

AMERICAN WIRE PRODUCERS ASSOCIATION

ANTICIRCUMVENTION INVESTIGATION OF SMALL-DIAMETER WIRE ROD FROM MEXICO

FEBRUARY 2016

SCOPE AND ANTICIRCUMVENTION PETITIONS FROM U.S. ROD INDUSTRY

FEBRUARY 11, 2011

Two groups of U.S. rod producers—ArcelorMittal USA, Gerdau Ameristeel US, and Rocky Mountain Steel of Evraz Inc. NA; and Nucor Corporation and Cascade Steel Rolling Mills Inc.—submitted to the U.S. Department of Commerce (DOC) scope/anticircumvention petitions against small-diameter wire rod in connection with the antidumping (AD) order on carbon and certain alloy steel wire rod from Mexico. The petitions claimed that two Mexican producers/exporters—Deacero S.A. de C.V. (Deacero) and Ternium Mexico S.A. de C.V. (Ternium)—exported wire rod with a diameter of 4.75 mm to the United States. The scope of the AD order covers wire rod “5.00 mm or more . . . in solid cross-sectional diameter.”

DOC’S INITIATION OF ANTICIRCUMVENTION INVESTIGATION

JUNE 8, 2011

The DOC formally initiated a “minor alterations anti-circumvention proceeding” with respect to wire rod from Mexico. The purpose of the proceeding is to determine whether wire rod with an actual diameter measuring between 4.75 mm and 5.00 mm results from a minor alteration and, thus, constitutes a change to the product which is so insufficient that the wire rod is subject to the AD order on carbon and certain alloy steel wire rod from Mexico.

On the other hand, the DOC declined to initiate a scope inquiry because it concluded that the diameters mentioned in the scope language (*i.e.*, “5.00 mm or more”) refer to actual diameters. The U.S. producers had claimed that the 4.75 mm rod product is within the scope of the AD order because it falls within the tolerance parameters of 5.00 mm rod. However, the DOC rejected this claim and found that wire rod with an actual diameter less than 5.00 mm is not within the scope of the order on wire rod from Mexico.

DOC’S PRELIMINARY DETERMINATION

DECEMBER 20, 2011

The DOC preliminarily determined that “wire rod with an actual diameter between 4.75 mm and 5.00 mm produced in Mexico and exported to the United States by Deacero is circumventing the antidumping order on wire rod from Mexico” and that this small-diameter wire rod should be included in the scope of the antidumping order on wire rod from Mexico.

In reaching its preliminary determination, the DOC found that the small-diameter wire rod exported by Deacero is indistinguishable from wire rod with a diameter of 5.00 mm or more “in any meaningful sense in terms of overall physical characteristics of the merchandise.” According to the DOC, Deacero admitted that the sole physical difference between these two types of wire rod is the 0.25 mm difference in diameter. The DOC’s preliminary analysis indicated that other physical characteristics—such as tensile strength, ductility, and

chemical content (or grade)—do not vary by diameter. Further, the DOC preliminarily determined that the difference in diameter between the two types of wire rod does not alter in any meaningful way the expectations of the ultimate users, the use of the merchandise, or the channels of marketing. Finally, the DOC found that the costs to produce the small-diameter wire rod are not significantly different from the costs to produce subject merchandise.

The DOC noted that its preliminary determination applies only to Deacero because information submitted by Ternium showed that it did not produce or sell small-diameter wire rod.

The effective date of this preliminary determination is June 8, 2011 (the date of initiation of the inquiry). Accordingly, the DOC instructed U.S. Customs and Border Protection to: (a) suspend liquidation of entries of small-diameter wire rod produced and/or exported by Deacero that were made on or after June 8, 2011, and (b) require cash deposits of 20.11 percent (the “All Others” rate) for all unliquidated entries that were made on or after June 8, 2011.

DOC’S FINAL DETERMINATION

OCTOBER 1, 2012

The DOC’s final determination confirmed its preliminary determination that “wire rod with an actual diameter of 4.75 mm to 5.00 mm by Deacero S.A. de C.V. constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.” The DOC also confirmed that this determination applies only to Deacero, and it does not cover Ternium, because Ternium has not shipped wire rod with diameters of 4.75 mm to 5.0 mm.

The effective date of this final determination is June 8, 2011. Thus, wire rod with an actual diameter of 4.75 mm to 5.0 mm produced and/or exported by Deacero and entered into the United States on or after June 8, 2011, will be subject to potential dumping duties. The DOC instructed U.S. Customs and Border Protection to continue to suspend liquidation of entries of such small-diameter wire rod from Deacero and to require cash deposits of 20.11 percent (the “All Others” rate) for all entries that were made on or after June 8, 2011.

DEACERO’S APPEAL OF DOC’S FINAL DETERMINATION

OCTOBER 29, 2012

Subsequent to the DOC’s final determination, Deacero appealed the circumvention determination to the U.S. Court of International Trade (CIT). The DOC’s determination will remain in force during the pendency of the appeal.

CIT’S DECISION AND REMAND TO DOC

SEPTEMBER 30, 2013

On September 30, 2013, the CIT issued its opinion in the appeal. The CIT found that 4.75 mm wire rod was commercially available prior to the issuance of the AD order on Mexico and that the U.S. rod industry could have included it within the scope but did not. Further, the CIT found that diameter is an essential characteristic of the scope and that wire rod with a diameter of 4.75 mm “unambiguously” fell outside the scope of the order, which defines subject merchandise as wire rod with a diameter of 5.00 mm or more but less than

19.00 mm. The CIT characterized the DOC's determination and reasoning as "flawed," "conclusory," "unsupported," and "rigid." The CIT also stated that the U.S. rod industry wanted to rewrite the order "so that it says what they wish it had said at its inception."

Accordingly, the CIT remanded the case to the DOC with instructions to reconsider its original determination that 4.75 mm wire rod circumvents the order. If the DOC continues to conclude on remand that 4.75 mm wire rod is circumventing the order, the CIT ordered that the DOC "must thoroughly explain how the record and relevant law supports that determination" in light of the CIT's decision. The DOC must submit its remand redetermination to the CIT by January 29, 2014, and Deacero and the U.S. rod industry have until February 28, 2014, to submit comments on the DOC's redetermination.

DOC'S FINAL REMAND REDETERMINATION

JANUARY 29, 2014

On December 6, 2013, the DOC released its draft remand redetermination. The DOC initially stated that it "respectfully disagrees with the Court that the fact that 4.75 mm diameter steel wire rod existed in Japan at the time of the antidumping duty investigation of steel wire rod from Mexico indicates that the Department's application of the minor alteration analysis was incorrect." Nevertheless, the DOC revised its analysis and found that Deacero's entries of wire rod with a diameter of 4.75 mm to 5.00 mm do not constitute a minor alteration and do not circumvent the AD order.

Both Deacero and the U.S. industry have submitted comments on the draft redetermination to the DOC. Deacero urged the DOC to finalize its draft redetermination; the U.S. rod industry urged the DOC to explain why its original determination was lawful.

On January 29, 2014, the DOC released its final remand redetermination which incorporated its draft redetermination and found that wire rod with an actual diameter of 4.75 mm to 5.00 mm shipped to the United States by Deacero is outside the scope of the antidumping order on wire rod from Mexico.

DOC'S SECOND FINAL REMAND REDETERMINATION

OCTOBER 20, 2014

The CIT reviewed the DOC's final remand redetermination of January 29, 2014, and it found that a further remand was necessary because the DOC had misinterpreted its decision. The misinterpretation involved a technical point, which the DOC resolved in its second final remand redetermination on October 2014.

The DOC stated that it "continues to respectfully disagree with the Court" but nevertheless confirmed its previous remand redetermination that wire rod with a diameter of 4.75 mm to 5.00 mm shipped to the United States by Deacero is outside the scope of the antidumping order.

CIT'S DECISION**DECEMBER 22, 2014**

The CIT affirmed the DOC's second final remand redetermination of October 20, 2014, and sustained the DOC's determination that wire rod with a diameter of 4.75 mm to 5.00 mm shipped to the United States by Deacero is not subject to antidumping duties.

APPEAL OF CIT DECISION**FEBRUARY 23, 2015**

Following the CIT's decision, the DOC and U.S. producers—ArcelorMittal USA, LLC, Gerdau Ameristeel U.S. Inc., and Nucor Corp.—filed an appeal to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). Briefs have been filed, and a three-judge panel will hear oral argument in the case on February 4, 2016. There is no deadline by which the Federal Circuit must make a decision. In the meantime, the DOC's determination that wire rod with a diameter of 4.75 mm to 5.00 mm shipped to the United States by Deacero is not subject to antidumping duties will remain in force during the pendency of the appeal.