172	398313	402555	333383	493577	743417	382209
Austria	266036	333100	361389	459259	371292	307093	363161	324970	338883	310405
Poland	665132	888487	488792	148649	247837	327273	382277	315017	221555	349730
Lithuania	88738	41202	64854	196908	429184	244351	442178	338413	151828	40957
Angola	55930	112617	0	0	0	32980	120185	18235	0	0
United Arab Emirates	150180	0	0	17843	50793	31746	36192	18770	88723	17400
Colombia	0	53305	48968	50734	32937	70617	17659	71540	119753	30127
Liechtenstein	25997	38944	18454	20640	30365	32124	30624	76442	61883	45848
Italy	261	1418	255	27012	296	2986	1808	46869	49251	24516
Japan	2280	7216	5654	4922	7517	412	20796	2104	4708	976
Germany	17900	2131	18963	40273	7379	16834	37848	1624	21018	2838
Dominican Republic	26650	11268	3039	30929	20683	0	0	0	6783	0
Czech Republic	0	0	0	6700	0	35737	15389	3697	0	2288
Indonesia	0	0	0	0	0	0	0	0	17298	0
Spain	0	0	3797	2722	7639	0	11688	0	0	377
United Kingdom	10	9502	2135	10157	7761	689	2853	163	1689	2615
Slovakia	0	0	0	0	0	0	0	0	0	0
Belgium	0	0	0	0	0	0	0	0	0	0
France	0	800	400	1002	0	800	813	362	1696	1188
New Zealand	0	0	0	4023	0	0	0	3981	0	0
Hong Kong	216405	0	0	0	0	2182	0	1263	0	0
Sweden	0	0	0	0	0	0	0	0	0	0
Australia	0	0	0	0	0	0	14	14	3009	0
Switzerland	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	534	0	0	0	0
Netherlands	0	0	0	0	0	0	220	0	0	0
Vietnam	0	0	0	0	0	0	0	0	0	0
Curacao	0	0	0	0	0	0	20	0	0	0
Brazil	0	0	0	0	0	0	0	0	0	0
Costa Rica	0	0	4	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	0	0	0
Finland	0	0	0	0	0	0	0	0	0	0
Israel	0	0	4200	0	0	0	0	0	0	0
Luxembourg	0	0	0	0	0	0	0	0	0	0
Moldova	0	0	0	0	0	0	0	0	0	0
Norway	0	0	0	0	0	0	0	0	0	0
Singapore	0	0	0	0	0	0	0	0	0	0
Suriname	0	0	0	0	0	0	0	0	0	0
Tajikistan	0	0	0	0	0	0	0	0	0	0
Total	23714140	26130332	25214065	25031965	29556777	21579726	25667918	23004345	25010442	20976621

Annex 2 Nails Import Data (Kilograms)

Country	JUL 19	AUG 19	SEP 19	OCT 19	NOV 19	DEC 19
Oman	4294060	4547943	4148114	2249423	3202160	1882787
Turkey	2852284	2951052	2159323	2536779	2175286	2274834
South Korea	2933130	2395078	2113520	2261106	2004228	1543914
Thailand	2271596	2743773	2220575	2101879	1754317	1764355
India	2206709	1984883	1746282	1880619	2260020	970020
Taiwan	1574334	1940465	2129152	1381123	1101383	1281251
Sri Lanka	1862172	1843197	1792239	2228531	2206573	1900901
Malaysia	1334722	678874	817322	238817	385043	536491
Mexico	946934	850965	693213	1044252	610737	1628653
Saudi Arabia	700917	731972	567533	951683	970585	392356
China	522469	361100	330353	256493	290528	468067
Egypt	756677	920250	465479	600183	485823	390803
Canada	513335	611861	493223	553972	547782	479003
Austria	416932	335215	127626	372488	180391	146894
Poland	320438	386290	259573	323321	95459	169617
Lithuania	36406	131972	18203	18203	0	0
Angola	33000	0	221495	869209	13263	0
United Arab Emirates	18520	88875	93280	128575	498442	297336
Colombia	70677	54130	71375	33032	105502	65056
Liechtenstein	38601	40866	25294	40015	31207	29601
Italy	49602	3231	1960	222	5292	2887
Japan	2527	25392	39864	41381	22436	19293
Germany	20918	19638	1598	3150	1731	30510
Dominican Republic	0	25185	20683	0	11770	0
Czech Republic	0	3075	8164	0	247	7043
Indonesia	1	0	18648	0	16218	0
Spain	0	361	3875	4151	2420	582
United Kingdom	1070	2689	2051	533	2143	2257
Slovakia	0	0	0	0	19050	0
Belgium	0	4801	0	883	0	0
France	0	0	0	0	0	0
New Zealand	0	0	0	0	0	0
Hong Kong	0	0	0	0	0	0
Sweden	0	3070	0	0	0	0
Australia	0	0	0	0	0	0
Switzerland	0	0	0	0	828	0
Ireland	0	0	0	0	0	0
Netherlands	0	0	0	0	0	0
Vietnam	0	0	115	0	0	15019
Curacao	0	0	0	0	0	0
Brazil	0	0	0	0	0	0
Costa Rica	0	0	0	0	0	0
Estonia	0	0	0	0	0	0
Finland	0	0	0	0	0	0
Israel	0	0	0	0	0	0
Luxembourg	0	0	0	0	0	0
Moldova	0	0	0	0	0	0
Norway	0	0	0	0	0	0
Singapore	0	0	0	0	0	0
Suriname	0	0	0	0	0	0
Tajikistan	0	0	0	0	0	0
Total	23778031	23686203	20590132	20120023	19000864	16299530

Oman HTS Specific Import Data for Nails covered in Annex 2 (Kilograms)

Month	HTS Number			Total
	7317.00.5503	7317.00.5505	7317.00.5507	
JAN 16	326,700	133,475	2,494,152	2,954,327
FEB 16	230,418	71,571	1,614,421	1,916,410
MAR 16	446,207	170,915	1,998,238	2,615,360
APR 16	397,212	144,301	1,920,293	2,461,806
MAY 16	352,102	132,231	1,984,338	2,468,671
JUN 16	323,047	247,077	2,044,885	2,615,009
JUL 16	332,238	202,765	2,484,404	3,019,407
AUG 16	371,247	426,131	1,864,714	2,662,092
SEP 16	395,808	187,093	2,661,745	3,244,646
OCT 16	495,547	114,490	2,438,232	3,048,269
NOV 16	433,379	93,819	3,653,427	4,180,625
DEC 16	480,119	146,398	3,864,047	4,490,564
JAN 17	524,260	143,500	2,446,104	3,113,864
FEB 17	447,606	116,521	2,396,455	2,960,582
MAR 17	370,763	158,122	2,117,477	2,646,362
APR 17	479,766	98,182	1,312,973	1,890,921
MAY 17	550,282	124,584	1,830,046	2,504,912
JUN 17	438,390	147,733	1,471,682	2,057,805
JUL 17	552,436	115,596	1,573,320	2,241,352
AUG 17	587,030	99,190	1,664,591	2,350,811
SEP 17	387,393	129,534	1,655,758	2,172,685
OCT 17	520,830	139,945	2,369,937	3,030,712
NOV 17	529,249	134,316	2,799,292	3,462,857
DEC 17	550,637	100,930	1,571,152	2,222,719
JAN 18	378,129	83,106	1,700,739	2,161,974
FEB 18	450,245	572,669	1,274,089	2,297,003
MAR 18	395,722	485,804	1,744,854	2,626,380
APR 18	451,890	373,998	1,794,319	2,620,207
MAY 18	575,092	464,066	2,388,448	3,427,606
JUN 18	668,667	914,564	2,732,190	4,315,421
JUL 18	628,164	810,937	3,095,907	4,535,008
AUG 18	871,526	719,810	2,979,986	4,571,322
SEP 18	847,593	475,553	3,483,311	4,806,457
OCT 18	905,985	697,357	3,650,394	5,253,736
NOV 18	1,007,998	940,285	4,420,611	6,368,894
DEC 18	739,059	758,732	3,233,099	4,730,890
JAN 19	940,166	1,501,828	4,134,985	6,576,979
FEB 19	1,084,241	1,154,878	2,024,483	4,263,602
MAR 19	1,050,835	1,528,992	1,789,431	4,369,258
APR 19	1,251,701	1,480,271	2,386,397	5,118,369
MAY 19	1,431,278	1,356,220	2,290,379	5,077,877
JUN 19	1,327,504	1,042,857	2,061,720	4,432,081
JUL 19	1,163,218	708,852	2,421,990	4,294,060
AUG 19	1,361,844	863,537	2,322,562	4,547,943
SEP 19	1,229,936	981,368	1,936,810	4,148,114
OCT 19	869,425	330,211	1,049,787	2,249,423
NOV 19	1,160,405	587,468	1,454,287	3,202,160
DEC 19	552,162	478,453	852,172	1,882,787

EXHIBIT 3

NONCONFIDENTIAL

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE THE HONORABLE TIMOTHY C. STANCEU, CHIEF JUDGE

_____)	
PRIMESOURCE BUILDING PRODUCTS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE UNITED STATES, DONALD J. TRUMP, IN HIS)	
OFFICIAL CAPACITY AS PRESIDENT OF THE)	
UNITED STATES; WILBUR L. ROSS, JR., IN HIS)	Ct. No. 20-00032
OFFICIAL CAPACITY AS UNITED STATES)	
SECRETARY OF COMMERCE; UNITED STATES)	
DEPARTMENT OF COMMERCE; MARK A.)	
MORGAN, IN HIS OFFICIAL CAPACITY AS ACTING)	
COMMISSIONER, UNITED STATES CUSTOMS AND)	
BORDER PROTECTION; UNITED STATES)	
CUSTOMS AND BORDER PROTECTION,)	
)	
Defendants.)	
_____)	

ORDER

Plaintiff PrimeSource Building Products, Inc., has moved for a temporary restraining order and a preliminary injunction. The parties have subsequently represented to the Court that they have reached agreement on the terms of a proposed injunctive order that could be entered upon consent, without the defendants admitting that the plaintiff has demonstrated a likelihood of success on the merits, and which would obviate the need for the Court to decide the merits of the pending motions. Plaintiff has further indicated that it seeks leave to withdraw its pending motions to permit the Court to enter the parties’ joint proposed order.

The parties have further represented that, in light of this agreement, they each waive their respective procedural rights to a preliminary injunction hearing and defendants waive their right

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to respond to the pending motions. In light of the parties' subsequent agreement on the terms of an order and request that the Court enter such order, it is hereby ORDERED

That the pending application for a temporary restraining order and motion for preliminary injunction dated February 12, 2020 is ORDERED WITHDRAWN;

That, by consent of the parties, the following order is ENTERED:

ORDERED that United States Customs and Border Protection (CBP) is enjoined from collecting duty deposits due pursuant to Proclamation 9980 of January 24, 2020: Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States, 85 Fed. Reg. 5281 (January 29, 2020), on entries filed by PrimeSource Building Products Inc. on or after 12:01 am February 8, 2020, excluding any entry filed after on or after February 8, 2020 but before CBP implements this Order that PrimeSource is unable to or does not correct within the 10-day period set forth in 19 C.F.R. 142.12 to remove the Section 232 deposit;

ORDERED that the United States is enjoined from liquidating entries filed by PrimeSource Building Products, Inc. of articles subject to Proclamation 9980;

ORDERED that PrimeSource Building Products, Inc. shall, within 5 business days of the date of this Order terminate its existing continuous bond and replace it with a continuous bond with a total limit of liability [REDACTED] to reflect the additional Section 232 duties PrimeSource anticipates it would otherwise have had to deposit over the next prospective six month period, based on the estimate provided in Confidential Ex. 2 to PrimeSource's Complaint;

ORDERED that the United States and PrimeSource Building Products, Inc., shall confer prior to the expiry of this initial, and each subsequent, six month period while this Order is in effect, and review the Section 232 duty deposits foregone and PrimeSource's estimated imports over the next six-month period and that Prime Source shall further increase the limit of liability of

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its continuous bond to reflect the parties' agreement as to the additional Section 232 duties that would be owed during that subsequent six-month period.

ORDERED that should CBP determine that PrimeSource's imports are in excess of PrimeSource's projections, CBP may seek leave of the Court to require additional security as permitted by applicable law.

It is further ORDERED that this order is effective immediately and continues in effect until judgment is entered, or until it is otherwise modified or dissolved by the Court.

SO ORDERED.

/s/ Timothy C. Stanceu
Chief Judge

Dated: February 13, 2020
New York, New York