
**USITC Investigation Nos. 701-TA-417 and 731-TA-953,
957-959, and 961 (Third Review)
Business Proprietary Information Released Under APO
Deleted from Pages: 1, 4, 7, 9-14, Exhibit List, Exhibits 1-3,
17, 20
PUBLIC VERSION**

**BEFORE THE
U.S. INTERNATIONAL TRADE COMMISSION**

**CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM BRAZIL, INDONESIA,
MEXICO, MOLDOVA, TRINIDAD AND TOBAGO**

POSTHEARING BRIEF OF DOMESTIC INDUSTRY

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June 25, 2020

**POSTHEARING BRIEF OF CHARTER STEEL, EVRAZ ROCKY MOUNTAIN STEEL,
LIBERTY STEEL, AND OPTIMUS STEEL**

I. OVERVIEW

The only party appearing in support of revocation of the orders in this sunset review, Mexican producer Deacero, is the subject producer that is most likely to export carbon and alloy steel wire rod (“CASWR”) in significant volumes to the U.S. market at low and injurious prices, causing injury to the domestic industry. Deacero has continued to demonstrate an interest in, and an ability to sell into, the U.S. market even with the order in place, twice resorting to circumvention to evade the duties. Deacero has an established sales force and affiliated U.S. buyers. Mexican producers obtain [

] providing a strong incentive and likelihood that import volumes from Mexico would increase significantly absent an order. Yet prices of Mexican CASWR still undercut U.S. prices in most instances, and this underselling would intensify to the detriment of competing U.S. producers (who saw prices plummet in 2019) if the discipline of the orders is removed.

Despite this compelling record evidence, Deacero contends that its volumes will remain low and insignificant. Deacero ignores that capacity in Mexico has increased and that much of that capacity sits idle today, as home market sales in Mexico have declined and as the order has limited Mexican sales to its preferred export market, the United States. Idle capacity in Mexico would allow it to capture [] percent of the U.S. market – hardly an insignificant share. Mexico will use low prices that undercut U.S. producer prices, as it has even with the order in place, to seize sales at the domestic industry’s expense. The section 232 surge protection agreement with an undefined and, as yet, unapplied volume-limiting mechanism will not control these import volumes and will have no effect on dumped import pricing. These facts refute

Deacero's contention that Mexico will have no discernible adverse impact – indeed, Mexico alone is likely to cause injury. Nor does the record show that Mexico operates under different conditions of competition based on its unused capacity level – which is substantial – or its export orientation, which is laser-focused on the United States, as evidenced by its increased U.S. exports, its U.S. affiliations, and its circumvention efforts.

Deacero largely ignores the cumulative injury that imports from all five subject countries, unleashed from the restraints of the orders, would have on the U.S. industry. Indeed, Deacero concedes that the other subject producers have significant idle capacity and are export-oriented, factors indicating the likelihood of significant subject import volumes. Deacero Prehrg. Brf. at 6-8. The collective impact of the idle capacity available in the subject countries that will quickly target the large, open, and higher-priced U.S. market will be devastating to the U.S. industry.

The U.S. CASWR industry is still recovering from the injury it suffered due to unfairly-traded imports from ten other countries just a couple years ago. Deacero's contention that the industry's trade and financial condition are somewhat better than when it was being injured by imports from ten other countries does not refute the evidence of vulnerability. Not only does the U.S. industry still have high levels of unused capacity and falling prices, the industry is also facing declining demand in the U.S. market, based on both a long-term trend and the recent effects of the COVID pandemic. The demand declines have already caused idling of U.S. facilities, and more will surely follow if the unfair imports are permitted to resume their dumping behavior. Indeed, importers and purchasers have been quite explicit as to their expectations for significant volumes of imports from the subject countries at lower prices if the trade orders are eliminated. See Dom. Ind. Presentation, Slides 32-34. These record facts provide a compelling basis to conclude there would be likely continued or recurrent injury absent these orders.

II. THE COMMISSION SHOULD REJECT DEACERO'S REQUEST THAT IT DECUMULATE MEXICO

A. The Record Does Not Support the Conclusion That There Would Be No Discernible Adverse Impact from Mexico

Deacero's claim that there would be no discernible adverse impact from Mexico if the order was revoked lacks record support and is inconsistent with prior Commission findings. Deacero points first to import volume levels from Mexico under the discipline of the order in support of its claim that the volume levels from Mexico have been low and purportedly would remain low. Deacero Prehrg. Brf. at 3-4. Volume levels from Mexico with an order in place and subject to the discipline of antidumping duties are not indicative of likely volume levels if the order is removed. The statute is counterfactual and asks what would happen if the order is revoked, not what is occurring with the order in place.¹ Indeed, if volume levels with the order in place were the test, every one of the subject countries could contend there would be no discernible adverse impact given even smaller volumes, or no import volumes, from the other countries. See ITC Prehearing Report, dated June 8, 2020 ("ITC Prehrg. Rep.") at C-3.

The very fact that Mexico is continuing to export CASWR to the United States at all with the order in place shows its continued interest in, and ability to sell, to the United States, a factor the Commission has recognized as indicating a likely discernible adverse impact if the order is removed.² Indeed, the extraordinary circumvention efforts Deacero has engaged in to maintain

¹ 19 U.S.C. § 1675a(a)(1); Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316(I) at 883-84 (1994); see also Certain Activated Carbon from China, USITC Pub. 4381 (Review) (2013) at 8.

² See, e.g., Polyethylene Retail Carrier Bags from China, et al., USITC Pub. 4605 (First Review) (2016) at 15-23; Iron Construction Castings from Brazil, et al., USITC Pub. 4655 (Fourth Review) (2016) at 18.

U.S. sales, as well as the existence of U.S. affiliates such as Deacero USA and Mid Continent,³ show how very likely it is that subject imports from Mexico will enter the U.S. market in increasing volumes absent the order.⁴ Although Deacero focuses on its capacity utilization rate, it ignores how much tonnage that rate translates into when applied against the increased capacity level in Mexico.⁵ ITC Prehrg. Rep. at IV-38; Exh. 1, Q.9. The significant level of idle capacity existing in Mexico now, which exceeds [] coupled with the much lower U.S. demand levels today, will likely result in Mexico capturing a sizeable share of the U.S. market (in the []) that is well above its pre-order volume levels. See Exh. 1, Q.6; ITC Prehrg. Rep. at IV-38, C-3.

³ Deacero's attempt to dismiss sales to its U.S. affiliates as a potential cause of injury and to focus only on sales to unrelated customers lacks merit. Transcript of ITC Hearing conducted June 16, 2020 ("Tr.") at 103. In Deacero's absence, sales to affiliated companies like Mid Continent would be made by U.S. producers. Indeed, Mr. Pratt testified that Mid Continent purchased wire rod from both U.S. suppliers and Deacero. Id. at 165. Mr. Pratt also emphasized the importance of price in his buying decisions. Id. at 164. Deacero's sales to its U.S. affiliate thus cost the U.S. producers sales they could have made, and affect pricing in the U.S. market adversely. See Exh. 2, para. 7 (Goettl. Decl.). The Court has sustained the Commission's reliance on the presence of U.S. affiliates as an indication of a likely discernible adverse impact. Cogne Acciai Speciali S.p.A. v. United States, 29 CIT 1168, 1182-83 (2005).

⁴ See Honey from China, USITC Pub. 4776 (Third Review) (2018) at 16-17 (Chinese producers "continuously demonstrated their interest in the U.S. market since imposition of the order through various circumvention schemes" and "continued efforts to direct honey to the U.S. market notwithstanding the order."); Certain Tissue Paper Products from China, USITC Pub. 4165 (July 2010) at 17 ("Commerce's affirmative circumvention determinations also indicate that Chinese producers are actively seeking ways to access the U.S. market and would aggressively target the U.S. market in the absence of the order."); see also Exh. 1, Q.12; Tr. at 108 (Mr. Pratt).

⁵ Deacero contends that capacity has not increased over the POR (Deacero Prehrg. Brf. at 6-7), [

] Deacero's further challenge to the prehearing report data on expansions by other Mexican producers as set forth in various reports is equally unavailing. Deacero Prehrg. Brf. at 7 n.24. Although some of the expansions cited may relate to other products in addition to subject wire rod, the reports are clear that expansions of capacity occurred at the various producers with respect to wire rod production as well. ITC Prehrg. Rep. at IV-36.

Deacero also points to the surge protection agreement between the United States and Mexico, whereby the United States eliminated section 232 tariffs on Mexican steel products on the condition that those tariffs could be reimposed if imports surged, claiming the agreement provides an effective restraint on Mexican imports. Deacero Prehrg. Brf. at 4-5; Tr. at 157. As discussed in response to question 8 (Exh. 1), the surge mechanism for Mexico does not meaningfully differentiate it from the other subject countries also under section 232 volume-restricting measures.⁶ In addition, the surge mechanism has no defined quantitative limit or enforcement procedure and has not been employed to date, meaning that, if anything, increasing imports from Mexico are more – not less – likely. Even with the surge mechanism in place, import volumes from Mexico increased in 2019 and further increased in 2020. ITC Prehrg. Rep. at IV-4; Exh. 1, Q.6. Finally, the surge protection agreement does nothing to address the injurious price effects of imports from Mexico, imports that have undercut U.S. prices in the majority of comparisons even with the order in place. ITC Prehrg. Rep. at V-17.

⁶ Deacero points to the stainless steel bar sunset case in support of its arguments. Tr. at 96. There, the Commission found no likely discernible adverse impact from Brazil based on a quota level that was below the level of its pre-order exports as well as evidence of increased U.S. demand that would lead to a smaller market share by Brazil. Stainless Steel Bar from Brazil, India, Japan and Spain, USITC Pub. 4820 (Fourth Review) (2018) at 16-17. By contrast here, Mexico is not subject to any quota but merely to an overall surge mechanism that is neither specific to wire rod nor defined in terms of what constitutes a surge. Exh. 1, Q.8. Moreover, unlike the bar case, demand in the U.S. market is declining, not increasing, so the same (or, more likely, an even larger) volume of subject imports from Mexico would capture an even larger market share than they did pre-order. Notably, the Commission did not find in the bar case that the imposition of tariffs under section 232 with respect to other subject countries supported a no discernible adverse impact finding. USITC Pub. 4820 at 19. That case, therefore, is inapposite to the record presented here.

B. The Commerce Department's Findings on Circumvention Refute Deacero's Arguments That It Developed a New Product to Meet Customer Needs

Deacero spent much of the hearing trying to re-litigate Commerce's anti-circumvention findings to demonstrate that it developed smaller diameter wire rod to meet specific customer needs rather than to circumvent the order. See, e.g., Tr. at 133-34. Commerce concluded, however, that Deacero began making 4.75 mm wire rod, and later 4.4 mm wire rod, to circumvent the orders on CASWR with diameters of 5.0 mm and above. ITC Prehrg. Rep. at I-19. Commerce specifically examined in detail the evidence of patterns of trade as well as Deacero's claim that customers asked Deacero to make small diameter wire rod for its superior qualities. Commerce found that Deacero ceased selling 5.0 and greater diameter wire rod in the U.S. as soon as it began shipping 4.75 mm wire rod – a strong indication that 4.75 mm wire rod was simply being substituted for larger diameter CASWR to circumvent the order. See Exh. 1, Q.12. Commerce's anti-circumvention determination was upheld by the Court of Appeals for the Federal Circuit as supported by substantial evidence and in accordance with law and should not be revisited here. See Deacero S.A. DE C.V. v. United States, 817 F.3d 1332 (Fed. Cir. 2016). In the second anti-circumvention proceeding, Commerce found that Deacero altered its production process to produce 4.4 mm wire rod in response to its 4.75 mm wire rod anti-circumvention determination, which again strongly suggests that Deacero was reacting to the parameters of the antidumping duty order rather than customer demand. See Exh. 1, Q.12.

Deacero's import trends also support this conclusion. As described in answer to Question 12 and as illustrated in Slide 23 of the domestic industry's presentation, each introduction of a smaller diameter wire rod size led directly to the increase in exports of CASWR from Deacero to the U.S. Importantly, Deacero's customers described CASWR with diameters above and below

5.0 mm as substitutes for one another. See Exh. 1, Q.14; [

] Purch. QRs at II-7. Those purchasers that ceased buying small diameter wire rod from Deacero generally indicated they did so because the goods were placed under order. See, e.g., [] Finally, the evidence collected by the Commission in the last sunset review and by Commerce in the most recent anti-circumvention review demonstrates that Deacero is selling small diameter wire rod at a discount rather than a premium, undermining any notion that it is a specialized product for specialized uses. See Exh. 1, Qs.11-13.

C. The Record Supports Cumulating Mexico as Imports from Mexico Will Operate Under Similar Competitive Conditions as Other Subject Imports

Record evidence indicates that if the orders are revoked, imports from Mexico will operate under similar conditions of competition as other subject imports and provides no basis to decumulate Mexico. As detailed further in response to question 9 (Exh. 1), the basic conditions of competition are the same for all subject countries given the: (1) substitutable nature of the product, (2) price-sensitive nature of the market, (3) higher U.S. prices relative to other countries, (4) significant levels of idle capacity, and (5) demonstrated interest in exporting to the U.S. market. Deacero's reliance on purportedly high capacity utilization rates in Mexico ignores the sizeable level of idle capacity in Mexico relative to demand in the U.S. market that would allow Mexico to capture significant and increased market share. Exh. 1, Q.6. Deacero's claim that Mexico is not export oriented ignores record evidence that Deacero is very much export-focused on the United States, so much so that it has circumvented this order twice to sell increased volumes into this market. Exh. 1, Q.12; Dom. Ind. Presentation, Slide 23. Deacero also ignores declining Mexican home market sales in claiming that it will increase sales in

Mexico. ITC Prehrg. Rep. at IV-39; Exh. 1, Q.4. With the COVID-19 effects on demand in Mexico, projections are even more bleak, providing greater incentive to export to the United States. Exh. 1, Qs.2-4; Exh. 2, para. 9 (Goettl Decl.).⁷

Deacero's assertion that it is operating under a different condition of competition based on the 232 surge protection agreement with Mexico is also misplaced. See supra section II.A.; Exh. 1, Q.8. Every subject country is subject to some type of 232 action, whether a tariff, a quota, or this surge protection agreement in an effort to control imports – a common competitive condition. Ironically, and despite Deacero's arguments, its 232 "control" is the most limited and makes it the most likely that imports from Deacero will surge absent the dumping duties.

III. THE U.S. INDUSTRY HAS AMPLE CAPACITY TO SUPPLY THE MARKET

As explained in the domestic industry's prehearing brief and its hearing presentation, U.S. producers have capacity to produce wire rod in excess of apparent consumption as it has existed over the last several years. Dom. Ind. Prehrg. Brf. at 11-15; Dom. Ind. Presentation, Slide 30. In 2019, the domestic industry had up to 5.9 million tons of capacity to produce

⁷ Deacero relies on two Commission decisions to support its request for decumulation based on allegedly different competitive conditions for Mexico. First, Deacero cites to the Commission's decumulation of Japan in the hot-rolled steel case. The different competitive conditions the Commission found were Japan's focus on regional sales in Asia rather than the United States, and evidence of overselling by Japan in contrast to underselling by other subject countries. Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, et al., USITC Pub. 4237 (Second Review) (2011) at 17-18. Here, Mexico is not focused on other regions but on local regions that include the U.S. market; indeed, its U.S. exports have increased over the POR. ITC Prehrg. Rep. at IV-38. Further unlike Japan, Mexico has engaged in extensive underselling both before the order was imposed and post-order, including underselling in the vast majority of instances examined in this review period. Id. at V-17. A focus on the U.S. market and the use of low-priced sales to sell into that market are common competitive conditions Mexico shares with the other subject countries. Deacero's reliance on the Commission's decision to decumulate Italy in the stainless wire rod case is equally unavailing. Stainless Rod, USITC Pub. 4623 (Third Review) (2016) at 28-30. In that case, one producer was excluded from the order, another consumed all its rod internally (no commercial sales), and a third had a regional focus in the EU and long-term contracts with customers. Id. None of these factors applies to Mexico.

CASWR against consumption of only [] tons. ITC Prehrg. Rep. at C-3-C-4. While there is no legal requirement that the domestic industry be able to supply all types of the like product, the record shows that the domestic industry has substantial production in every category of wire rod. ITC Prehrg. Rep. at IV-8. With demand declining between 2018 and 2019, domestic capacity utilization at just 70 percent, and the impact of the COVID-19 pandemic further hindering demand, the domestic industry can supply – and needs to be able to compete for – all of the remaining demand in the market. ITC Prehrg. Rep. at C-3, C-4.

Although a number of purchasers claimed the industry faced supply constraints in 2018 due to the unprecedented imposition of the section 232 tariffs on top of a ten-country trade case, the market quickly worked out the initial tightness of supply caused by purchasers over-ordering for their actual needs. Tr. at 55-56; Exh. 1, Q.1; [] Purchasers essentially acknowledged that this tightness lasted only a few months (see, e.g., [

]). Comments about short supply tended to focus on a single producer and this specific period, and no purchasers alleged that they were unable to meet their own production schedules as a result. Indeed, the record shows that apparent consumption only rose by [] percent in 2018 and then fell by significantly by [] percent in 2019. ITC Prehrg. Rep. at C-3. These data demonstrate that any tightness in supply was short-lived and is not evidence of an endemic U.S. industry supply deficit. Moreover, there is anything but a shortage of domestic wire rod capacity today. With the decline in demand, Liberty Steel has been forced to temporarily close its Georgetown facility and is taking periodic outages at its Peoria Mill to balance production with its order book. Exh. 3, para. 5 (Dillon Decl.).

Finally, the Commission should dismiss Deacero’s claims that the marketplace is clamoring for its small diameter wire rod due to its inherent physical characteristics and that the

domestic industry's alleged failure to object to Section 232 exclusions indicates that there is a wire rod shortage. The record shows that Deacero's small diameter product was used to circumvent the order on Mexico and competes with 5.5 mm wire rod on the basis of price. See supra section II.B.; Exh. 1, Qs.11-14. Contrary to Deacero's claims regarding section 232 exclusions, the domestic industry actually has filed over 1,700 section 232 exclusion objections. See Exh. 1, Q.1; Exh. 4. Moreover, the decision by any U.S. producer to object to any particular exclusion request is not indicative of the industry's ability to supply.⁸ See Exh. 1, Q.1 Exh. 2, para. 4 (Goettl Decl.); Exh. 5, para. 9-10 (Cassise Decl.).

IV. REVOCATION OF THE ORDERS WILL QUICKLY LEAD TO CONTINUED OR RECURRENT INJURY

A. Cumulated Subject Import Volumes Will Be Significant Absent the Orders

Although Deacero contends that import volumes will not be significant upon revocation, it focuses entirely on imports from Mexico only – and often on Deacero alone – while ignoring the likely cumulative subject import volumes from the five subject countries. In discussing the other subject countries, Deacero admits that the “other countries subject to the orders have relatively low capacity utilization and high export orientation.” Deacero Prehrg. Brf. at 6; Tr. at 18. These factors indicate that there will be likely significant cumulative volumes of subject imports targeted at the U.S. market absent the orders. ITC Prehrg. Rep. at IV-25, IV-28, IV-32, IV-38, IV-41, IV-44, IV-47; Dom. Ind. Presentation, Slide 24.⁹ The subject countries' large

⁸ The section 232 exclusion process is completely divorced from the reality of supply and demand in the CASWR market, and the Commission should rely on the comprehensive dataset it collected to measure the adequacy of domestic supply. See Exh. 1, Q.1.

⁹ Based on [] data, CASWR producers in all five subject countries maintained a total capacity of [] tons in 2018, up from [] tons in 2013. See Domestic Industry's Substantive Response (July 3, 2019) at 7-8; Second Review Staff Rep. at IV-14.

(nearly 1.0 million tons in 2019) and increasing export volumes also demonstrate that if the orders were revoked, the subject producers' exports to the United States would likely significantly increase. ITC Prehrg. Rep. at IV-28, IV-32, IV-41, IV-44.

Deacero also ignores that the higher U.S. prices and relatively large U.S. demand will draw in subject imports. ITC Prehrg. Rep. at IV-57-IV-59, C-3. Questionnaire data show that Mexican export AUVs to the United States are higher than to other markets, providing an incentive to ship to the U.S. market. Exh. 1, Q.7. Deacero's assertion that freight costs for shipments from Mexico by rail or truck make selling into the U.S. market unattractive is without merit. See Exh. 1, Q.7. Increased exports of Mexican CASWR to the United States in recent years (ITC Prehrg. Rep. at IV-39) as well as in recent months – up by 158 percent in the first four months of 2020 (Exh. 6) – belie Deacero's claim. See Exh. 1, Q.6. Freight costs for other subject countries also will not dissuade those countries from sending significant volumes to the U.S. market for significantly higher U.S. prices. See id., Q.5.

Deacero's claims that Mexican capacity is declining, that demand in its home market is increasing, and that it is not interested in selling to the U.S. market in increased volumes also lack record support, as discussed in section II.A.¹⁰ Deacero's heavy reliance on the 232 tariffs/quotas and surge protection agreement with Mexico to control all import volumes (or at least those of other subject countries) is misplaced. Tr. at 157-58. The surge mechanism that Deacero cites has no defined quantitative limit or surge percentage and import volumes from

¹⁰ Mexican capacity increased from [] tons in 2019. ITC Prehrg. Rep. at IV-38. The Mexican industry also showed growing unused capacity, from [] tons in 2019. Id. This level of idle capacity would allow Mexico to capture [] percent of U.S. demand. Id. at IV-38, C-3. Deacero's numerous circumvention attempts, accompanied by sharp upticks in U.S. exports, also demonstrate its ongoing interest in capturing more U.S. sales. See section II.B.; Exh. 1, Qs.11-14.

Mexico increased in 2019 and continued to increase further in 2020. See section II.A.; Exh. 1, Qs.6, 8. The section 232 actions, whatever the form, are not substitutes for the certainty and demonstrated discipline of the orders on subject imports.

B. Deacero's Assertion That the U.S. Industry Is Not Likely to Experience Adverse Price Effects if the Orders are Revoked Lacks Record Support

In its prehearing brief, Deacero asserts that subject imports from Mexico did not have adverse price effects on domestic producer prices during the period of review. See Deacero Prehrg. Brf. at 24. Unlike an original investigation, however, an historical adverse price impact by imports subject to an order is not required or even particularly expected in the context of a sunset review. By law, the Commission must consider the likely future price impact if the orders are revoked. 19 U.S.C. § 1675a(a)(3).

Imports of CASWR from Mexico have occurred under the restraining effects of the existing order, which has acted to significantly limit the volumes and price aggression of such imports. Pre-order, imports from Mexico undersold domestic producer prices in 37 of 46, or 80.4 percent, of all possible comparisons. ITC Prehrg. Rep. at V-17, note. Even with the order in place, imports from Mexico have been sold at low prices, with pricing comparisons showing underselling of U.S. producers by Mexico in seven of ten possible quarterly price comparisons. Id. at V-17. Average unit values of imports from Mexico have also been [

percent. Id. at C-3-C-4.

Further, a majority of purchasers responded that imports from Mexico were priced lower than those from the United States. Id. at V-16. [

] If the order is revoked, imports from Mexico will be available in larger volumes and across CASWR product types, thereby greatly accentuating the injurious impact on the prices realized by the domestic industry – prices that have already been declining in the most recent year.¹¹

At the hearing, Deacero was unable to respond to Commissioner inquiries concerning the significance of its consistent underselling since the original investigation. Tr. at 146-47. Instead, Deacero simply asserted that it would not ship CASWR to the U.S. market in large volumes in the event of revocation. Id. Deacero’s response ignores well-established Commission precedent that even small volumes of unfair imports can have significant injurious price effects in price sensitive markets.¹² Deacero also ignores its high level of idle capacity relative to U.S. demand and the many record facts showing it is able to, and interested in, exporting CASWR to the U.S. market, exports that will significantly increase from that idle capacity if the order is revoked. Under these facts, Deacero cannot contend that the adverse price effects that imports from Mexico and other subject countries had on the U.S. industry pre-order are not likely to recur.

¹¹ Domestic producer prices on the Commission’s four pricing products fell by between 23.3 and 33.1 percent from the first until the fourth quarter of 2019. ITC Prehrg. Rep. at V-7-V-10; Dom. Ind. Prehrg. Brf. at 34. While Deacero has questioned the [

] See Deacero Prehrg. Brf. at Exh. 23b. If the orders are revoked, these price declines are likely to accelerate, given the high likelihood of underselling by the subject imports. Price depression is even more likely, given the ongoing depressing effects of the COVID-19 pandemic on demand for CASWR in the U.S. market. Dillon Testimony at 3. Moreover, the percentage of underselling by Mexico (70 percent) over the POR [] and is expected to continue and increase in the absence of the orders.

¹² See Certain Circular Welded Pipe and Tube from Brazil, et al., USITC Pub. 4333 (Third Review) (2012) at 17; see also H.R. Rep. No. 98-725, at 37 (1984).

C. Significant Volumes of Low-Priced Imports Will Injure the Domestic CASWR Industry That Remains in a Vulnerable Condition

The U.S. industry remains in a vulnerable condition as it works to recover from the damage done by consecutive waves of unfairly-traded imports over the last decade. Deacero claims the domestic industry is healthy. Deacero Prehrg. Brf. at 17 (arguing that the domestic industry’s “overall condition . . . maintained levels that remained [] 2017 levels”). These “levels,” however, do not include capacity utilization, which dropped significantly from 82.3 percent in 2017 to 70.5 percent in 2019 (ITC Prehrg. Rep. at C-4) or net sales quantity, which also declined over the POR (*id.* at C-5). While the domestic industry’s market share may have increased somewhat over the POR, U.S. consumption has fallen to its lowest level since the original investigations and decreased by [] percent between 2017 and 2019. *Id.* at I-11, C-3. Thus, U.S. producers are getting a slightly larger piece of an increasingly smaller pie.

Any strides the domestic industry has made over the POR represent only a modest improvement from the grave situation the industry faced from a years-long onslaught of unfairly traded imports. The experience of the domestic industry in the current review period has been difficult. [] of the U.S. producers reported prolonged production shutdowns or curtailments. *See id.* at III-6; *see also* Exh. 7 (Brown Decl.). Mr. Dillon of Liberty Steel explained that declines in demand for wire rod in 2019, coupled with more intense price competition from imported wire rod, caused Liberty to suffer significant declines in wire rod shipments, declines in prices, and operating losses on its wire rod operations last year. Dillon Testimony at 2. Similarly, Mr. Goettl of Optimus Steel LLC testified that its mill still is “in the process of recovering from the injurious effects of wire rod from the 10 countries just a few years ago . . . It takes time to rebuild and turn the tide toward growth.” Goettl Testimony at 4.

The domestic industry's currently weak performance shows a nascent recovery that remains dependent on the existence of the orders against unfairly-traded wire rod.

Given that the industry remains in a vulnerable condition, removing the subject orders would lead very quickly to continued or recurrent injury to the domestic industry. While the Commission can find likely material injury even if the domestic industry is not in a vulnerable condition, as it did in the prior review (USITC Pub. 4472 (Second Review) (2014) at 46-47), U.S. producers today, unfortunately, are in an even weaker position than they were during the prior review. Their predicament is magnified by declining domestic demand for CASWR due in large part to the global COVID-19 pandemic. See ITC Prehrg. Report at II-15; Goettl Testimony at 3; Dillon Testimony at 2 (“in 2020, market conditions have quickly gone from bad to abysmal”). Without the orders, subject CASWR producers will flood the United States once again, jeopardizing U.S. producers who already are struggling with recovery in a down market. Accordingly, removal of the orders would cause the domestic industry continued or recurrent injury.

Respectfully submitted,



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June 25, 2020

CERTIFICATION

In accordance with section 201.6(b)(3)(iii) of the Commission's regulations, 19 C.F.R. § 201.6(b)(3)(iii), I, Kathleen W. Cannon, hereby certify on June 25, 2020, that information substantially identical to that for which business proprietary treatment has been requested in this document is not available to the general public.

In accordance with section 207.3(a) of the Commission's regulations, 19 C.F.R. § 207.3(a), I, Kathleen W. Cannon, hereby certify on June 25, 2020, that the information contained in this document is accurate and complete to the best of my knowledge.

This certification is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.



Kathleen W. Cannon

INDEX TO EXHIBITS

Exhibit No.	Description of Exhibit	Public/BPI/APO
1	Responses to ITC Commissioner Questions	BPI/APO
2	Declaration of Edward P. Goettl	BPI
3	Declaration of Timothy Dillon	BPI
4	Section 232 Exclusion Request Outcomes for Carbon and Certain Alloy Steel Wire Rod	Public
5	Declaration of Christopher Cassise	Public
6	Wire Rod Imports from Mexico, 2019 & Jan.-Apr. 2020	Public
7	Declaration of Roxanne D. Brown	Public
8	Section 232 Exclusion Requests for Carbon and Certain Alloy Steel Wire Rod by Requesting Organization	Public
9	Objection to April 6, 2018 Request for Exclusion by Bekaert Corporation from Remedies Resulting from the Section 232 National Security Investigation of Imports of Steel - Grade 1078 and Above Wire Rod for Tire Cord Produced in Basic Oxygen Furnaces Under HTS 7213.91.3011	Public
10	World Health Organization COVID-19 Daily Confirmed Cases Data	Public
11	NPR News Article – 1st Known U.S. COVID-19 Death Was Weeks Earlier Than Previously Thought	Public
12	UN News Article – COVID-19 to cause biggest economic contraction ever in Latin America & Caribbean	Public
13	Alacero June 2020 Press Release	Public
14	World Steel Association, World Steel in Figures 2019	Public
15	Trading Economics Article – Mexico Car Production	Public
16	Focus Economics Article – Mexico Economic Outlook	Public

PUBLIC VERSION

17	[]	BPI
18	2011 and 2012 Commerce Department 4.75 mm Circumvention Decisions	Public
19	2018 and 2019 Commerce Department 4.4 mm Circumvention Decisions	Public
20	Declaration of Michael Skowronek	BPI

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ANSWERS TO COMMISSIONER QUESTIONS

SUPPLY

1. ***Commissioner Kearns: Respondents raised the 232 exclusions, suggesting that there are supply constraints. Can you all comment briefly on that and also in the post-hearing brief? (Tr. at 76)***

Commissioner Stayin: I noted that one of your positions is that the fact that there were so many exclusion orders suggested that there are a lot of purchasers who couldn't get the product directly from U.S. producers, and that's one of the arguments behind the exclusion orders and all the requests (Tr. at 161-162)

The definitive evidence of whether the domestic industry is able to supply the domestic market for CASWR is not found in the section 232 exclusion requests, but in the comprehensive database collected by the Commission, which surveyed domestic producers, importers and purchasers and found no evidence of a systemic shortage of CASWR. See Dom. Ind. Prehrg. Br. at 11-15. Note that neither Deacero nor Mid Continent Wire have filed any exclusion requests for wire rod thus far (Transcript of ITC Hearing conducted June 16, 2020 ("Tr.") at 110), and Mid Continent's Mr. Pratt indicated that his company was able to purchase domestic wire rod during the period. Tr. at 110, 165. Thus, Mid Continent has faced no shortage of rod itself. By Deacero's own logic, therefore, its own lack of reliance on section 232 exclusion requests for wire rod and Mid Continent's purchases of domestic CASWR would suggest there was no endemic shortage of domestic wire rod.

The history of the section 232 exclusion process provides no meaningful or reliable information regarding actual supply constraints or real demand in the U.S. CASWR market. The section 232 exclusion process does not comprehensively survey the industry regarding supply and demand as the Commission does. That process instead relies only on whatever information is provided in the exclusion request form filed by the requestor and any responses filed by those domestic producers who are actually aware of the request and in a position to respond. In 2018,

there were a total of 44,453 section 232 steel exclusion requests filed, accounting for 67,727,837 metric tons of steel product. In 2019, there were 65,887 such exclusion requests accounting for 29,534,522 metric tons of steel products. See Department of Commerce, Bureau of Industry and Security (“BIS”) Data.¹ As Mr. Goettl describes in his declaration, domestic CASWR producers had to devote substantial resources to monitor exclusion requests on a daily basis, to scour each one of those to determine whether a product they made was being requested for exclusion, to evaluate the substance of the exclusion and to determine whether and how to respond. See Exh. 2, para. 4.

In fact, importers of wire rod filed 2,025 separate exclusion requests in 2018 covering 2,628,086 tons of CASWR, and 1,996 separate requests in 2019 covering 2,291,997 tons of CASWR, or enough to cover nearly [] See Exh. 8;² ITC Prehearing Report dated June 8, 2020 (“ITC Prehrg. Rep.”) at C-3. These section 232 exclusion requests indicate that importers were seeking to import outside of the section 232 tariffs more than [

] as shown in the table below:

¹ These data come from the two websites that have been used by BIS to process exclusion requests: <https://www.regulations.gov/docket?D=BIS-2018-0006> (old portal) and <https://232app.azurewebsites.net/steelalum> (new portal).

² This calculation is based on exclusions requested for the HTSUS tariff classifications covered by the scope of these orders.

Comparison of Sec. 232 Wire Rod Exclusion Requests to Consumption and Imports (tons)		
Year	2018	2019
Sec. 232 Exclusion Tonnage Requested	2,897,559	2,527,009
Consumption	[]	[]
Exclusion Request % of Consumption	[]	[]
Actual CASWR Import Market Share	[]	[]
CASWR Imports	[]	[]
Exclusion Request % of Imports	[]	[]
Source: Exh. 8; ITC Prehrg. Rep. at C-3.		

The disconnect between the exclusion request volumes and the actual market size and import market share demonstrate that the exclusion requests bear no relationship to actual supply and demand for CASWR during the period of review.

Assuming a domestic producer chose to devote resources to monitoring and responding to this huge and expanding database of exclusion requests, each response to an exclusion request required detailed analysis and response to demonstrate the ability or desire of the domestic producers to supply the precise product requested (diameter, grade, chemistry, test requirements etc.). 15 C.F.R. § 705, Supp. 1(c)(2), published at Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum, Interim Final Rule, 83 Fed. Reg. 46,026 (BIS Sept. 11, 2018) (requiring exclusion requests and objections be made on a product-specific basis by individual dimension combinations, grade, chemistry, finish, testing).³ The domestic producer must also demonstrate that it is able to supply the product immediately, which under the regulation means within eight weeks. Id. § 705, Supp. 1(c)(6)(i). This meant that

³ That provision provides:

Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (e.g., galvanized, coated), and distinct critical dimensions (e.g., 0.25-inch rebar, 0.5-inch rebar, 0.5-inch sheet, or 0.75 sheet) covered by a common HTSUS subheading.

15 C.F.R. § 705, Supp. 1(c)(2).

importers or purchasers often filed dozens or even hundreds of exclusion requests to get access to the full range of products they sought. See Exh. 8. The domestic industry would similarly have had to file an individual objection to each such exclusion request, a task that required devoting significant resources, quickly overwhelming domestic producers' staffs. Exh. 2, para. 4 (Goettl Decl.). Domestic producers also only have 30 days to respond. 15 C.F.R. § 705, Supp. 1(d)(3).

As the above table shows, the exclusion request tonnage represented [] total CASWR consumption in 2018 and 2019 respectively – unrealistic quantities that do not reflect actual demand during the period or any actual shortage of domestic supply. The requested quantities [] the actual imports and import market share for CASWR in those years. This is because importers and purchasers wildly overstated their need for wire rod in response to the section 232 duties, just as purchasers did in over-ordering from domestic producers in mid-2018. Tr. at 55-56; [] It is important to note that section 232 exclusions are granted not on a sale-by-sale basis, but in the aggregate for a period of one year regardless of what happens to supply and demand in that period. 15 C.F.R. § 705, Supp. 1(h)(2)(iv). The importers could not accurately anticipate the demand or supply for every size, grade, and chemistry that their customers might order, so they sought excessive exclusion quantities for a wide variety of individual products. Taken together, those requests far exceeded their actual anticipated need for CASWR; they were filed without regard to actual demand to ensure they could avoid the 25 percent tariffs no matter what the market conditions. Thus, the exclusion quantities requested and granted bear little or no relationship to the actual supply and demand conditions in the marketplace in 2018 and 2019.

Deacero criticizes the domestic industry for not objecting to enough exclusion requests, arguing this inaction constituted a tacit concession by the domestic industry that it could not supply the market. Deacero Prehrg. Brf. at 14-15; Tr. 118-19 (Ms. Lutz). In fact, the domestic industry has filed over 1,700 objections on CASWR exclusion requests, based on the tariff numbers covered by the scope of these orders. See Exh. 4. Initially, the industry objected as an industry to most of the major exclusions for CASWR exemptions early in the process (Tr. at 78 (Mr. Goettl)), citing to the low capacity utilization of the industry and the recent findings by the Commission in the ten-country case that the domestic industry was being injured by the subject imports. See Exh. 9. But as of September 11, 2018, Commerce changed the rules for objections and made clear that any such objections had to be individually filed by each objecting company, making it much more burdensome for the domestic industry to object to such exclusion requests. See 83 Fed. Reg. 46,026, amending 15 C.F.R. § 705, Supp. 1(d)(1). Moreover, Commerce also added steps to the exclusion process to allow for rebuttals and surrebuttals that further increased the burden on domestic producers in trying to respond to the exclusion requests. See 15 C.F.R. §§ 705, Supp. 1(f), (g), published at 83 Fed. Reg. 46,058-59. In 2019, Commerce again changed the entire platform on which exclusions are evaluated and went to a web-based exclusion and objection system that made it even more difficult for domestic producers to enter their objection information into the system. Implementation of New Commerce Section 232 Exclusion Portal, 84 Fed. Reg. 26,751 (BIS June 10, 2019). Individual domestic producers have continued to file objections throughout the process, though not against all exclusion requests, as they have had to pick their battles to conserve resources and to avoid being overwhelmed by the process. Exh. 2, para. 4 (Goettl Decl.); Exh. 4.

In mid-2018, inquiries for orders to domestic CASWR producers were coming in for volumes that far exceeded what the purchasers actually needed. Tr. at 55-57 (Goettl, Dillon, Zernikow); [] Those purchasers were reacting to an unprecedented situation of price increases and anticipated tight supply due to the 10-country trade orders and the section 232 tariffs being implemented at approximately the same time. Tr. at 55-56; [] Those customers essentially over-ordered as they sought to create inventories of large volumes of CASWR at lower prices in anticipation of expected price increases and tight supply. Thus, domestic industry lead times were lengthening at that point, as domestic producers worked with customers to supply them first with the volumes they actually needed, rather than what they had over-ordered in response to the sudden change in market circumstances due to the new AD/CVD orders and the announced 232 tariffs in early 2018. Id. Notably, even during this period of tight supply, the domestic industry could supply the market [] Exh. 2, para. 3 (Goettl Decl.); Exh. 5, para. 10 (Cassise Decl.). While the domestic industry did take steps to ensure that it could reasonably supply customers, no purchaser has reported to the Commission the inability to meet its supply requirements or having to close production of downstream production as a result. As purchasers reported, the tightness in supply actually lasted only a few months. See, e.g., [] By late 2018, customer orders [] Exh. 2, para. 3 (Goettl Decl.). In fact, apparent consumption in 2018 was only [] percent higher than in 2017, and it fell by [] percent in 2019, demonstrating the short term nature of the demand bubble. ITC Prehrg. Rep. at C-3.

The longer lead times in 2018 as domestic producers managed the temporary surge in demand also had an impact on the domestic industry's ability to object effectively to exclusion

requests. As explained above, the Commerce Department's regulations require that an objector must be able to ship the requested quantity of steel to the purchaser within eight weeks. See 15 C.F.R. § 705, Supp. 1(c)(6)(i). This unrealistic requirement made it very difficult, and often impossible, for the domestic industry effectively to object to many exclusion requests during periods of longer lead times. Thus, importers/purchasers could request exclusions for large quantities of CASWR in excess of their average annual usage of such CASWR, and a domestic producer did not have a valid ground for objection if it could not ship the whole amount requested within eight weeks from the time the purchase order was placed. Such a system has no relationship to actual supply and demand in the market or to how steel markets actually work.

The failure to object to an exclusion request is not an admission of anything regarding the actual supply and demand in the marketplace. There are many reasons why a company may choose not to object to exclusion requests, including not being aware the exclusion request was made; inadequate resources to track, evaluate and respond to the exclusion; and maintaining existing relationships with purchasers seeking exclusions. Tr. at 77-78 (Mr. Price); Tr. at 78-79 (Mr. Goettl); Exh. 2, para. 4 (Goettl Decl.)

Nor can Commerce's written section 232 determinations be said to provide any reliable information as to the actual availability of domestic supply for CASWR. The decision letters simply state that based on the documents submitted, there is or is not an adequate supply of the specific product requested that can be delivered within eight weeks. Those decisions provide no reasoning, analysis or insight into the exclusion decision. The decision is based solely on the incomplete record made up of the request for exclusion and any objections, rebuttals or surrebuttals filed. These documents do not provide a comprehensive analysis of actual supply conditions in the market.

The record of this case, by contrast, does provide exactly that sort of comprehensive market information in a way that speculation about the section 232 objections cannot. That record evidence gathered from domestic producers, foreign producers, importers and purchasers demonstrates that there is no systemic shortage of domestic CASWR. Dom. Ind. Prehrg. Brf. at 11-15. While a majority of purchasers reported some short-term tightness in supply in 2018 coinciding with the imposition of AD/CVD duties on 10 countries⁴ and the implementation of the section 232 tariffs on wire rod in March of that year, it was short-lived. *Id.*⁵ Anytime there is a sudden and significant change in the market's expectations regarding supply, demand and price, it will take both the purchasers and producers a period of time to adjust, which is what happened in 2018. The imposition of dumping duties and section 232 tariffs led to more of a perceived tightness, rather than an actual shortage, of wire rod in 2018, as is apparent from the domestic industry's 78.8 percent capacity utilization rate in 2018 and its subsequent decline in capacity utilization to only about 70 percent in 2019. *Id.* at C-4. The industry reacted by significantly increasing capacity, capacity utilization and shipments in 2018. *Id.* The domestic industry reopened and expanded capacity in the United States, increasing overall allocated capacity to produce CASWR by about 750,000 tons since 2017, so that total U.S. capacity that can be devoted to the production of CASWR should the need arise now stands at about 5.9 million tons.

⁴ See Carbon and Certain Alloy Steel Wire Rod from China, USITC Pub. 4509 (Final) (Jan. 2015); CASWR from Belarus et al., USITC Pub. 4752; Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine, USITC Pub. 4766 (Final) (Mar. 2018); Carbon and Certain Alloy Steel Wire Rod from Italy, Korea, Spain, Turkey, and the United Kingdom, USITC Pub. 4782 (Final) (May 2018) (collectively, "2018 CASWR Injury Determinations").

⁵ At the same time, Liberty's Georgetown South Carolina mill was ramping up production to meet increased demand. Unfortunately, the mill was again forced to shut down in 2020 due to a deterioration of market conditions. See Exh. 3, para. 5 (Dillon Decl.).

ITC Prehrg. Rep. at III-12, C-4. Thus, the domestic industry has more than enough domestic capacity to serve the entire U.S. CASWR market.

Volume of Domestic Supply of CASWR to the U.S. Market (short tons)			
	2017	2018	2019
U.S. CASWR Consumption	[]	[]	[]
U.S. CASWR Allocated Capacity	4,660,259	5,422,591	5,433,837
U.S. Unallocated CASWR Capacity	301,009	282,979	450,210
Total Available Domestic Capacity	4,961,268	5,705,570	5,884,047
Dom. Ind. Capacity Utilization	82.3%	78.8%	70.5%
Source: ITC Prehrg. Rep. at III-12, C-3, C-4			

The Commission should rely on the comprehensive record of supply and demand for CASWR that it has gathered rather than on Deacero’s speculation as to the meaning of exclusion requests in the section 232 process.

DEMAND

2. ***Commissioner Kearns: And I’m wondering if you all can send more about how we should look at COVID-19. You know, as I think your brief points out, it seems there are kind of two dimensions to it, both the U.S. market but then also relative differences between the U.S. market and other markets. And if other markets right now are more dependent -- I mean if other producers in other countries, subject import countries, are more dependent on other markets, then we should be analyzing that as well. So, if you have any thoughts on that post-hearing or now, I’d appreciate it. (Tr. at 43)***

As discussed in the testimony presented at the Commission’s hearing, the pandemic has had a significant negative effect on the U.S. economy generally and demand for CASWR specifically, but reports indicate that it is now hitting Latin American countries to an even greater degree, with instances of coronavirus increasing and significant economic retraction occurring and projected to continue in 2020.

With respect to the United States, as noted by Mr. Dillon, the U.S. market for CASWR has seen an estimated contraction of at least 30 percent for the year to date. See Exh. 3, para. 6 (Dillon Decl.). The contraction has led to layoffs and the idling of at least one CASWR

production facility, Liberty Steel’s Georgetown, South Carolina mill. Id., para. 5. While the long-term economic impact of the coronavirus is currently difficult to gauge, it is highly likely that U.S. demand for CASWR for 2020 as a whole will be well below that for 2019. Id., para. 6.

The United States, of course, is not the only country suffering from the pandemic. Recent information indicates that Latin America has become the global epicenter for COVID-19. Information from the World Health Organization (“WHO”) shows that the coronavirus came to Latin America later than the United States and that the severity of the pandemic is increasing at a much higher rate in Latin America than in the United States or the rest of the world.⁶ See Exh. 10.

Although the United States accounted for 86.1 percent of all new cases of COVID-19 in the Americas on April 15, 2020 and Latin America accounted for 9.1 percent (Canada held the remaining 4.8 percent), by June 22, 2020, Latin America accounted for 63.9 percent of all new cases in the Americas and the United States represented just 35.7 percent (Canada accounted for 0.4 percent). Id. Further, while Latin America accounted for just 3.5 percent of new infections in the world on April 15, by June 22, that figure had soared to 38.0 percent. Id. These jumps reflected the massive increases in cases of COVID-19 in Latin America over this period, with new cases per day growing from 2,598 on April 15 to 57,926 on June 22, a more than 22-fold increase. Id. Of further concern, the number of new infections in Latin America in the most recent week have been the highest by far since the advent of the pandemic. See WHO data at <https://covid19.who.int/>.

⁶ The first known death from coronavirus in the United States occurred on February 6, 2020, while the first death in Mexico occurred on March 20, 2020 and the first in Brazil was on March 18, 2020. See “1st Known U.S. COVID-19 Death Was Weeks Earlier Than Previously Thought,” npr.org (Exh. 11); WHO data available at <https://covid19.who.int/>.

Based on these data, it appears that the worst is yet to come for the COVID-19 outbreak in Latin America, and economic forecasts for 2020 are dire. The United Nations office for Latin America and the Caribbean forecasts an economic contraction for the region of 5.3 percent for the year of 2020, a decline worse than that suffered at the time of the great depression of the 1930s. See “Covid-19 to cause biggest economic contraction ever in Latin America & Caribbean,” UN News (Apr. 21, 2020) (Exh. 12).

The contraction of production in the steel industry in Latin America is expected to be even more dramatic. The June press release from Alacero, the Latin American Steel Association, stated that total production of steel in the region fell by 34 percent in April 2020 in relation to the previous year, and that total production for 2020 year-to-date was down 14 percent. See “Latin American Steel industry reduces production in response to lower demand,” Alacero Press Release (June 2020) (Exh. 13). For the year as whole, Alacero forecasts that total consumption of finished steel products in the region will decline by 16.5 percent. Id. Alacero further notes its concern that imports from China, which began its recovery from the coronavirus relatively early, will target the Latin American market and add to the problems of the region’s steel industry by displacing locally-produced shipments with Chinese imports. Id.

These data and projections are at odds with the claims made by Deacero’s representatives at the Commission’s hearing. Specifically, they contradict Mr. Guerra’s claim that “we expect stable wire rod sales and demand for 2020 despite the pandemic” and Ms. Lutz’s assertion that “even taking year to date shipments into account the company expects its internal consumption and home market shipments to increase modestly but steadily over 2019 levels.” Tr. at 102, 121. In fact, Deacero will not be the sole steel producer to buck the overwhelming tide of economic contraction in Mexico and the Latin American export markets in which it sells wire rod. The

COVID-19 epidemic will cause Deacero and other members of the Mexican CASWR industry (as well as producers in other subject countries) to suffer substantial excess capacity, which will readily be redirected to the U.S. market in the event of revocation.

3. ***Commissioner Karpel: And do we have information on the demand in these third country markets? I take it there are smaller countries and smaller economies, but if there's more specific information that's in the record or that you could point to that sort of would bolster that assertion that there's a limit to how much those third country markets are going to take in (Tr. at 86)***

Table IV-18 of the prehearing report provides information on exports of CASWR from Mexico. It shows that other than the United States, third country exports from Mexico have gone primarily to Canada, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Peru. While specific consumption data for CASWR in these countries on an individual basis is not available, it is clear that the United States is a substantially larger economy than any of these countries.⁷ Available information on steel consumption also shows that the United States is a massively larger market than any of Mexico's third country export markets for CASWR.

The data of the World Steel Association ("WSA") show that apparent use of finished steel products in the United States in 2018 was 100.2 million metric tons ("MT"). See World Steel Association World Steel in Figures 2019, at 16 (Exh. 14). By comparison, the largest of Mexico's third country export markets for CASWR separately shown in the WSA data, Canada, had a reported use of finished steel products of just 17.3 million MT. This means that Canada's steel consumption stands as just 17.3 percent of that of the United States. Further, the entirety of finished steel demand in Central and South America (other than Brazil, Argentina, and

⁷ According to the data of the World Bank, the 2018 GDP of the United States is more than eight times larger than the eight third-country export markets listed in Table IV-18 put together. See <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

Venezuela) totaled just 17.3 million MT, far smaller than U.S. demand.⁸ Id. In combination, the markets of Canada and “Other” Central and South American countries represented just 34.6 million MT of finished steel consumption, or only around one-third of the demand in the United States.

Further, there is no indication that rates of growth in steel consumption in these countries mean that they will grow larger than U.S. market consumption any time soon. In fact, the WSA data show that finished steel consumption in “Other” Central and South American countries increased at a lower rate (from 16.8 million MT in 2016 to 17.3 million MT in 2018, or 3.0 percent) than that in the United States (which expanded from 91.9 million MT in 2016 to 100.2 million MT in 2018, an increase of 9.0 percent). See WSA Data (Exh. 14).

In short, given the predominant position of the U.S. market in relation to consumption of finished steel products, it is clear that Mexican producers of CASWR will far prefer to export to the United States over any of their current third-country export markets in the event of revocation.

⁸ This geographic group covers all of the countries in the list of Mexican third-country export markets in Table IV-18 of the prehearing staff report and numerous others. There are a total of 13 countries in South America, three of which are Brazil, Argentina, and Venezuela; there are seven countries in Central America. Thus, the Mexican export markets (other than Canada) shown in Table IV-18 represent seven of the 17 countries included under the “Other” Central and South American countries shown in the WSA table.

4. ***Chairman Johanson: On pages 15 to 16 of the Nucor brief they argue that Mexican home demand is quite low right now and that means that there is an incentive to export to the U.S. market. In your brief you have a chart in Exhibit 12 that shows restart dates for many U.S. auto plants. Would you be able to find something similar for Mexican auto plants? . . . Any other material you can provide will be useful, specifically for the auto sector, but other parts of the economy as well. I would welcome any information about that. Thank you. (Tr. at 144, 147)***

Publicly-available information directly contradicts Ms. Lutz’s claim that “all indications show, however, that the automotive industry started reopening both U.S. and Mexican plants in May.” Tr. at 121. According to a recent article, Mexican auto output showed a decline of 93.7 percent in May 2020 relative to May of 2019. “Mexico Car Production,” Trading Economics (Exh. 15). Production for the month of May fell by a minimum of 82.8 percent among all automobile manufacturers in Mexico, including Audi, FCA Mexico, Ford, General Motors, Honda, Kia, Mazda, Nissan, Toyota, and Volkswagen. Id.

These reductions in output reflect the contraction of the Mexican economy as a whole. Mexico’s economy shrank for the fourth consecutive quarter in the first quarter of 2020, and is projected to continue to contract more dramatically over the remaining quarters of 2020. “Mexico Economic Outlook,” FocusEconomics (May 19, 2020) (Exh. 16). According to this economic forecast, the Mexican economy “is set to suffer a deep recession this year. Social distancing measures are set to hammer household spending; investment will be derailed amid elevated uncertainty; and exports will crumble as the pandemic ravages global demand.” Id. For the year as a whole, a contraction of the Mexican economy of 7.1 percent is forecast. Id.

The Mexican steel industry is likewise being severely affected by the COVID-19 pandemic. A recent article noted that May and June 2020 were expected to be very difficult months for the Mexican industry and that output had already dropped by [

] Id.

It is also worth noting that the COVID-19 pandemic is still growing rapidly in Mexico. Mexico reached a peak in the number of new daily confirmed cases of 5,662 on June 20, 2020 and nearly reached that level again on June 23, 2020 (5,343 new cases). See WHO data at <https://covid19.who.int/region/amro/country/mx>. These figures compare to new cases in Mexico of just 1,047 per day as recently as May 1. Id.

These facts contradict the assertions made by Deacero's economic witness, Ms. Lutz, that "even taking year to date shipments into account the company expects its internal consumption and home market shipments to increase modestly but steadily over 2019 levels." Tr. at 121. In truth, Deacero and the Mexican industry as a whole are highly likely to suffer major declines in demand for CASWR in the Mexican market. In the event of revocation, that excess capacity will be redirected to the U.S. market and cause a recurrence of material injury to the domestic industry.

GLOBAL PRICING

5. ***Commissioner Karpel: So I was wondering if you could comment on, in your pre-hearing brief at page 27 to 28, you argue that MEPS pricing data shows that U.S. prices are higher than prices in third country markets, in particular, markets in Asia and Europe, and that this creates an incentive to export to the United States if the orders are revoked, and I'm wondering, in particular, for subject imports from Moldova and Indonesia, whether you know the additional cost of shipping to the United States from those markets as compared to those markets and, if so, how those additional shipping costs might factor into your argument here. (Tr. at 63)***

The additional costs of shipping from Moldova and Indonesia are not significant enough to detract from the incentive offered by higher U.S. prices relative to those in third country markets. Available data show that the freight cost for Moldavian producers to the United States was around \$48.00 per ton and freight for Indonesian producers was around \$96 per ton.⁹ As shown in the table below, the shipping costs from both Indonesia and Moldova are well below the delta between U.S. prices and prices in other countries in Asia and Europe.

⁹ Freight costs were calculated on the basis of the difference between the CIF value and the Customs value on a per ton basis for imports of HTS number 7210.49 (a reasonable steel product proxy for which reliable freight data were available for these countries; Ukraine was used as a proxy for Moldova).

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For example, U.S. prices were higher than prices in third country markets by primarily between [] per ton in 2019 and 2020, while the shipping costs were lower, at \$48 to \$96 per ton, still providing a pricing incentive to export. See ITC Prehrg. Rep. at IV-59. These differentials, even accounting for shipping costs, are sufficiently large to make the U.S. a highly attractive market for subject producers' excess capacity and to provide an economic justification for subject producers to shift sales from third-country markets to the U.S. market.

Not only is there the incentive of higher U.S. prices (even when taking into account freight costs), the United States also represents an open and substantially larger market (at over [] tons) than other third country markets, leading to a strong likelihood of increased imports of CASWR in the U.S. market if revocation occurs. See ITC Prehrg. Rep. at C-3; see also supra Q.3.

6. ***Commissioner Kearns: Again, I think what we heard this morning and in the briefs from Petitioners, even if we were to assume that you can't shift current sales, that there's quite a bit of excess capacity in Mexico that could be used to serve the U.S. market. So if you could speak to that as well, Mr. Villanueva. (Tr. at 127)***

If Mexican unused capacity in 2019 alone shifted to the United States, imports from Mexico would be significant and would capture [] percent of the U.S. market. ITC Prehrg. Rep. at IV-38, C-3. Mexican industry capacity increased from [

] tons in 2019. Id. at IV-38-IV-39. Further, the Mexican industry's CASWR capacity was also increasingly idle over the POR. While Deacero has focused on capacity utilization rates, it has ignored the sizeable level of CASWR capacity in Mexico and the amount of that capacity now sitting idle. Idle CASWR capacity has risen from [

] tons in 2019. Id. That volume of unused capacity, as noted above, would allow Mexico to capture a [] of the U.S. market. Id. at IV-38, C-3. Moreover, even the capacity utilization rate for subject producers in Mexico has declined over the POR from [] in 2019. Id. During the same period, Mexican home market shipments fell from [] providing further incentive for Mexico to export its idle capacity. Id. at IV-38.

Indeed, Mexico is already increasing its exports to the U.S. market. Exports from Mexico more than [] tons in 2019. Id. In the first four months of 2020, Mexico has shown an increased focus on the U.S. market even as compared to 2019. CASWR imports from Mexico in January-April 2020 totaled 12,158 tons as compared to 4,712 tons in the same period of 2019, an increase of 158 percent. Exh. 6.

Mr. Villanueva testified that Deacero would not increase exports to the United States for reasons including that "wire rod doesn't travel well on wheels," meaning by truck or rail. Tr. at 128. It is absurd for Deacero to state that a producer in a neighboring country of Mexico to the

United States will not export to the United States, but subject producers in Europe and Asia will export to the United States. Mexican foreign producers delivered large and increasing volumes of CASWR during the original investigation “on wheels,” and that has not changed. As noted above, Mexico has increased exports to the U.S. market in recent years and even in recent months. See Exh. 6.

In addition, Mr. Villanueva provided a misleading freight comparison of Mexican CASWR delivered to Missouri for \$70 per ton, as compared to a shipment brought out of China, Turkey or even Europe for \$15 per ton. See Tr. at 128. Mr. Villanueva’s quote of \$15 per ton refers to the ocean freight shipment costs alone. That cost estimate (even if accurate) does not take into account any U.S. inland freight for shipments from other countries once they arrive at the U.S. port to ship CASWR to the U.S. purchaser. Moreover, Mr. Villanueva overstates inland freight costs for CASWR in the U.S. market, which are [] far less than \$70 per ton. See Exh. 3, para. 10 (Dillon Decl.). Both Mexican producers and other subject foreign producers must pay U.S. inland freight to the customer, so Mexican producers are not at a disadvantage vis-à-vis other countries, and they certainly are not less likely to export to the United States than the other subject countries.¹⁰ Tr. at 183 (Mr. Rosenthal). If anything, based on their behavior under order to date, Mexican producers are the subject producers most likely to export to the United States if the order is revoked.

¹⁰ At the hearing, Deacero claimed that it “simply cannot afford to compete in certain parts of the U.S. market, including the Northeast, the Northwest, and part of the Midwest, because the freight costs are prohibitive to the expansion.” Tr. at 107 (Mr. Villanueva). That statement is also rebutted by the record, which shows that Deacero [

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7. ***Commissioner Karpel: I was asking earlier about Table {IV-18} and I just wanted to circle back to that, and I guess setting aside – I take your point that you said that the lower Mexican export AUVs to the US compared to other export markets might be evidence of underselling, but I wanted to return to my question that if it’s a fact that Mexico has an opportunity to export to market with higher export AUVs, why would it direct any increase in production to the U.S. market where it would get a lower price, as opposed to other markets where it might get a higher price? And in that, I mean, if you have any information about the difficulties in them expanding exports to those third country markets, I’d like to hear that. If you have any information about maybe the products they’re shipping to the U.S. are different in some way than the products they’re shipping to other markets, that would be interesting, too, or any other explanation, I, of course, welcome. (Tr. at 84)***

The Mexican export AUVs to the United States reported by GTA in 2019 are not an accurate reflection of the U.S. prices or AUVs obtained by Mexican producers for subject wire rod, as evidenced by other record data.¹¹ In particular, the Commission’s own questionnaire data as submitted by the Mexican producers show that Mexican producers’ export AUV to the United States was [] per ton in 2019, as compared to [] per ton for exports to all other export markets. ITC Prehrg. Rep. at IV-39. Mexican export AUVs to the United States also exceeded export AUVs to other markets in each year of the POR, as shown below:

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¹¹ When comparing reporting Mexican producers’ export AUV to the United States [] in 2019 to Mexico’s export AUVs to other countries as reported by GTA, Mexico’s export AUV to the United States is also higher than [

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ITC Prehrg. Rep. at IV-39, IV-42.

Thus, the data reported directly to the Commission by respondents on subject wire rod show export AUVs to the United States that are nearly [] per ton higher than Mexican producers' export AUVS to all other countries in 2019. Id.

It also appears that the Mexican export AUV to the United States based on GTA data is understated because it includes non-subject product that is priced lower than the subject CASWR. The GTA data covers CASWR on a broader six-digit level of merchandise classified under HTS subheadings 7213.91, 7213.99, 7227.20, and 7227.90.

CUMULATION

8. ***Commissioner Schmidlein: So my first question has to do with the joint Section 232 agreement and the fact that Mexico is no longer under 232 tariffs or quotas, and I know that, Mr. Price, you just addressed that by using rebar as an example, but I wonder if you could respond to the argument that at the very least this means that imports from Mexico are going to compete differently, that this is a different condition of competition since the other countries, other subject countries in this particular review are not under that exemption, don't have that kind of exemption. So shouldn't we look at that as a different condition of competition in terms of analyzing decumulation? (Tr. at 38)***

The surge protection mechanism in place for Mexico in lieu of the section 232 tariff does not mean that imports from Mexico compete under different conditions of competition in the United States. CASWR imports from Mexico, Brazil, Indonesia, Moldova, and Trinidad and Tobago would all compete under the same conditions of competition if the orders were revoked because they all share restrictions under section 232. For Brazil, Indonesia, Moldova, and Trinidad and Tobago, those restrictions are in the form of tariffs or quota limits intended to have the effect of limiting import volumes from those countries.¹² For Mexico, the restriction is in the

¹² See Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 11,625, 11,625 (Presidential Documents Mar. 15, 2018) (“Among those recommendations was a global tariff of 24 percent on imports of steel articles in order to reduce imports to a level that the Secretary (footnote cont'd on next page)

form of a surge protection mechanism, which is intended to have the effect of limiting Mexican import volumes.¹³ Counsel for Deacero admitted this parallel goal at the hearing, stating that the surge protection mechanism in place under the section 232 remedy acts as a “volume restraint” on Mexican imports due to the “threat of the resumption of 232 duties.” Tr. at 141, 157 (Ms. Jeong), 158 (Mr. Altschuler). Moreover, the section 232 action as a whole can be removed at will by this or another presidential administration. Because the surge protection mechanism for Mexican imports arises under section 232, it would vanish just like the tariffs or quota limits on the other subject countries should the political decision be made to end the action.

The difference between the section 232 surge mechanism applicable to Mexico and the quota applicable to Brazil is the lack of specificity on the actual volume limitation and the specific recourse and remedy if a surge occurs. That the surge protection mechanism does not specifically define the “surge” that would trigger the mechanism or establish an enforcement procedure makes it even more likely that Mexican wire rod producers will export significant volumes to the United States in the absence of the antidumping duty order.¹⁴ The lack of a specific restraint undermines the likely effectiveness of the surge protection agreement with

(footnote cont'd from previous page)

assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity . . .”).

¹³ See Adjusting Imports of Steel Into the United States, 84 Fed. Reg. 23,987, 23,987 (Presidential Documents May 23, 2019) (“The United States has successfully concluded discussions with Canada and Mexico on satisfactory alternative means to address the threatened impairment of the national security posed by steel articles imports from Canada and Mexico. . . . These measures are expected to allow imports of steel articles from Canada and Mexico to remain stable at historical levels without meaningful increases . . .”).

¹⁴ See Tr. at 42 (Mr. Dillon) (“And our view is that what we are seeing in the market today is through the first three months of this year wire rod shipments {from Mexico} are actually far more than they were through the first three months of last year. In fact, they’re four times as much as they were through the first three months last year.”).

Mexico as a volume-limiting measure, but there is also some question about the effectiveness of any of the forms of the section 232 measures with respect to CASWR imports.¹⁵ In essence, there is some form of action under section 232 that is intended to have a volume-restricting effect currently in place for all five subject countries under review. There is no indication that Mexico would operate under any different conditions of competition in the U.S. market if the order were revoked.

In terms of common conditions of competition, the section 232 measures applicable to each of the subject countries would not prevent the imports from underselling the domestic product, particularly in a price-sensitive market like the U.S. market for CASWR. See Dom. Ind. Prehrg. Brf. at 18 (citing Certain Welded Large Diameter Line Pipe from Japan, USITC Pub. 4973 (Third Review) (Sept. 2019) at 27 n.135); Hot-Rolled Steel Products from China, et al., USITC Pub. 4942 (Third Review) (Aug. 2019) at 32 & n.163). CASWR imports from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago each predominantly undersold the domestic product in the original investigation and first sunset review, and Mexico continued to undersell the domestic product in a majority of instances during the second and current review periods. See ITC Prehrg. Rep. at V-17 & note; Domestic Industry Presentation (June 15, 2020), slides 8-11. The section 232 surge protection mechanism in place for imports from Mexico in lieu of a tariff is intended to restrict import volumes and would not (and did not during the POR)

¹⁵ See, e.g., Testimony of Edward Goettl (June 15, 2020), at 3 (“The benefit from the 232 tariffs has all but disappeared.”); Exh. 2, para. 5 (Goettl Decl.) (“The section 232 tariffs have not prevented U.S. customers from purchasing imported wire rod even though Optimus has available capacity. In addition to exclusions being granted, it is not unusual for foreign producers to absorb the section 232 tariff to be able to continue supplying the U.S. market below domestic prices.”).

prevent Mexican imports from underselling the domestic industry and causing the continuation or recurrence of injurious price-depressing and suppressing effects.

In sum, a difference in how the section 232 measure operates with respect to Mexico and the other subject countries does not demonstrate that the subject imports would compete under different conditions in the U.S. market if the orders were revoked. On the contrary, the section 232 restrictions on imports from each subject country are designed to achieve the same goal, are in place for the same unknown period time and removable at will, and would not prevent any of the subject imports from underselling the domestic product in a price-sensitive market as they did both before and after imposition of the orders.

9. ***Commissioner Kearns: Deacero argues that Mexico has a higher degree of capacity utilization, more U.S. export orientation compared to other subject countries, and is the only country not subject to duties in other markets and is the only one that has a safeguard in its home market. Can you help us put that in perspective in terms of how we should think about cumulation in this case compared to other cases? (Tr. at 47)***

The factors Deacero cites in an effort to prevent the Commission from cumulating imports from Mexico with the other unfairly-traded imports in this case show neither that imports from Mexico will have no discernible adverse impact nor that they will compete under different conditions of competition from the other imports. To the contrary, the factors cited and other record information provide compelling evidence that imports from Mexico are likely to increase significantly in volume and sell at very low prices if the order is revoked – as is true of other subject imports – presenting strong grounds for cumulation here.

Notably, the factors Deacero relies upon in support of its arguments of no discernible adverse impact and differing competitive conditions – particularly purported high levels of capacity utilization and a low export orientation – are the same factors it relied upon in the prior sunset review in support of decumulation. See Deacero Prehrg. Brf. at 6-9. The Commission

majority rejected these arguments and cumulated imports from Mexico with imports from the other subject countries. Carbon and Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad & Tobago and Ukraine, USITC Pub. 4472 (Second Review) (June 2014) at 26-27 (“Second Sunset Reviews”). Commissioner Johanson dissented and decumulated imports from Mexico in that review, finding that the record indicated different conditions of competition, specifically, higher levels of capacity utilization than other countries and a lower export orientation, and concluded that Mexico was not likely to ship significant volumes if the order was revoked. Id. at 56. While the domestic industry disagrees with Commissioner Johanson’s decision to decumulate in the prior review and concurs in the majority’s analysis, the facts of this review provide an even more compelling record for cumulation.

First, while Deacero urges the Commission to find no likely discernible adverse impact from Mexico based on these factors, it should be recognized that all of the Commissioners found that Mexico was likely to have a discernible adverse impact in the prior review. The factors that Deacero cites to differentiate Mexico – purported high usage of capacity and low exports – were identified only as different conditions of competition by Commissioner Johanson in the prior review, not as a basis for finding no discernible adverse impact. As detailed further in the Nucor and CMC Prehearing Brief at section II.A., the record here is even more compelling in showing a likely discernible adverse impact from Mexico if the orders are revoked.

Second, the capacity utilization and export factors on this record are not the same as the prior review and provide compelling evidence that imports from Mexico will operate under similar conditions of competition as other subject imports. In the prior review, the capacity utilization rate for Mexico averaged 92 percent during the POR and Mexico had, on average, roughly 200,000 tons of idle capacity. Second Sunset Reviews, USITC Pub. 4472 at 56.

Capacity utilization rates in this review are significantly lower. Capacity utilization averaged [] percent over the POR, was just [] percent in 2019, and is even worse in 2020 as the COVID effects have materialized. ITC Prehrg. Rep. at IV-39; Tr. at 13 (Mr. Price). More importantly, the level of idle capacity is [] than in the prior review. Contrary to Deacero's claims, Mexico has expanded its capacity since the last review. ITC Prehrg. Rep. at IV-39. The combination of higher capacity and lower utilization rates left an average of roughly [] tons of idle capacity in Mexico annually over the POR and [] tons of excess capacity in 2019. Id.

To put this level of idle capacity in Mexico perspective, idle capacity in Mexico in 2019 is not only well above the [] tons it exported in 2001, its peak pre-order export volumes, but would also capture [] percent of the U.S. market under the lower U.S. demand level existing in 2019. Id. at I-7, IV-39, C-3. Even if Deacero exported only half of its idle capacity to the U.S. market, it would be able to capture a market share in excess of its pre-order injurious volume levels. Id. These record facts do not indicate that Mexico is operating at such high capacity utilization levels that, relative to its total capacity and to U.S. demand, it would be unable to sell significant volumes to the United States if the order were revoked. Nor do these facts show that Mexico is different from the other subject countries in terms of available capacity for export.

Third, Deacero's heavy reliance on its claim that overall Mexico has a low export orientation is misplaced. Deacero Prehrg. Brf. at 8-9. The critical issue for the Commission's assessment is not merely whether Mexico is overall a significant exporter, but whether Mexico is likely to export significantly to the U.S. market. Even if a large percentage of Mexico's production is not for export, the record provides compelling evidence that Mexico has been

exporting to the U.S. market even with the order in place, that Mexico has increased its CASWR exports when it was not subject to duties (when it was circumventing the order), that Mexico has affiliates in the U.S. market that will encourage and facilitate further exports, and that Mexico has already been increasing exports to the United States over the POR (and further into 2020). ITC Prehrg. Rep. at IV-39; Dom. Ind. Presentation, Slide 29; Tr. at 25-26, 73, 180-81; Exh. 6. Moreover, respondents' data show that home market sales are declining, further incentivizing exports of CASWR to the United States from Mexico. ITC Prehrg. Rep. at IV-39. As discussed further in response to questions 5 and 7, prices in the U.S. market are higher than those in Mexico and in other third country markets, another magnet pulling Mexican production to the United States. Given these facts, with its sizeable levels of idle capacity, Mexico will export to the U.S. market in significant volumes if the restraint of the order is removed. As Deacero admits, the other subject producers are export oriented and are likely to increase exports to the U.S. market as well (Deacero Prehrg. Brf. at 6-7; Tr. at 18), providing another common condition of competition between Mexico and other subject countries.¹⁶

The section 232 surge protection agreement between the United States and Mexico, as discussed further in response to question 8, is not a different condition of competition from the other subject countries, which also face other 232 forms of restraint (tariffs or quotas). Deacero's

¹⁶ Notably, in the previous sunset review, the Commerce Department had not yet reached a finding that the smaller diameter wire rod imports were within the scope of this case, so the Commission treated these imports as non-subject imports from Mexico when assessing the likelihood of increased volumes of subject imports from Mexico. Second Sunset Reviews, USITC Pub. 4472 at 17 n.98. Commerce has now reached two findings of circumvention (sustained by the appellate court) and has found that these imports are subject to the order, such that these volume increases should now be recognized as subject imports. See Exhs. 18, 19. Mexican exports of subject product, as well as its circumvention efforts as recognized by Commerce, are an additional factor differentiating the record of this case from the prior sunset review. See infra Q.12.

identification of a few other discrete facts, such as the existence of safeguard duties in Mexico or it not being subject to tariffs in other countries, provide no basis for decumulation. These factors simply go to the question of whether Mexico is likely to target other countries with its exports instead of the United States. Deacero's own behavior of selling CASWR to the United States, notwithstanding the safeguard duties or the tariffs in other countries already, shows that these restraints will not preclude imports into the United States from Mexico.

In sum, there is no basis on this record for finding that imports from Mexico will have no discernible adverse impact on the U.S. industry or that they will sell under different conditions of competition from other subject imports. To the contrary, the record provides compelling evidence that the significant level of idle capacity in Mexico, current Mexican sales to the U.S. market, affiliation between Mexican and U.S. companies, and Deacero's blatant and repeated efforts to increase exports of wire rod by circumventing the antidumping order, all make it highly likely that Mexico will export wire rod in significant volumes to the United States absent an order – as is also true of the other countries – justifying cumulation.

10. *Commissioner Karpel: So I'd like to ask about Trinidad and Tobago and, in particular, the facility there that Nucor argues in its brief was recently – or recently a bid was accepted to purchase the facility. However, the staff report offered information, another news article, suggesting that that bid was withdrawn. Do the domestic industry participants have any information about the status of that sale or whether there is another bidder and whether that facility, you know, has the prospect of restarting production anytime soon? (Tr. at 58-59)*

The Domestic Industry refers the Commission to the Posthearing Brief submitted by Nucor and CMC for updated information on the sale of the Trinidad facility, and adds the following observations.

First, [

] Based on these reports and activities, [
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Second, at the hearing, in response to a question regarding the status of the Trinidad mill, Mr. Dillon testified that resumption of operations at a mill that has been shuttered for several years can occur very rapidly, as evidenced by Liberty’s experience at the Georgetown, South Carolina mill. Tr. at 59. Specifically, Mr. Dillon stated that the Georgetown mill had been shut down in 2015, Liberty closed on the purchase of the mill in late 2017, and Liberty had the mill up and running within six months, a very “quick turnaround.” Id. In his declaration, Mr. Dillon further explained:

While I am not privy to information on the ongoing negotiations regarding the sale of that facility, I do have some insight into how long it takes to get a shuttered wire rod mill back up and running. In December of 2017, Liberty purchased the wire rod mill in Georgetown, South Carolina from ArcelorMittal, who had closed the mill in August of 2015. After this closure of nearly two and a half years, Liberty was able to bring this mill back to steel production in around six months, with the melt shop pouring steel by July 9, 2018 and the rolling mill running its first internally produced billet the following week. Liberty could have restarted rolling operations earlier if it had chosen to purchase billet as its input material, but the plan was to open both the melt shop and the

rolling mill at the same time. Given Liberty's experience, I believe the wire rod mill in Trinidad and Tobago could likely be brought back into full production in a period of around six months, if not earlier.

Exh. 3, para. 7 (Dillon Decl.). Mr. Zernikow of Nucor and Mr. Goettl of Optimus concurred regarding how quickly a wire rod mill that has been shut down like the one in Trinidad is able to resume operations. Tr. at 59-61.

Third, it bears emphasis how important the U.S. market is to the Trinidad mill's production operations. Before imposition of the order, the Trinidad mill exported the [

] of its production to the United States. Trinidad targeted its wire rod production for export, with [] of its CASWR production exported, and the U.S. market accounted for [] of exports by Trinidad. Second Review Staff Rep. at IV-57; Original Inv. Staff Rep. at II-9. Moreover, the market share captured by Trinidad pre-order was [] ITC Prehrg. Rep. at I-11. And the capacity at the Trinidad mill is sizeable, at over [] tons. *Id.* at IV-20 n.5. Given the U.S. market's proximity to Trinidad and its high prices relative to other countries (see Dom. Ind. Prehrg. Brf. at section V.A.4.), the U.S. market would remain a prime target for exports from the Trinidad mill once operations resume. The Trinidad mill's significant capacity, [] will quickly ramp up and target its production at the U.S. market if no order is in place.

Based on these facts, it cannot be concluded that there is likely to be no discernible adverse impact by imports from Trinidad. To the contrary, the Trinidad mill is positioned to quickly become a significant source of CASWR to the U.S. market, as it was pre-order, if the order is removed.

SMALLER DIAMETER WIRE ROD

11. ***Commissioner Kearns: Let me move on to kind of a bonus question, the small diameter wire rod and the circumvention issue. My question is, should we have included small diameter wire rod in our original domestic light product determination? And could we have, given that there was no U.S. production of that product at the time? (Tr. at 79)***

At the time of the original investigation, there would have been no reason for the Commission to consider the question of whether small diameter CASWR (less than 5.0 mm in diameter) was within the same scope as CASWR that is 5 mm or greater in diameter. The scope of an investigation is the starting point for any like product determination, and neither petitioners nor Commerce included wire rod less than 5.0 mm in diameter in the scope. This was because at the time of the original investigation, there was no domestic production of wire rod of less than 5.0 mm in diameter and there were also no known imports of the product.¹⁷ For this reason, no party raised the issue at the time of the original investigation. The Commission, however, could have, and likely would have, included small diameter wire rod in the scope of the CASWR case had the issue been raised.

While scope is the starting point for the domestic like product definition, it is not the end of the issue. Cleo Inc. v. United States, 501 F.3d 1291, 1298 n.1 (Fed. Cir. 2007). The Commission can determine a like product that encompasses more than the scope of the investigation or it can determine more than one like product from the same scope. Cleo, 501

¹⁷ There is no reference in the decision or staff report of domestic production less than 5.0 mm. Significant commercial production of the smallest size CASWR available at the time stopped at 5.6 mm, but the scope allowed for the production of wire rod down to 5.0 mm. See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey and Ukraine, USITC Pub. 3546 (Final) (Oct 2002) at I-7 (“Original Injury Determination”). As noted in a declaration from Mr. Skowronek of Charter Steel, while Charter had produced wire rod in diameters below 5.0 in the early 1990s, it had not produced it since the mid-1990s and was not producing it at the time of the original investigation. Exh. 20, para. 2 (Skowronek Decl.)

F.3d at 1295. It cannot, however, base a separate like product determination on the lack of domestic production. The courts have upheld the Commission’s longstanding practice “that lack of domestic production of identical merchandise is not a basis for recognizing a separate domestic like product.” Hitachi Metals, Ltd. v. United States, 350 F. Supp. 3d 1325, 1342 (Ct. Int’l Trade 2018), aff’d, 949 F.3d 710 (Fed. Cir. 2020). Had the small diameter wire rod issue been raised at the time, the Commission would have included small diameter wire rod within the same domestic like product covering wire rod with a diameter of 5.0 mm or more based on the language of the statute and the Commission’s practice.

The statute, at 19 U.S.C. § 1677(10), defines the domestic like product as “a product which is like, *or in the absence of like, most similar in characteristics and uses with*, the article subject to investigation.” 19 U.S.C. § 1677(10) (emphasis added). If there is no domestic production of a product, then the Commission is required to identify the domestic like product most similar in characteristics and uses to the small diameter wire rod:

The ITC will examine an industry producing the product like the imported article being investigated, but if such an industry does not exist and the question of material retardation of establishment of such an industry is not before the ITC, the ITC will examine an industry produce a product most similar in characteristics and uses with the imported article.

S. Rep. No. 96-249, at 90 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 476. The product that is most like wire rod under 5 mm in diameter in characteristics and uses is CASWR that is 5 mm or more in diameter. Small diameter CASWR has otherwise identical characteristics to larger diameter CASWR except that it has a slightly smaller diameter. It also is completely substitutable in uses, which Deacero admitted in the last sunset review (USITC Pub. 4472 at 41 n.280), and which the record of this review also confirms. See also [

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The Commission would therefore have treated wire rod with diameters less than 5.0 mm as a part of the same continuum domestic like product containing CASWR 5.0 mm or more in diameter. There also is record evidence of how the Commission would have approached this issue because the Commission undertook an identical analysis when it determined that grade 1080 tire cord wire rod and grade 1080 tire bead wire rods, which were outside the scope of the investigation, were nonetheless within the same continuum like product as other in-scope CASWR. See Original Injury Determination, USITC Pub. 3546 at 8-9.

CASWR with diameters less than 5.0 mm is now explicitly within scope as a result of Commerce's circumvention rulings. ITC Prehrg. Rep. at I-19. No party – including Deacero – has argued that the domestic like product should not include these small diameter CASWR products, so the question is academic. Moreover, as discussed in answer to question 12 below, the imports of small and smaller diameter wire rod from Mexico, whether or not they were within scope at the time they entered the U.S., provide strong evidence that Deacero remains committed to and interested in expanding its wire rod sales within the United States.

12. ***Commissioner Kearns: Despite your arguments during the draft questionnaire phase that the Commission had not previously evaluated smaller diameter wire rod as a separate like product, in March 2019 Commerce issued a determination that all such smaller diameter wire rod constituted a minor alteration that place it within the scope of the order. Doesn't your attempts to continue shipping smaller diameter wire rod to the United States notwithstanding the order demonstrate a continued interest in the U.S. market? (Tr. at 129-130)***

Commissioner Stayin: And yet you did enter the United States with a new type of wire which you just discussed, and it was found to be violating the decisions at Commerce and therefore it was a circumvention of the Department of Commerce order on these products. It suggests that your company was so anxious to get into the wire business in the United States that you attempted to do it through a surreptitious way by coming in with a slightly smaller wire. Tell me what your thoughts are on that and how this came about. (Tr. at 138)

The Commission has previously determined that the efforts of foreign manufacturers to produce and ship small diameter wire rod (4.75 mm) wire rod and other wire rod outside the scope of the CASWR orders (grade 1080 tire cord and tire bead quality wire rod) demonstrates continued interest in shipping CASWR to the United States. Second Sunset Reviews, USITC Pub. 4472 at 41 (“Moreover, we observe that subject producers continue to demonstrate interest in the U.S. market, as evidenced by their exports of out of scope wire rod products.”). The same is true now of the smaller diameter wire rod less than 4.75 mm wire rod. In particular, the Commission has previously recognized that efforts to circumvent an order provide strong evidence of an interest in shipping to the United States should the order be revoked. See Honey from China, USITC Pub. 4776 (Third Review) (Apr. 2018) at 16-17 (Chinese producers “continuously demonstrated their interest in the U.S. market since imposition of the order through various circumvention schemes” and “continued efforts to direct honey to the U.S. market notwithstanding the order.”); Certain Tissue Paper Products from China, USITC Pub. 4165 (July 2010) at 17 (“Commerce’s affirmative circumvention determinations also indicate

that Chinese producers are actively seeking ways to access the U.S. market and would aggressively target the U.S. market in the absence of the order.”).

Deacero has now twice been found to have circumvented the CASWR order to make sales of wire rod in the United States outside the discipline of the order. ITC Prehrg. Rep. at I-19. In those determinations, Commerce examined the evidence of patterns of trade and Deacero’s claims that customers sought to have it make small diameter wire rod, and concluded that Deacero began making 4.75 mm wire rod, and later wire rod down to 4.4 mm, specifically to circumvent the orders on CASWR with diameters of 5.0 mm and above. Commerce found in the first anti-circumvention proceeding that Deacero ceased selling 5.0 and greater diameter wire rod in the U.S. immediately after it began shipping 4.75 mm wire rod – which is a strong indication that 4.75 mm wire rod simply was being substituted for larger diameter CASWR to circumvent the order. See Exh. 18 (Final Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter of 4.75 Millimeters (mm) to 5.00 mm (Dep’t Commerce Sept. 12, 2011) at 16 (Comment 7) (“DOC 4.75 mm Final Circumvention Memo”). This anti-circumvention finding was ultimately upheld by the Court of Appeals for the Federal Circuit. Deacero S.A. de C.V. v. United States, 817 F.3d 1332 (Fed. Cir. 2016). Any argument by Deacero that this is somehow unfair is misplaced and should be dismissed.

In the second anti-circumvention proceeding, Commerce specifically found that Deacero altered its production process to produce 4.4 mm wire rod when its 4.75 mm wire rod was found to be within scope, which again suggests that it was reacting to the antidumping duty order and not customer demand. See Exh. 19 (4.4 mm Wire Rod Anti-Circumvention Inquiry Segment, Affirmative Preliminary Decision Memorandum of Circumvention Concerning Carbon and

Certain Alloy Steel Wire Rod from Mexico Produced and/or Exported by Deacero S.A.P.I. de C.V. (Dep't Commerce Oct. 15, 2018) at 20-21 ("DOC 4.4 mm Preliminary Circumvention Memo"). Deacero chose not to appeal that finding, so it should not be heard to reargue the outcome before the Commission. As described further below, moreover, Deacero's import trends documented in its questionnaire response are consistent with these circumvention determinations.

The Commission itself also examined the behavior of Deacero in the last sunset review of this order and determined that its imports of both subject and what was then recognized as non-subject wire rod (4.75 mm diameter wire rod, prior to the Commerce circumvention finding) demonstrated Deacero's continuing interest in the domestic CASWR market:

Similarly, subject imports as well as nonsubject wire rod imports from Mexico were present in the U.S. market throughout the period of review, and Deacero itself stated that imports from Mexico maintained a continued "substantial presence" during the review period. CR/PR at Tables IV-17, IV-19, C-1 and Appendix F; Deacero's Posthearing Brief at 5. Accordingly, notwithstanding Deacero's assertion that wire rod prices in third countries are higher than U.S. prices, Deacero's Posthearing Brief at 8-9 and Prehearing Brief at 23-26, we find that the persistent presence of wire rod imports from Mexico during the review period demonstrates that the U.S. market continues to be viewed by Mexican producers as an attractive market. Moreover, as discussed above in section III.D., Deacero acknowledged that the 4.75 mm wire rod that it shipped during the review period is "substitutable" with subject 5.5 mm wire rod, and Deacero undersold domestically produced 5.5 mm wire rod by providing a price incentive on its 4.75 mm wire rod to gain sales and market share in the United States. Tr. at 181-82 (D. Gutierrez, Campbell). Additionally, Deacero indicated that it might also ship subject wire rod to the United States if the order were revoked. Tr. at 210 (Campbell).

Second Sunset Reviews, USITC Pub. 4472 at 41 n.280. The same factors are present in this case, except that Commerce has now recognized the smaller diameter rod to be subject product

and Deacero's actions to be circumvention. Deacero had a persistent presence in the United States market throughout the period of investigation. ITC Prehrg. Rep. at C-3. Indeed, in its prehearing brief, Deacero self-describes its presence in the U.S. market as [

] Deacero Prehrg. Br. at 24. Its levels of wire rod imports, whether considered subject or non-subject for specific periods, continue to demonstrate that it views the U.S. market as extremely attractive. ITC Prehrg. Rep. at C-3, C-4.

The [] volumes of imports of smaller diameter wire rod circumventing the order demonstrate that Deacero was unable to ship larger volumes of wire rod without dumping, necessitating that it find a way to ship wire rod that it could argue (unsuccessfully) was non-subject as shown below:

Deacero's Imports of Wire Rod By Size						
	2014	2015	2016	2017	2018	2019
Total Imports	[]	[]	[]	[]	[]	[]
4.75 mm to <5mm	[]	[]	[]	[]	[]	[]
< 4.75 mm*	[]	[]	[]	[] ¹⁸	[]	[]
% 4.75 mm to <5mm	[]	[]	[]	[]	[]	[]
< 4.75 mm*	[]	[]	[]	[]	[]	[]
Source: Deacero Imp. QR at II-7. []						

As these data show, [

] that it claimed was outside of the scope and therefore not subject to the payment of antidumping duties. As should be clear from the table above and from slide 23 of the Domestic Industry's Presentation at the hearing, Deacero has circumvented the order as a means to increase its volume of wire rod sales to the United States. See Dom. Ind. Presentation, Slide 23. Deacero's development of the ability to produce 4.75 mm wire rod and 4.4 mm wire rod has led to surges in imports of wire rod from Mexico, just as Deacero intended. Equally important, by 2019 and after the smaller diameter product became subject to duties, [

¹⁸ In its Importer's Questionnaire Response, Deacero [

]

]

As the Commission also found in the last sunset proceeding, Deacero also has [

] Second Sunset Reviews, USITC Pub. 4472 at 41 n.280. At least some of [

] Thus, Deacero continues to use low prices – whether or not the wire rod is above or below 5.0 mm in diameter – to attract U.S. customers.

See also [] In stark contrast to Deacero’s claims to be interested in only selling to a few established customers and not expanding its U.S. customer base (Tr. at 106-07), [

] Finally, while the Commission did not collect pricing data on CASWR less than 4.5 mm in diameter, the Commerce Department did examine Deacero’s pricing of 4.4 mm CASWR and concluded that it was not selling those products at a premium as the higher production costs would suggest they should:

Deacero additionally claims that 4.4 mm wire rod carries a price premium over subject wire rod, which indicates that customer

expectations differ with respect to 4.4. mm. We examined Deacero's sales by customer to the United States. As part of our analysis we removed sales to [] given that it is an affiliated company. We found that the price of 4.75 mm to 19mm wire rod is []. Subject wire rod was [], respectively. Deacero's data does not support its claim that 4.4 mm wire rod had a price premium over subject wire rod.

See Exh. 19 (DOC 4.4 mm Preliminary Circumvention Memo, at 17) (emphasis added).

Moreover, it has been the domestic industry's experience that Deacero undersells domestic producers' 5.5 mm wire rod with its 4.75 and 4.4 mm wire rod, even though Deacero's smaller diameter CASWR costs more to produce. [] Exh. 3, para. 11 (Dillon Decl.). Deacero's aggressive low pricing and its sales of significant volumes of both subject and non-subject merchandise are evidence of Deacero's intention to expand its U.S. sales base for CASWR if it is no longer subject to antidumping duties.

All of the CASWR with diameters under 5.0 mm from Mexico is now within scope, but those previous import levels achieved while Deacero was circumventing the order are evidence that Deacero will once again ramp up CASWR production for export to the United States should the order be revoked. Dom. Ind. Presentation, Slide 23. The Commission need only follow the trends on slide 23 of the domestic industry presentation to see the surge of imports from Mexico that is in store should the order be revoked.

13. ***Commissioner Stayin:*** *My time has run out, but was there a request made to your company for that wire or did your company just develop {small diameter wire rod}? (Tr. at 142)*

Commissioner Karpel: *Just following up on what Mr. Villanuevo was saying, I found it an interesting discussion. Is there something you can put in writing on the record to support that discussion? I think that would be helpful to us. We of course can use the transcript as we're considering this information further, but in terms of the process and the benefit for your customers and also the information in response to Commissioner Stayin's question that these were developed per a specific customer request, and it took a while afterwards. If you could sort of show that time line, maybe show that customer request, sort of build up some documentation to support your testimony, Mr. Villanueva, I think that would be helpful for us to have. (Tr. at 142-143)*

Commissioner Schmidlein: *With regard to the smaller-diameter wire rod, I was a little bit confused. I thought I heard maybe in the presentation that U.S. industry did not supply that diameter, but then later, in answer to questions, I think I understood you to say at the time of the original investigation, they were supplying it, but that was outside of the scope. So, you know, that sort of led the Mexican producers to assume that those producers – the supply, the domestic supply, of that size wire rod was not – they weren't concerned about imports with regard to that. So can you clarify for me, does the U.S. produce that size now, and did they produce it I guess during the circumvention proceedings? (Tr. at 156)*

Counsel for Deacero spent a good portion of the hearing attempting to reargue to the Commission the facts of the anti-circumvention proceedings as found by Commerce, and frequently got those facts wrong. Ms. Jeong alleged that there was “healthy U.S. production of small diameter wire rod” at the time of the original investigation. Tr. at 134; see also Tr. at 150. As discussed above in answer to question 11, that assertion is wrong and unsupported by any record evidence. There is no reference in the Commission's determination or in the staff report of the original investigation to domestic production of CASWR with diameters less than 5.0 mm. The staff report states that “significant commercial production” of the smallest size CASWR available at the time stopped at 5.6 mm, and the scope allowed for the production of wire rod down to 5.0 mm. See Original Injury Determination, USITC Pub. 3546 at I-7. There is not an

iota of evidence of domestic production of small diameter wire rod at the time or the investigation contained in the original investigation documents, and Deacero cites to none.

Nor did Commerce's anti-circumvention determinations, after examining this issue carefully, establish that there was any domestic production of small diameter wire rod at the time of the original investigation. That record showed that Charter (which was not a petitioner in the original investigation) experimentally produced a small amount of wire rod with diameters below 5.0 mm in the early 1990s and had ceased any such production by the mid-1990s, long before the antidumping case against Mexico was filed. Exh. 18 (DOC 4.75 mm Final Circumvention Memo at 6); see also Exh. 20, para. 2 (Skowronek Decl.).

More importantly, to the extent that Deacero is attempting to argue that the wire rod below 5.0 mm should not be within the scope, it is making that argument to the wrong agency. As discussed in answer to question 11 above, scope is determined by the Commerce Department. Deacero has now twice lost that argument before the Commerce Department that its CASWR less than 5 mm in diameter should be outside the scope of the orders. ITC Prehrg. Rep. at I-19. Commerce's first decision that 4.75 mm wire rod was circumventing the antidumping duty order on wire rod from Mexico was upheld by the Court of Appeals for the Federal Circuit. Deacero S.A. de C.V. v. United States, 817 F.3d 1332 (Fed. Cir. 2016). Despite having lost this decision at the Court of Appeals for the Federal Circuit, Deacero nonetheless was trying to pump 4.4 mm wire rod into the U.S. market [] during the 2017-2019 period. When the domestic industry challenged these imports as circumventing the order, Deacero also lost the second decision involving 4.4 mm wire rod on essentially the same grounds before Commerce, and Deacero failed to appeal it. Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Affirmative Determination of Circumvention of the Antidumping Duty Order, 84 Fed. Reg.

9,089 (Dep't Commerce Mar. 13, 2019). Deacero's claims of unfair treatment should be rejected. Its claims were fully vetted before the Commerce Department and the Courts, and it has received all the hearing on this issue to which it is entitled.

No party has challenged the like product in this case as encompassing all wire rod within the scope. As also discussed in answer to question 11 above, had the Commission examined the question of whether the like product at the time included small diameter wire rod, it would have included it in the like product for CASWR. See supra Q. 11. Although the domestic industry did not produce small diameter CASWR during the original investigation period, the record indicates that the domestic industry has more recently begun producing small diameter wire rod (under 5 mm). As Mr. Zernikow testified, while Nucor has produced the product, there is essentially no interest by customers in paying domestic producers the higher price for such products reflective of their higher cost of production. Tr. at 53 (Zernikow); [

] Mr. Zernikow testified that when Nucor tried to sell the higher-cost, smaller diameter wire rod in the market, they came up against Deacero 4.75 mm wire rod that was priced below even standard 5.5 mm wire rod. See Tr. at 53 (Zerikow).¹⁹

Thus, while there may be a few customers who find an advantage in starting their wire drawing process with a smaller diameter rod for a particular wire product, they generally do not want to pay the higher prices associated with the increased costs of making that product. What purchasers overwhelmingly are interested in obtaining is Deacero's lower-than-market prices for

¹⁹ This statement is consistent with the Commission's findings in the last sunset review that "Deacero undersold domestically produced 5.5 mm wire rod by providing a price incentive on its 4.75 mm wire rod to gain sales and market share in the United States." Second Sunset Reviews, USITC Pub. 4472 at 41 n.280 (citing the testimony of Deacero witness (D. Gutierrez) and counsel (Campbell)).

small diameter wire rod – despite its higher cost to make (Tr. at 152 (Mr. Villanueva)) – when such imports can be obtained outside the discipline of the antidumping duty order. See, e.g.,

[

]

The record of all of the proceedings involving these antidumping duty orders show that the domestic industry has been consistently interested in ensuring that the imported CASWR from Mexico and other subject producers that is competing with the CASWR that it is producing is subject to the discipline of the antidumping duty order. The scope and like product at the time of the original investigation reflected the actual CASWR being produced by the domestic industry and imported by the subject foreign producers. As Deacero made minor alterations to the CASWR it produced to circumvent the antidumping duty orders with small diameter CASWR, the domestic industry filed, and ultimately won, two separate anti-circumvention proceedings. ITC Prehrg. Rep. at I-19. The domestic industry also more recently developed the capability to produce smaller diameter CASWR, only to find that contrary to Deacero’s claims, purchasers are not clamoring for it to replace 5.5 mm wire rod, but are primarily interested in it if it is priced lower than 5.5 mm rod. See, e.g., [] This is a practice that Deacero uses to gain market share in the United States. Dom. Ind. Presentation, Slide 23; Tr. at 26 (Mr. Rosenthal). These sales have an injurious impact on domestic producers who must sell both 5.5 mm and smaller diameter wire rod at injurious prices to compete with Deacero’s dumped prices that would otherwise undersell the domestic industry.

14. Commissioner Karpel: But, to the extent it's not already on the record, who are these five to seven customers that Deacero is selling to in the U.S.? And what kind of wire rod are you selling to them? Can it be broken down between these more specialty 4.75 and 4.4 versus the more standard grade so we can see? I guess what I'm hearing is some of this argumentation this afternoon to me strikes me as a bit of an attenuated competition argument, that, you know, domestic producers don't make these smaller wire rods. This is where we spend a lot of energy investing in this new technology to be able to make this. So I'd like to get a sense of what you're actually selling to your U.S. customers and is it really, you know, focused on the specialty material or is it more of a mix of the two types. And, again, I recognize this may be confidential, so I'm happy to receive this information post-hearing. (Tr. at 166-167)

The record identifies several customers to which Deacero sells small diameter wire rod, but those purchasers generally do not ascribe the same level of specialization to it that Deacero described at the hearing. While [] purchasers responded to the Commission's questionnaire as being customers of Deacero, the question is not how many customers Deacero has while under order, but how many customers it will have and what its future volume will be if it is no longer under order. Deacero is one of the largest producers of wire rod in North America, with a sales organization in the United States, an established customer base, and a history of aggressively underselling domestic producers to gain sales and market share. Dom. Ind. Prehrg. Brf. at 28-30; Exh. 3, para. 12 (Dillon Decl.)

As described above for example, purchaser [

]

[

] This explanation stands in stark contrast to Deacero's claims to be interested in only selling to a few established customers and not expanding its U.S. customer base. Tr. at 142 (Mr. Villanueva).

[

]

These customers represent a substantial customer base of large consumers of CASWR for Deacero that it will be in a position to rapidly expand if the antidumping duty order is revoked. Deacero has already demonstrated a keen interest in the market through circumvention, has used that circumvention to surge in imports, and consistently undersold the domestic industry with CASWR that is both above and below 5.0 mm. Deacero has in fact been the single most aggressive respondent from the subject countries. With its home market and third country export demand slowing and its capacity up while its capacity utilization is down, revocation of the orders will lead to growth in its customer base, sales, and shipments in the U.S. to the injury of the domestic industry.

LIKELY IMPACT

15. Chairman Johanson: This is a question regarding Liberty Steel. If I could turn your attention to confidential statements made on page 13 of the Deacero brief and the associated public exhibits 15 and 16. The first exhibit is an article about the owner of Liberty Steel, and the second is about Liberty's acquisition of Georgetown Steel. Both articles were from late February, just before the COVID-19 problem started, and, although I don't want to overstate matters, both articles are somewhat skeptical regarding Liberty's financial health. Given current business conditions of the past three months, is Liberty still on track to reopening Georgetown Steel in the near future? (Tr. at 70)

Liberty made the decision to close its Georgetown, South Carolina plant based on market conditions at the time [

] Exh. 3, para. 5 (Dillon Decl.). Similarly, Liberty's decision to re-open the Georgetown mill will be made based on an improvement in U.S. market conditions for wire rod. Id. Although Liberty has not yet made definite plans as to when it will reopen the Georgetown mill, it is continuing to examine and assess the situation in light of market conditions.

EXHIBIT 2

DECLARATION OF EDWARD P. GOETTL

I, Edward P. Goettl, declare and state that the following information is true and accurate:

1. I am the Vice President of Sales and Marketing at Optimus Steel, LLC, a domestic producer of carbon and certain alloy steel wire rod (“wire rod”). I have been in this role for two years and in the wire rod business for over 20 years. Optimus produces wire rod at our plant in Beaumont, Texas. Optimus acquired the Beaumont facility from Gerdau, a former producer of wire rod in the United States, in April 2018. Optimus Steel supports continuation of the orders on imports of wire rod from all five countries.
2. I testified before the International Trade Commission (“ITC”) on June 16, 2020 in the third sunset reviews on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad & Tobago. I provide this declaration to address questions from the ITC and to respond to claims made by respondents Deacero S.A.P.I. de C.V., Deacero USA, Inc., and Mid Continent Steel & Wire.

Supply

3. In response to the assertion that the domestic industry experienced supply constraints, particularly in 2018, Optimus’ experience is that any supply constraints during that time were temporary and resolved relatively quickly. As I stated at the hearing, the imposition of the section 232 tariffs in 2018 was an unprecedented event. As a result of the uncertainty in the market caused by the 232 tariffs in the second and third quarters of 2018 and expectation of related price increases, [

]

4. The fact that Optimus did not object to all section 232 exclusion requests is not indicative of our inability to supply those wire rod products or volume. We carefully track and review all wire rod exclusion requests, but the decision to object to each request is an economic one and []
As I explained at the hearing, there is time and expense involved in preparing and filing objections, and the number of exclusion requests being filed at any given time – in the dozens or hundreds – was often overwhelming. We had to determine the likelihood of getting that volume if the exclusion request was denied and also consider various commercial relationships at play. Reviewing, analyzing, and objecting to every exclusion request could nearly be a full time job and we had to balance that with our business of making wire rod. Although we did not object to every exclusion, the decisions not to object

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were based on a variety of commercial considerations, not an inability to supply the customer.

5. The section 232 tariffs have not prevented U.S. customers from purchasing imported wire rod even though Optimus has available capacity. In addition to exclusions being granted, it is not unusual for foreign producers to absorb the section 232 tariff to be able to continue supplying the U.S. market below domestic prices. In fact, an important distinction between the antidumping duties and the section 232 tariffs is that nothing prevents the absorption of the section 232 tariffs by the foreign producers.
6. In addition, in order to better serve the U.S. market, Optimus has begun making significant investments in equipment and process improvements. [

] Revocation of these orders would put all these investments at risk.

7. At the hearing, the representative from Mid Continent said that it had trouble getting wire rod from U.S. suppliers (Tr. at 109). [

]

8. I also want to address the claim by the Mid Continent representative at the hearing that its section 232 exclusions for wire – not wire rod – were relevant because “capacity for wire is essentially equal to the capacity for wire rod.” Tr. at 110. Wire and wire rod capacity are not the same. While some of our customers may purchase both wire and wire rod, those are different products, produced and sold by different manufacturers. In fact, Optimus does not produce and sell wire, only wire rod. Mid Continent’s exclusion requests for wire, therefore, have no bearing on whether Optimus could supply wire rod.

Demand

9. [

]

Competition

10. [

]

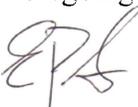
11. [

]

12. [

]

This declaration is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.



Edward P. Goettl

Dated: June 24, 2020

EXHIBIT 3

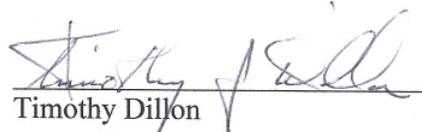
PUBLIC VERSION

opinion that the impact of COVID-19 on the Mexican wire rod market has been, and will be, at least as severe as in the United States.

7. During the Commission’s hearing, Commissioner Karpel asked a question concerning the current status of the wire rod production facility in Trinidad and Tobago. Tr. at 58-59. While I am not privy to information on the ongoing negotiations regarding the sale of that facility, I do have some insight into how long it takes to get a shuttered wire rod mill back up and running. In December of 2017, Liberty purchased the wire rod mill in Georgetown, South Carolina from ArcelorMittal, who had closed the mill in August of 2015. After this closure of nearly two and a half years, Liberty was able to bring this mill back to steel production in around six months, with the melt shop pouring steel by July 9, 2018 and the rolling mill running its first internally produced billet the following week. Liberty could have restarted rolling operations earlier if it had chosen to purchase billet as its input material, but the plan was to open both the melt shop and the rolling mill at the same time. Given Liberty’s experience, I believe the wire rod mill in Trinidad and Tobago could likely be brought back into full production in a period of around six months, if not earlier.
8. During the hearing, Mr. Pratt, the representative from Mid Continent Steel and Wire said that his company had trouble sourcing input material from U.S. suppliers in 2018. Tr. at 109. [] in 2020.
9. At the Commission’s hearing, Mr. Pratt of Mid Continent also said that “capacity for wire is essentially equal to the capacity for wire rod.” Tr. at 110. That is not accurate. Liberty Steel produces both wire rod and wire, but does so in separate facilities. [] on the open market. Liberty also sells downstream products, such as engineered mesh and agricultural fencing, that are processed beyond drawn wire.
10. During the hearing, Mr. Villanueva of Deacero stated that his company pays inland freight in the United States of \$80 to \$100 per ton and that such costs put Deacero at a disadvantage in relation to imports from markets like Turkey, Moldova, and Ukraine, which pay ocean freight of \$15 per ton. Tr. at 142-143. That contention is incorrect in two ways. First, imports shipped by sea to the United States require some amount of inland transportation in addition to the ocean freight. Second, in Liberty’s experience, average inland transportation costs in the United States typically range from []
11. Mr. Villanueva claimed that Deacero sells 4.75 mm and 4.4 mm wire rod in the U.S. market at a premium. Tr. at 154. I am not aware of any U.S. customer paying a premium for wire rod of any size from Deacero.

12. Mr. Villanueva also stated that if the orders are revoked, import volumes from Mexico will be limited because Deacero only has five to seven customers in the U.S. market. Tr. at 106. In fact, Deacero is one of the largest producers of wire rod in North America and, in my opinion, the company has an obvious ability to expand its customer base in the United States. Further, to my knowledge, Deacero's current customers in the United States [] of the U.S.
13. Deacero's witness Ms. Lutz, asserted that import volumes from Mexico will be low if the order is revoked and, for that reason, claims Mexican imports will not negatively affect U.S. prices for wire rod. Tr. at 119. In my experience, Deacero has been more than willing to buy market share in the United States by offering low prices. Even at small volumes, aggressive import prices can destroy U.S. market prices, as purchasers use such information to force down prices from domestic producers of wire rod.
14. Mr. Villanueva stated at the hearing that Deacero's customer base is limited because Deacero's wire rod has to be qualified before making sales and the qualification process can take anywhere from two months to more than a year. Tr. at 107. In my experience, most sales of wire rod from Mexico are not for higher quality applications and are based on below-market prices, not quality, and do not generally require qualification trials. Further, any qualification process would be brief and would not prevent Deacero from increasing sales significantly later this year if the order is revoked.

This declaration is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.


Timothy Dillon

Dated: June 24, 2020

EXHIBIT 4

Section 232 Exclusion Request Outcomes for Carbon and Certain Alloy Steel Wire Rod

HTSUS #s 7213.91.3011, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0090, 7213.99.0090, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035

	(Quantity in Metric Tons)				Number of Objections	Exclusion Volume Requested			
	Granted	Denied	Pending	Total		Granted	Denied	Pending	Total
	Brazil	-	-	-	-	-	-	-	-
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	-	-	-	-	-	-	-	-
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	7	1	1	9	141,800	20,000	9,000	170,800
	Total	7	1	1	9	141,800	20,000	9,000	170,800
	Brazil	-	-	-	-	-	-	-	-
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	-	-	-	-	-	-	-	-
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	2	-	-	2	1,520	-	-	1,520
	Total	2	-	-	2	1,520	-	-	1,520
	Brazil	-	9	-	9	-	7,450	-	7,450
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	24	13	-	37	412	2,233	-	2,645
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	24	22	-	46	412	9,683	-	10,095
	Total	1,022	175	122	1,319	738,184	110,586	150,017	999,200
	Brazil	-	-	-	-	-	-	-	-
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	-	-	-	-	-	-	-	-
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	17	1	1	19	17,646	3,000	500	21,146
	Total	17	1	1	19	17,646	3,000	500	21,146
	Brazil	-	-	-	-	-	-	-	-
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	-	-	-	-	-	-	-	-
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	807	38	93	938	836,801	58,964	140,674	1,036,440
	Total	807	38	93	938	836,801	58,964	140,674	1,036,440
	Brazil	-	-	-	-	-	-	-	-
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	-	-	-	-	-	-	-	-
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	307	31	56	394	194,272	6,640	92,396	293,308
	Total	307	31	56	394	194,272	6,640	92,396	293,308
	Brazil	-	12	24	36	395,000	541,850	-	936,850
	Indonesia	-	-	-	-	-	-	-	-
	Mexico	60	37	-	97	2,375	147,830	-	150,206
	Moldova	-	-	-	-	-	-	-	-
	Trinidad and Tobago	-	-	-	-	-	-	-	-
	All Others	3,461	725	395	4,581	3,346,891	1,159,228	506,783	5,012,902
	Total	3,533	786	395	4,714	3,744,267	1,848,908	506,783	6,099,958

Source: U.S. Department of Commerce Bureau of Industry and Security

EXHIBIT 5

DECLARATION OF CHRISTOPHER CASSISE

I, Christopher Cassise, do hereby declare and state that:

1. My name is Christopher Cassise, and I am International Trade Legal Counsel for Evraz Inc. NA, a U.S. producer of carbon and alloy steel wire rod. I have held this position since January 2019.

2. Evraz's wire rod production facility is located in Pueblo, Colorado and produces a wide range of wire rod grades and sizes. The grades supplied span from 1006 to 1083 and are used in products such as wire mesh, industrial grade wire, various springs, PC strand, rubber reinforcement, wire rope and welding wire.

3. The revocation of the orders on imports from the five subject countries would present serious challenges at a difficult time for our industry. Wire rod consumption has fallen and stands at an even lower level than during the last review. U.S. prices have also deteriorated over the review period -- and would drop even further if low-priced imports returned to this market.

4. Over the past six years, our path toward recovery under the relief provided by the orders at issue here was significantly impeded as imports from China and then 10 more countries began pouring into the market. In 2016, we temporarily idled the wire rod mill in Pueblo due to lack of orders and production cutbacks.

5. Now that there are orders in place to cover those additional countries, we have some relief, but our company's financial health is still in a tenuous condition. At this time in particular, the return of imports from the five countries subject to this review into the United States would be devastating. These five countries could easily overwhelm this market and cause severe injury to the domestic industry.

6. The only difference between the wire rod products that subject countries offer and the wire rod Evraz or the other domestic manufacturers produce is price – specifically, the lower prices offered by subject imports. All of our customers' purchasing decisions boil down to the source with the best price offer. The subject producers are well known to wire rod customers in the United States, and many have sales offices in the United States. Subject producers' wire rod will not have trouble finding acceptance by our customers, especially given the attractive, open nature of the U.S. market.

7. U.S. prices for wire rod are higher than other markets in the world, which represent an incentive for subject producers to sell in the United States. Brazilian producers, for example, are already deeply embedded in the U.S. market, as they currently export non-subject wire rod to the United States. There is no question they would quickly begin shipping significant volumes of subject wire rod to the U.S. market in the absence of the antidumping and countervailing orders. Mexico has also shown its continued interest in the U.S. market by circumventing the antidumping order, including during the review period, and shipping subject wire rod at prices that undersell the domestic producers.

8. Based on our customers' expectations of lower prices from subject imports, we have every reason to believe that the subject producers will undersell Evraz and other U.S. producers with unfairly-priced wire rod imports if the orders are removed. Evraz will lose sales to dumped and subsidized wire rod, or will be forced to take a smaller share of our customers' product needs at a lower price. We will not lose sales or revenues because the customers prefer the quality, delivery, or service associated with wire rod from these five countries. On the contrary, Evraz takes pride in the quality of our wire rod and the excellent service we provide our customers. We will lose sales because the purchasers want access to the much lower prices that are available from the dumped and subsidized imports.

9. The U.S. market is not in any danger of experiencing wire rod shortages in the foreseeable future. The domestic industry has plenty of capacity to produce wire rod and could produce and sell much higher volumes than the current ones. Evraz is not operating at full capacity, but could readily increase its production and even add shifts if market conditions warranted it. In fact, we want nothing more than to make and sell more wire rod.

10. Shortly after the imposition of section 232 tariffs were announced, Evraz's lead times were extended for a few months in 2018. These short-term supply interruptions ended within a short period of time. By the end of 2018 and into 2019, we were supplying our customers quickly and extended lead times have not been an issue since then.

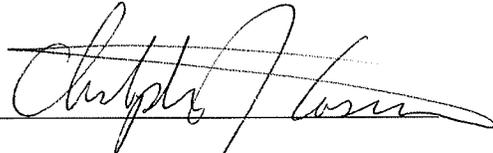
11. While there is no question that we compete with subject imports for sales of industrial wire rod, I am also concerned about what will happen to our sales of higher-value, lower-volume wire rod products in the event of revocation. The wire rod mills in Brazil and Trinidad, for example, have been known for their ability to produce high-carbon wire rod products that Evraz also makes, and will further injure our business with these customers. In addition, tire cord and tire bead wire rod are important product areas for Evraz. Brazilian producers are already shipping excluded grade 1080 tire cord and tire bead wire rod to the United States. They could easily dominate the market for the grades of tire cord and tire bead wire rod still covered by the order, taking away another key product area for Evraz.

12. Unfairly-priced wire rod from the subject countries presents a large threat to Evraz. Each of the subject countries could readily increase their market participation to injurious levels in a very short period of time, as they did during the original investigation. Even if we were starting from a position of economic strength, the return of unfair imports would represent a significant threat to Evraz and the other domestic producers. Unfortunately, we face this threat at a time when our business is vulnerable.

13. In the event of a revocation, Evraz would lose business to low-priced subject imports, necessitating capacity and production reductions, employee layoffs, temporary or permanent shutdowns, and other measures necessary to sustain profitable operations. It is critical that the Commission continue these orders.

CERTIFICATION

This declaration is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.



Christopher Cassise

Dated: June 21, 2020

EXHIBIT 6

U.S. Imports of Wire Rod* from Mexico
Annual 2019, January - April 2019 & 2020

Quantity (short tons)				
	2019	2019 YTD	2020 YTD	% chg. YTD
Mexico	15,409	4,712	12,158	158.0%
<i>All Others</i>	1,148,806	493,928	310,785	-37.1%
Total	1,164,215	498,640	322,943	-35.2%

Value (Customs, USD)				
	2019	2019 YTD	2020 YTD	% chg. YTD
Mexico	7,661,421	2,221,507	6,066,510	173.1%
<i>All Others</i>	794,441,111	336,347,775	207,690,860	-38.3%
Total	802,102,532	338,569,282	213,757,370	-36.9%

AUV (\$/ST)				
	2019	2019 YTD	2020 YTD	% chg. YTD
Mexico	497.20	471.44	498.99	5.8%
<i>All Others</i>	691.54	680.97	668.28	-1.9%
Total	688.96	678.99	661.90	-2.5%

Source: U.S. Department of Commerce and USITC

*consisting of HTS #s 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, and 7227.90.6090.

EXHIBIT 7

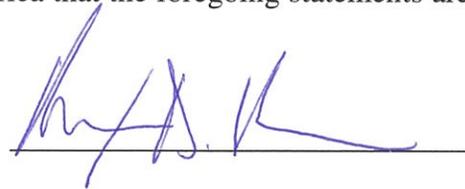
DECLARATION OF ROXANNE D. BROWN

I, Roxanne Brown, declare and state that the following information is true and accurate:

1. I am the International Vice President At Large of the United Steelworkers (“USW”), the largest industrial union in North America with more than 850,000 active members. The USW represents workers in the domestic wire rod industry at numerous facilities, including Cascade Steel Rolling Mills in Oregon, Evraz North America in Colorado, Liberty Steel in Illinois and South Carolina, and Sterling Steel Company in Illinois.
2. I provide this declaration on behalf of all of our steelworker members, retirees, and their families, as to why it is essential that the Commission continue to provide relief from unfair imports of steel wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago. Our union has a longstanding history of fighting against foreign governments and companies seeking to gain an unfair advantage by violating trade rules. Even with our efforts, unfair trade has had an enormously corrosive effect on the nation's manufacturers and workers.
3. At the end of 2012, ArcelorMittal USA laid off 40 workers at its plant in Georgetown, South Carolina following a surge of unfairly traded imports from China. In May 2015, the company was ultimately forced to close its Georgetown facility as a direct result of unfairly traded steel imports from China and other countries. 226 employees, many of whom were USW members, lost their jobs as a result of the closure. The Georgetown mill was subsequently acquired by Liberty Steel in late 2017. In April of this year, however, Liberty was forced to temporarily idle the mill again due to market conditions, affecting numerous workers.
4. Unfortunately, the closure of the Georgetown mill is not an anomaly amongst U.S. producers. In the most recent review period, the U.S. industry faced two import surges of unfairly traded wire rod that hurt USW facilities and their workers. One facility, Cascade Steel Rolling Mills, experienced several production curtailments and was forced to lay-off nearly 15 percent of its workforce in 2016 due to dumped and subsidized imports. Furthermore, in August 2016 Cascade decommissioned one of two rolling mills in production, eliminating a substantial number of future jobs.
5. Similarly, Evraz temporarily idled about 450 workers at its Pueblo, Colorado mill in 2016, roughly half of the mill's workforce. In this particular instance, the mill was able to restart operations, but without these trade orders in place that may not have been the case. These shutdowns, while temporary, put numerous American steelworkers out of work for an extended period of time and strained entire communities that depend on the success of the workers and the mill.
6. If the orders on Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago are revoked, the already vulnerable U.S. industry is likely to be further battered by significantly

increased imports from the five subject countries. The temporary shutdowns I mentioned earlier would likely become permanent closures, hurting not only the many steelworkers at these mills, but their communities as a whole. There is no question that American steelworkers and the products we make can compete with imports from any country in the world, but that requires an even playing field. On behalf of our U.S. steelworker members, retirees and their families all over the country, I urge the Commission not to allow unfairly traded wire rod from the five countries under review to again have unrestricted access to the United States market.

This statement is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.



Dated: June 20, 2020

Roxanne D. Brown

EXHIBIT 8

Section 232 Exclusion Requests for Carbon and Certain Alloy Steel Wire Rod by Requesting Organization

HTSUS #s 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035

(Quantity in Metric Tons)

Requesting Organization	2018		2019	
	Number of Exclusion Requests	Exclusion Volume Requested	Number of Exclusion Requests	Exclusion Volume Requested
Acument Global Technologies, Inc.	29	18,541	15	4,140
AFL Telecommunications LLC	-	-	4	5,200
ASWPeng	55	68,859	23	10,300
Bekaert Corporation	35	209,800	4	220,000
Beta Steel, LLC	61	20,831	35	8,137
Blue Ridge Metals Corp	15	2,379	9	1,703
Brainard Rivet Company	7	1,218	-	-
Brantner and Associates, Inc.	2	1,800	-	-
Bridgestone Metalph U.S.A., Inc.	4	252,000	4	252,000
Cold Heading Company	179	85,373	86	60,898
Conex Cable LLC	1	2,750	-	-
DENSO Manufacturing Tennessee, Inc	-	-	2	2,040
Dexter Fastener Technologies, Inc.	61	66,016	1	1,800
DW National Standard - Stillwater	4	2,000	-	-
Emerald Steel Processing	-	-	3	4,105
Grand Blanc Processing, L.L.C.	104	57,974	138	77,041
Indiana Automotive Fasteners Inc.	103	35,848	35	10,414
Insteel Wire Products Company	2	74,714	1	61,653
ITW Bedford Wire	19	10,408	-	-
Johnstown Wire Technologies, Inc	64	39,037	-	-
KAMAX Limited Partnership	57	31,403	59	29,714
Kanematsu USA Inc.	12	8,170	12	10,820
Kiswire Inc	5	52,000	5	19,000
Kiswire Pine Bluff	22	233,400	13	28,600
Leland Powell Fasteners	3	1,080	-	-
Metal One America, Inc	70	28,530	68	56,710
MNP CORPORATION	120	67,407	99	60,137
Mount Joy Wire Corporation	6	2,381	2	227
MSSC INC.	2	1,720	-	-
Mubea Inc.	-	-	10	41,746
Nelson Steel Products Inc.	-	-	3	6,000
Neturen America corporation	23	3,053	-	-
NHK of America Suspension Components Inc.	58	21,310	36	21,220
Nippon Steel & Sumikin Bussan Americas, Inc.	3	1,500	18	12,121
Nippon Steel & Sumikin Cold Heading Wire Indiana Inc.	82	28,069	247	78,062
NN Inc. Mobile Solutions (Autocam Precision Components Group)	-	-	1	63
O&k Amercian Corp	417	122,059	913	879,927
Okaya (U.S.A.), INC	1	1,700	3	3,000
Rightway Fasteners Inc.	71	19,878	4	708
Riverdale Mills Corp.	48	472,000	4	46,000
Rocknel Fastener, Inc	9	3,648	5	5,040
Shannon Precision Fasteners, LLC	8	2,284	6	1,132
Shinsho American Corporation	-	-	2	122
Solon Specialty Wire Co. (also dba Shaped Wire)	8	2,960	-	-
Stanley Black & Decker	89	8,240	1	1
Suzuki Garphyttan Corporation	85	44,094	61	44,870
The ESAB Group Inc.	-	-	6	4,486
The Lincoln Electric Company	24	167,860	15	144,500
The Mapes Piano String Company	1	400	1	800
TOKUSEN U.S.A., Inc.	21	342,000	8	63,000
Topura America Fastener, Inc.	13	6,220	17	8,794
Toyota Tsusho America, Inc	2	1,200	2	1,200
Tsuda USA Corporation	1	480	-	-
Universal Bearings, LLC	8	1,407	-	-
Vico Products, Co.	-	-	2	1,770
WCJ - Pilgrim Wire, LLC ("WCJ Pilgrim")	-	-	1	2,080
WireCo WorldGroup Inc.	3	255	12	716
Wirerope Works, Inc.	8	1,830	-	-
Total	2,025	2,628,086	1,996	2,291,997

Source: U.S. Department of Commerce Bureau of Industry and Security

EXHIBIT 9

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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May 6, 2018

Mr. Brad Botwin
Director, Industrial Studies, Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
Room 1093
1401 Constitution Avenue, NW
Washington, DC 20230
Steel232@bis.doc.gov

Re: Objection to April 6, 2018 Request for Exclusion by Bekaert Corporation from Remedies Resulting from the Section 232 National Security Investigation of Imports of Steel - Grade 1078 and Above Wire Rod for Tire Cord Produced in Basic Oxygen Furnaces Under HTS 7213.91.3011

Dear Mr. Botwin:

On behalf of the Wire Rod Coalition, a trade organization of U.S. producers of carbon and alloy steel wire rod, we hereby submit this objection to the request for exclusion from the Section 232 steel remedy for grade 1078 and above tire cord wire rod produced in basic oxygen furnaces (BOF) from Japan, submitted by Bekaert Corporation and posted on April 6, 2018. This objection is timely submitted pursuant to 19 C.F.R. Pt. 705, Supplement No. 1, sec. (d)(3).¹ The Bureau of Industry and Security (BIS) should deny the requested exclusion because it is not required that grade 1078 and above tire cord wire rod be produced using BOF, grade 1078 and above tire cord wire rod is currently being produced in the United States and can be produced by

¹ See Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, 83 Fed. Reg. 12,106 (Dep't Comment Mar. 19, 2018).

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members of the Wire Rod Coalition, and the Wire Rod Coalition members currently make wire rod for downstream tire cord and tire bead wire that will be displaced by imports of grade 1078 and above tire cord wire rod. Granting the exclusion would have the effect of threatening the recovery of domestic producers of steel wire rod.

I. BACKGROUND

The Wire Road Coalition is a trade organization representing domestic producers of carbon and alloy steel wire rod. The current members of the Wire Rod Coalition² are:

Keystone Consolidated Industries, Inc., 7000 S.W. Adams Street, Peoria, IL 61641.

Charter Steel, 1658 Cold Springs Road, Suakville, WI 53080; 4300 East 49th Street, Cuyahoga Heights, OH 44125; 6255 State Hwy 23, Fostoria, OH 43457.

Optimus Steel, 100 Old Hwy 90 West, Vidor, TX 77662.

The Wire Rod Coalition was formed in the early 1980s for the purpose of representing the domestic industry in antidumping (AD) and countervailing duty (CVD) proceedings involving unfairly traded imports of wire rod from numerous countries. Since that time, a number of additional AD and CVD petitions were filed on behalf of the Wire Rod Coalition throughout the 1990s, in 2001, 2005, 2014, and, most recently, in 2017. There are currently AD orders in effect covering wire rod imports from Belarus, Brazil, China, Indonesia, Mexico, Moldova, Russia, South Africa, Trinidad and Tobago, Ukraine, and the United Arab Emirates; and CVD orders in effect covering wire rod from Brazil and China. On May 1, 2018, the U.S. International Trade Commission (ITC) voted in the affirmative in finding material injury to the domestic industry by reason of wire rod imports from Italy, South Korea, Spain, Turkey, and the United Kingdom, with orders expected to be issued in mid-May 2018.

In the most recent AD and CVD investigations involving wire rod from 10 countries, the ITC collected information on the domestic wire rod producers' operations. Domestic wire rod producers reported producing 3.57 million tons of carbon and alloy steel wire rod in 2016, down nearly 3 percent since 2014, and at a capacity utilization rate of only 76.6 percent. See Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates, Inv. Nos. 731-TA-1349, 1352, and 1357, USITC Pub. 4752 (Final) (Jan. 2018) ("Carbon and Certain Alloy

² Other domestic producers of steel wire rod include Nucor Corporation (Charlotte, NC; Wallingford, CT; Norfolk, NE; Kingman, AZ; Darlington, SC), Cascade Steel Rolling Mills, Inc. (McMinnville, OR; City of Industry, CA), Evraz Rocky Steel (Pueblo, CO), Mid American Steel and Wire (Madill, OK), and Sterling Steel Company, LLC (Sterling, IL).

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Steel Wire Rod”), at C-4 (excerpts included at Attachment 1). Between 2014 and 2016, the domestic industry lost 3.3 percent of wire rod production-related workers, and hours and wages for the remaining workers also declined. Id. In recent years, domestic wire rod producers suffered significant declines in gross, operating, and net profits. Id. at C-5.

In sum, the ITC determined as recently as January 2018 that the domestic wire rod industry has suffered declining market share and a deteriorating financial condition over the past several years as a result of unfairly traded imports. See id. at 38-44. Given the vulnerable position of the domestic wire rod industry, the Section 232 steel tariff is especially critical relief from the high volume of wire rod imports – including from Japan – that are not currently subject to AD or CVD orders.

II. THERE IS NO BASIS TO GRANT THE REQUESTED EXCLUSION

Bekaert Corporation seeks an exclusion for 5.5 mm 1078 and above carbon steel tire cord wire rod on the basis that there is “no U.S. production” using a BOF process. See Exclusion Request at Q.2.b. This claim is incorrect for several reasons and, thus, the exclusion request should be denied.

First, Bekaert asserts that there is “no U.S. production” of 1078 and above carbon steel tire cord wire rod because “1078 and above carbon levels used to manufacture steel tire cord requires Blast Oxygen Furnace (BOF) manufacturing process to produce the quality of steel necessary for all tire manufacturers. US Steel Mills only use scrap-based Electric Arch {sic} Furnace (EAF) manufacturing, which cannot produce the quality of steel tire cord necessary for tire manufacturing in the US.” See Exclusion Request at Q.2.b. This claim is based on an incorrect premise. Grade 1078 and above tire cord wire rod can be and is produced using the EAF process – both in the United States and in other countries that have exported grade 1080 tire cord wire rod to the United States – and EAF-produced grade 1078 and above tire cord wire rod is sold to downstream end users in the United States. See Carbon and Certain Alloy Steel Wire Rod, USITC Pub. 4752 at 12 n.66.

The tightly-controlled use of certain alloy materials and the minimization of impurities necessary to produce grade 1078 and above tire cord wire rod is accomplished by domestic EAF producers through control of scrap inputs, the purchase of BOF-produced billets, and the use of direct-reduced iron (DRI) in the production process. Domestic wire rod producers are capable of producing high-carbon steel at grade 1078 and above for numerous other wire rod products. After the melt stage, the process for rolling high-carbon tire cord wire rod is largely identical to the process for making other wire rod. EAF production, therefore, is not an impediment to the

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successful domestic production of this particular product.³ On the contrary, Wire Rod Coalition members are capable of producing grade 1078 and above tire cord wire rod if market conditions would support greater investment in and commitment of resources to this specialized product. See Carbon and Certain Alloy Steel Wire Rod, USITC Pub. 4752 at 15.

Second, Evraz Rocky Mountain Steel, a domestic wire rod producer, has manufactured and shipped grade 1078 and above tire cord wire rod during the past several years. See id. at 11. In fact, according to data collected during the ITC's recent wire rod investigations, the volume of U.S. producers' shipments of grade 1080 tire cord and tire bead wire rod (collectively) in 2016 matched or exceeded the volume imported from a number of countries subject to those investigations. Id. at 12-13 n.67.

Third, grade 1078 and above wire rod for tire cord can also be used in tire bead applications and in other lower-carbon tire cord applications. Keystone Consolidated Industries, a member of the Wire Rod Coalition, and several other domestic producers manufacture tire bead wire rod. See id. at 11. If grade 1078 and above tire cord wire rod is excluded from the Section 232 tariff, imports will displace not only domestically-produced grade 1078 and above tire cord wire rod, but also domestically-produced wire rod for tire bead applications in both high-carbon (e.g., 1078 and above) and lower-carbon (e.g., grade 1070, 1065, and below) grades, and lower-carbon tire cord wire rod. Thus, domestic production and sales of tire cord *and* tire bead wire rod of grades both above and below 1078 – and the ability of U.S. wire rod producers to grow in the tire cord and tire bead market, which has been besieged by import competition – will be undermined if this exclusion request is granted.

Please note that we have not provided capacity or capacity utilization for members of the Wire Rod Coalition as such information is business proprietary. We are able to provide such information upon request.

III. GRANTING THE EXCLUSION WOULD BE CONTRARY TO THE PURPOSE OF THE SECTION 232 TARIFF

The members of the Wire Rod Coalition are capable of producing grade 1078 and above wire rod for tire cord for the U.S. market, as other domestic producers are already doing. The

³ Kiswire America, one of the U.S. tire cord producers requesting this particular product exclusion and a U.S. purchaser that participated in the recent ITC carbon and alloy wire rod investigations, acknowledged during the ITC proceedings “that some domestic producers may be able to produce grade 1080 tire bead wire rod using the EAF process.” See Carbon and Certain Alloy Steel Wire Rod, USITC Pub. 4752 at 12 n.66.

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Section 232 steel tariff is designed to address a particular threat to national security posed by a declining domestic steel industry, as explained in the Department of Commerce's Section 232 Report: "{R}elying on foreign owned facilities located outside the United States introduces significant risk and potential delay for the development of new steel technologies and production of needed steel products, particularly in times of emergency." Effects of Imports of Steel on National Security, U.S. Dep't Commerce (Jan. 11, 2018), at 46. Although Bekaert complains that it needs the requested exclusion for the downstream U.S. tire cord industry to expand, the purpose of the Section 232 tariff is to give upstream U.S. steel producers, including those making carbon and alloy steel wire rod, the opportunity to increase production, sales, and capacity utilization so that the United States has a reliable supply of domestically-produced steel to meet national security needs. As Presidential Proclamation 9705 states:

This relief will help our domestic steel industry to revive idled facilities, open closed mills, preserve necessary skills by hiring new steel workers, and maintain or increase production, which will reduce our Nation's need to rely on foreign producers for steel and ensure that domestic producers can continue to supply all the steel necessary for critical industries and national defense.

Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 11,625, 11,626 (Presidential Documents Mar. 15, 2018).

If domestic production of grade 1078 and above wire rod for tire cord grows, so, too, will domestic production of tire cord by Bekaert and others. If this exclusion request is granted, however, tire wire producers will continue importing foreign tire cord wire rod at the expense of the domestic industry. Such a result – stymied domestic steel production – threatens national security and is, thus, contrary to the purpose of the Section 232 steel tariff. The exclusion request should not be allowed.

Respectfully submitted,



Paul C. Rosenthal
R. Alan Lubberda
Brooke M. Ringel

Counsel to the Wire Rod Coalition

ATTACHMENT 1

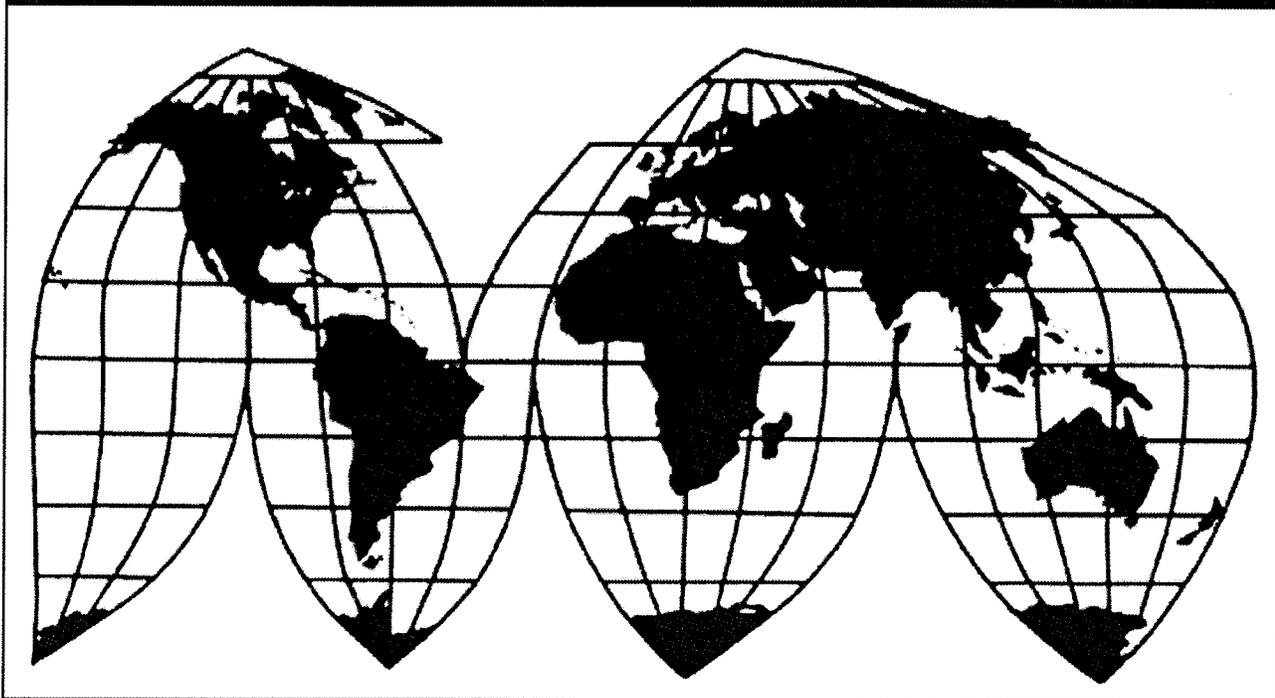
Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates

Investigation Nos. 731-TA-1349, 1352, and 1357 (Final)

Publication 4752

January 2018

U.S. International Trade Commission



Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1349, 1352, and 1357 (Final)

Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is materially injured by reason of imports of carbon and certain alloy steel wire rod from Belarus, Russia, and the United Arab Emirates, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).²

BACKGROUND

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective March 28, 2017, following receipt of a petition filed with the Commission and Commerce by Charter Steel, Saukville, Wisconsin; Gerdau Ameristeel US Inc., Tampa, Florida; Keystone Consolidated Industries, Inc., Peoria, Illinois; and Nucor Corporation, Charlotte, North Carolina. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of carbon and certain alloy steel wire rod from Belarus, Russia, and the United Arab Emirates were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 20, 2017 (82 FR 44001). The hearing was held in Washington, DC, on November 16, 2017 and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² The Commission also finds that imports of wire rod subject to Commerce’s affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Russia.

distribution than other wire rod products.⁴⁰ Specifically, they assert that grade 1080 tire cord and tire bead rod is sold exclusively to producers of tire cord and tire bead wire in the automotive sector.⁴¹ According to the British respondent, unlike standard wire, tire wire product specifications are technically complex and subject to trial and development programs. Consequently, domestic producers engage directly with tire cord and tire bead wire purchasers.⁴² It maintains that standard wire rod, on the other hand, is sold to distributors.⁴³

Additionally, Kiswire and the British and Korean respondents argue that grade 1080 tire cord and tire bead wire rod have different manufacturing facilities than other types of wire rod.⁴⁴ They assert that grade 1080 tire cord and tire bead wire rod can only be produced to customers' requirements using the basic oxygen furnace ("BOF") process used by certain subject producers as opposed to the electric arc furnace ("EAF") process used by domestic producers for production of their wire rod.⁴⁵ The Korean respondent states that although Evraz Rocky Mountain Steel ("Evraz") and Keystone reported production of grade 1080 tire cord and tire bead wire rod using the EAF process, the evidence indicates that the companies have been unable to produce these products in commercial quantities and to the satisfaction of tire manufacturers.⁴⁶ Kiswire argues that Evraz is able to produce grade 1080 tire cord wire rod, but that it must use imported BOF billets from Canada to do so. It claims that domestic producers do not use imported BOF billets to produce any other types of wire rod thus evidencing a clear dividing line between grade 1080 tire cord and tire bead wire rod and other wire rod products.⁴⁷

Finally, the British and Korean respondents argue that customers perceive grade 1080 tire cord and tire bead wire rod to be a distinct product from other types of wire rod⁴⁸ and that grade 1080 tire cord and tire bead wire is priced higher than all other wire rod products.⁴⁹

D. Domestic Like Product Analysis

Based on the record, we define a single domestic like product consisting of all wire rod, coextensive with the scope of the investigations.⁵⁰

⁴⁰ British Respondent Prehearing Br. at 26-27; Korean Respondent Prehearing Br. at 26-27.

⁴¹ British Respondent Prehearing Br. at 27; Korean Respondent Prehearing Br. at 26.

⁴² British Respondent Prehearing Br. at 27.

⁴³ British Respondent Prehearing Br. at 27.

⁴⁴ Kiswire Posthearing Br. at 4; British Respondent Prehearing Br. at 24-26; Korean Respondent Prehearing Br. at 25-26.

⁴⁵ Kiswire Posthearing Br. at 4; British Respondent Prehearing Br. at 21, 24; Korean Respondent Prehearing Br. at 25-26.

⁴⁶ Korean Respondent Prehearing Br. at 25-26.

⁴⁷ Korean Respondent Prehearing Br. at 11-19.

⁴⁸ Kiswire Posthearing Br. at 5-6.

⁴⁹ British Respondent Prehearing Br. at 27; Korean Respondent Prehearing Br. at 27.

⁴⁹ British Respondent Prehearing Br. at 28; Korean Respondent Prehearing Br. at 29-30.

⁵⁰ In the preliminary determinations, the Commission specifically considered and rejected the contention that grade 1080 tire cord and tire bead wire rod is a separate domestic like product. *Carbon* (Continued...)

Physical Characteristics and Uses. The record indicates that there is some overlap between grade 1080 tire cord and tire bead wire rod and all other wire rod with respect to physical characteristics and uses. All wire rod products within the scope, including grade 1080 tire cord and tire bead wire rod, are intermediate circular, hot-rolled steel products that are sold in irregularly wound coils and used for drawing and finishing into wire and wire products.⁵¹ The record indicates that the scope definition encompasses at least 11 major categories of wire rod, defined by end use, including low-carbon wire rod such as industrial wire rod used for nails and chain link fence, medium-high to high carbon wire rod used for mechanical springs, cold-heading quality (“CHQ”) wire, prestressed concrete strand (“PC strand”), and the highest-end products, including tire cord wire rod and music spring wire rod.⁵² Tire cord wire rod itself comprises several grades, including grade 1070 and 1080.⁵³

The British and Korean respondents argue that grade 1080 tire cord and tire bead wire rod is physically distinct from other wire rod because it is produced through a tightly managed manufacturing process to stringent specifications. However, the record indicates that there is domestic production of tire cord and tire bead wire rod below grade 1080 that also requires a

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and Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, Inv. Nos. 701-TA-573-574 and 731-TA-1349-1358 (Preliminary), USITC Pub. 4693 at 8-12 (May 2017) (“Preliminary Determinations”). The Commission found that although certain distinctions existed between grade 1080 tire cord and tire bead wire rod and other types of wire rod, there were substantial similarities as well. Specifically, it observed that grade 1080 tire cord and tire bead wire rod were high-end specialized products that were produced to specific customer requirements and standards and had limited interchangeability with other wire rod products in some end uses. It further observed that prices were lower for industrial quality wire rod and higher for higher quality and more specialized wire rod. However, given that all wire rod products shared certain basic physical properties, were generally manufactured in the same domestic facilities using the same processes, and were sold primarily to end users, and that limited interchangeability in some end uses and price differences was consistent with a grouping of a range of similar products, the Commission declined to define grade 1080 tire cord and tire bead wire rod as a separate domestic like product. See *id.* at 11-12. The Commission noted that this conclusion was consistent with findings it had made in 2002 and 2006 investigations of steel wire rod that grade 1080 tire cord and tire bead wire rod was not a separate domestic like product. *Id.* at 11 n.57. As explained below, while the record in the final phase of these investigations contains more extensive information with respect to the domestic like product factors, evidence on the record continues to indicate that grade 1080 tire cord and tire bead wire rod is not a separate domestic like product.

⁵¹ CR at I-15, PR at I-14.

⁵² CR at I-16-17, PR at I-14.

⁵³ CR/PR at Table IV-9 n.1; Nucor Posthearing Br. at Exhibit 1 pp.7-10, Exhibits 8-10; Kiswire Posthearing Br. at Responses to Commission Questions p.9 (stating that ***) and Exhibit 1. The different grades of tire cord and tire bead wire rod correspond to the carbon content. Thus, the carbon content of grade 1070 tire cord and tire bead wire rod is 0.7 percent, grade 1080 tire cord and tire bead wire rod is 0.8 percent, and grade 1090 tire cord and tire bead wire rod is 0.9 percent. Hearing Tr. at 218 (Hughes).

tightly managed manufacturing process to exacting purchaser specifications.⁵⁴ Purchaser specifications indicate similar metallurgical requirements for grades 1070 and 1080 tire cord and tire bead wire rod. Specifically, ***.⁵⁵ Key technical parameters for tire cord and tire bead wire rod such as surface defect, decarburization, microstructure, centerline segregation, and inclusion standards are also identical ***.⁵⁶ Moreover, other highly specialized wire rod products such as aircraft quality wire rod and music spring wire rod also have exacting metallurgical standards.⁵⁷ Their production processes must be carefully controlled to ensure the surface quality and cleanliness of the steel.⁵⁸ Thus, stringent metallurgical and quality requirements are not unique to grade 1080 tire cord and tire bead wire rod, but rather are shared qualities of certain specialized wire rod products that are on the high end of the wire rod spectrum.

Manufacturing Facilities, Production Processes, and Employees. All wire rod, including grade 1080 tire cord and tire bead wire rod, shares a basic manufacturing process consisting of steelmaking, casting, hot-rolling and coiling, and cooling.⁵⁹ While changes in chemical composition, alloying elements and other raw materials, stand fittings, and cooling speed determine the quality of the wire rod produced, the basic equipment, machinery, and facilities remain the same for the production of all wire rod including grade 1080 tire cord and tire bead wire rod.⁶⁰ Keystone and Evraz, which reported producing and shipping grade 1080 tire cord and/or tire bead wire rod during the period of investigation, and Nucor, which recently started production of grade 1080 tire bead wire rod, state that they use the same manufacturing facilities, production processes, and employees to produce grade 1080 tire cord and tire bead wire rod and other wire rod products. Specifically, *** produces grade 1080 as well as grades 1065 to 1075 tire cord and tire bead wire rod, industrial quality wire rod, welding quality wire rod, suspension spring wire rod, and CHQ wire rod using the same facilities, production

⁵⁴ Evraz produces grades 1065 to 1075 and grade 1080 tire cord and tire bead wire rod. Keystone produces grades 1070 to grade 1080 tire bead wire rod, including grades 1070, 1074, and 1078. Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 1 p.1.

⁵⁵ Gerdau, Keystone, and Charter Steel Posthearing Br. at 13, Exhibit 1 p.14, Exhibit 10; Nucor Posthearing Brief at Exhibit 1 pp. 7-8, Exhibits 9, 10.

⁵⁶ Gerdau, Keystone, and Charter Steel Posthearing Br. at 13-14, Exhibit 1 p.14, Exhibit 10; Nucor Posthearing Brief at Exhibit 1 pp. 7-8, Exhibit 9.

⁵⁷ Nucor Posthearing Br. at Exhibit 1 pp.18-21, Exhibit 6 (stating that music spring wire rod possesses specifications, including greater than 0.8 percent carbon content, similar to that of grade 1080 tire cord and tire bead wire rod); Hearing Tr. at 110 (Nystrom).

⁵⁸ Cascade U.S. Producer Questionnaire Response at V-1(a) (stating that music spring wire rod may be drawn to similar diameters as grade 1080 tire cord and tire bead wire rod and thus has similar quality requirements); Hearing Tr. at 110 (Nystrom); Kiswire Posthearing Br. at Responses to Commission Questions p. 3-4 (acknowledging the existence of other high end products that require the same tightly managed process and cleanliness of steel as grade 1080 tire cord and tire bead wire rod); Korean Respondent Posthearing Br. at 16 (stating that other high-end products, such as CHQ wire rod, suspension spring wire rod, and bearing quality rod, require stringent process controls and clean steel).

⁵⁹ CR at I-18-24, PR at I-17-22.

⁶⁰ CR at I-24, PR at I-20.

processes, and employees. *** states that ***.⁶¹ *** produces and packages grade 1080 in addition to grades 1070, 1074, and 1078 tire bead wire rod, industrial quality wire rod, welding quality wire rod, and CHQ wire rod on ***.⁶² *** produces grade 1080 tire bead wire rod, industrial quality wire rod, welding quality wire rod, suspension spring wire rod, and CHQ wire rod in the same facilities, using the same equipment and employees. *** states that in producing grade 1080 tire bead wire rod, it adds high levels of DRI or pig iron to reduce residual elements.⁶³

The British and Korean respondents argue that grade 1080 tire cord and tire bead wire rod must be produced using the BOF process and that the domestic industry, which uses only EAF production facilities, is incapable of producing grade 1080 tire cord and tire bead wire rod. As an initial matter, the statute, by use of the word “domestic” in the definition, unambiguously indicates that only domestically produced products may be included in a domestic like product and expressly distinguishes the domestic like product from the imported articles under investigation.⁶⁴ Because the like product analysis compares different domestically produced products, it is not probative to the analysis that domestic producers do not have BOF facilities to melt billets for the production of grade 1080 tire cord and tire bead wire rod.⁶⁵ The evidence on the record indicates that domestic producers produce grade 1080 tire cord and tire bead wire rod using the same EAF facilities used to produce all other wire rod.⁶⁶ *** also purchases billets from a BOF producer and rolls them on its rolling mill equipment to produce some of its grade 1080 tire cord and tire bead wire rod.⁶⁷

⁶¹ *** U.S. Producer Questionnaire Response at II-9, V-1(c) (Oct. 13, 2017); Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 1 p.1.

⁶² *** U.S. Producer Questionnaire Response at II-9, V-1(c) (Oct. 12, 2017); Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 1 p.1.

⁶³ *** U.S. Producer Questionnaire Response at II-9, V-1(c) (Oct. 13, 2017).

⁶⁴ 19 U.S.C. § 1677(10).

⁶⁵ See, e.g., *Large Residential Washers from China*, Inv. No. 731-TA-1306 (Preliminary), USITC Pub. 4591 at 10 (Feb. 2016).

⁶⁶ Email from ***, EDIS Doc. No. 629654 (stating that ***); Hearing Tr. at 41 (Armstrong) (Keystone produces grade 1080 tire bead wire rod from steel made in its EAF); Nucor Posthearing Br. at Exhibit 1 p.26 (stating that ***); Kiswire Posthearing Br. at 6 n.16 (acknowledging that some domestic producers may be able to produce grade 1080 tire bead wire rod using the EAF process); Korean Respondent Posthearing Br. at 12 (acknowledging that domestic producers produce grade 1080 tire bead wire rod).

We further note that EAF producers in Spain and Belarus also produce grade 1080 tire cord and tire bead wire rod that is exported to the United States. Gerdau, Keystone, and Charter Steel Posthearing Br. at 14, Exhibit 1 p.7, Exhibits 12 & 13; Global Steel Wire, S.A. Foreign Producer Questionnaire Response at III-1 (Oct. 13, 2017); Byelorussian Metallurgical Company Foreign Producer Questionnaire Response at III-1 (Dec. 10, 2017).

⁶⁷ Email from *** (Nov. 14, 2017), EDIS Doc. No. 629654 (stating that ***); Email from *** (Nov. 27, 2017), EDIS Doc. No. 630383 (clarifying that ***).

The Korean respondent argues that the domestic producers have been unable to produce grade 1080 tire cord and tire bead wire rod in commercial quantities and to the satisfaction of tire manufacturers. The domestic industry, however, supplied between *** of apparent U.S. consumption (Continued...)

To the extent that respondents argue that a clear dividing line exists between grade 1080 tire cord and tire bead wire rod and other wire rod products based upon domestic producers' purchase of BOF billets to produce grade 1080 tire cord and tire bead wire rod, the evidence on the record indicates that this is not unique to grade 1080 tire cord and tire bead wire rod. Domestic producers purchase BOF billets to produce other types of wire rod. Specifically, *** during the period of investigation.⁶⁸ ***.⁶⁹ ***.⁷⁰ In any event, the domestic producers primarily use steel melted in their EAF facilities to produce grade 1080 tire cord and tire bead wire rod.⁷¹ Consequently, there is little distinction in production facilities and manufacturing processes between domestically produced grade 1080 tire cord and tire bead wire rod and other domestically produced wire products.

Channels of Distribution. The majority of all domestically produced wire rod is sold to end users.⁷² In 2016, *** percent of U.S. producers' U.S. commercial shipments were to end users and *** percent were to distributors.⁷³ Grade 1080 tire cord and tire bead wire rod was sold *** to end users. The majority (*** percent) of other wire rod products was also sold directly to end users.⁷⁴

Interchangeability. The scope definition encompasses 11 broad end use categories, including tire cord and tire bead wire rod, within which there is an overlap of metallurgical qualities, chemistries, and physical characteristics. Wire rod products used for different end uses are not always interchangeable. Consequently, wire rod used for industrial applications would not meet the quality specifications required for grade 1080 tire cord and tire bead wire rod.⁷⁵ Higher grades of tire cord and tire bead wire rod, however, may be used in place of lower grades of tire cord and tire bead wire rod in producing tire cord and tire bead wire depending on purchaser specifications. Petitioners contend that tire cord and tire bead wire rod below grade 1080 are used to produce tire cord and tire bead wire.⁷⁶ The Korean

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for grade 1080 tire cord and tire bead wire rod during the period of investigation. Gerdau, Keystone, and Charter Steel Posthearing Br. at 13. In 2016, the domestic industry shipped *** short tons of grade 1080 tire cord and tire bead wire rod, a volume that exceeded the reported *** short tons of imports of this product from Spain and *** short tons from the United Kingdom. This volume nearly matched the 20,446 short tons of grade 1080 tire cord and tire bead wire rod imports from Korea. CR/PR at Table I-11. Additionally, domestic producers indicate that: ***. Emails from ***, EDIS Doc. No. 630383.

⁶⁸ Email from *** (Nov. 27, 2017), EDIS Doc. No. 630383.

⁶⁹ Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 1 p.15.

⁷⁰ Nucor Posthearing Br. at Exhibit 1 p.17.

⁷¹ Email from *** (Nov. 14, 2017), EDIS Doc. No. 629654 (stating that ***); Email from *** (Nov. 27, 2017), EDIS Doc. No. 630383 (stating that ***).

⁷² CR/PR at Table I-11.

⁷³ CR/PR at Table I-11.

⁷⁴ CR/PR at Table I-11.

⁷⁵ CR/PR at I-34-35.

⁷⁶ Nucor Posthearing Br. at Exhibit 1 pp.7-10. Nucor observes that ***, ***, and ***. See *id.* at Exhibits 8-10. Nucor claims that if grade 1080 tire cord wire rod is priced inexpensively, tire cord producers will substitute it for grades 1078 or 1070 tire cord wire rod. See *id.* at Exhibit 1 pp. 9-10.

respondent acknowledges that although the trend in the tire industry is to produce tires using grade 1080 tire cord and tire bead wire rod, grade 1070 tire cord and tire bead wire rod can be used to make tire cord and tire bead wire.⁷⁷

Producer and Customer Perceptions. Information on the record regarding producer and customer perceptions with respect to differences and/or similarities between grade 1080 tire cord and tire bead wire rod and all other wire rod is mixed. Three U.S. producers reported that grade 1080 tire cord and tire bead wire rod and all other wire rod are fully or mostly comparable, and three U.S. producers reported that they are somewhat comparable.⁷⁸ Three purchasers reported that grade 1080 tire cord and tire bead wire rod and all other wire rod are fully or mostly comparable, one purchaser reported that they are somewhat comparable, and four purchasers reported that they are not at all comparable.⁷⁹

The British and Korean respondents assert that customers clearly perceive grade 1080 tire cord and tire bead wire rod to be a distinct product that must be produced to stringent specifications.⁸⁰ It is not uncommon, however, for other wire rod products to be produced to exacting standards. This is true not only for grade 1080 tire cord and tire bead wire rod, but for tire cord and tire bead wire rod below grade 1080 and other types of specialized wire rod products as well.⁸¹ Domestic producers generally produce both specialty and lower end types of wire rod, and do not make bright-line distinctions among the various types, but rather view the various types as comprising a range of wire rod products.⁸²

Price. The average unit value in 2016 of U.S. commercial shipments of domestically produced grade 1080 tire cord and tire bead wire rod (\$*** per short ton) was higher than the average unit value of U.S. commercial shipments of all other domestically produced wire rod (\$*** per short ton).⁸³ Petitioners agree that tire cord wire rod commands a price premium over lower-end products, but assert that this is true for other wire rod products as well.⁸⁴ The record indicates that prices for domestically produced pricing product 6, suspension spring wire rod, a premium wire rod product, were substantially higher than those for industrial quality wire rod products during the period of investigation.⁸⁵

Conclusion. Based on the record in these investigations, we determine that there is one domestic like product. In investigations such as these in which domestically manufactured merchandise is made up of a grouping of similar products or involves niche products, the

⁷⁷ Korean Posthearing Br. at 32.

⁷⁸ CR at I-35, PR at I-26.

⁷⁹ CR at I-35-36, PR at I-26.

⁸⁰ British Respondent Prehearing Br. at 27; Korean Respondent Prehearing Br. at 27.

⁸¹ Gerdau, Keystone, and Charter Steel Posthearing Br. at 13-14, Exhibit 1 p.14, Exhibit 10; Nucor Posthearing Brief at Exhibit 1 pp. 7-8, 18-21, Exhibits 6, 9, 10; Kiswire Posthearing Br. at Responses to Commission Questions p. 3-4; Korean Respondent Posthearing Br. at 16; Hearing Tr. at 110 (Nystrom).

⁸² Gerdau, Keystone, and Charter Steel Prehearing Br. at 12; Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 1 pp.1-3; Nucor Posthearing Brief at Exhibit 1 pp.1-10, 18-21.

⁸³ CR/PR at Table I-12. The questionnaires did not seek quarterly pricing data on a grade 1080 tire cord and tire bead wire rod product.

⁸⁴ Gerdau, Keystone, and Charter Steel Prehearing Br. at 13.

⁸⁵ CR/PR at Tables V-3-4, Table V-8.

Commission does not consider each item of merchandise to be a separate like product that is only “like” its identical counterpart in the scope, but considers the grouping itself to constitute the domestic like product⁸⁶ and “disregards minor variations,”⁸⁷ absent a “clear dividing line” between particular products in the group. In prior investigations involving wire rod, the Commission has found that distinctions between different types of wire rod do not constitute “clear dividing lines” warranting the definition of separate domestic like products.⁸⁸ Notwithstanding respondents’ contention that product characteristics for grade 1080 tire cord and tire bead wire rod have changed since these prior proceedings, we conclude the record here warrants the same result. While grade 1080 tire cord and tire bead wire rod are high-end specialized products that may have certain unique characteristics and are made using specialized processes to specific customer requirements and standards, the same is true for other types of high end specialized wire rod. Moreover, all types of wire rod share certain basic physical properties, are generally manufactured in the same domestic facilities using the same processes, and are sold primarily to end users. Limited interchangeability in some end uses and price differences are consistent with a wide range of products comprising a continuum. We accordingly define a single domestic like product consisting of all wire rod, including grade 1080 tire cord and tire bead wire rod, corresponding to the scope of the investigations.

III. Domestic Industry

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes

⁸⁶ See, e.g., *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*, Inv. Nos. 701-TA-545-547, 731-TA-1291-1297 (Preliminary), USITC Pub. 4570 at 10 (Oct. 2015); *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, Inv. Nos. 701-TA-469 and 731-TA-1168 (Final), USITC Pub. 4190 at 8, n. 45 (Nov. 2010); *Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, Inv. Nos. 701-TA-413 (Final) and 731-TA-913-916 and 918 (Final), USITC Pub. 3488 at 6-7 (February 2002).

⁸⁷ See S. Rep. No. 96-249 at 90-91 (1979).

⁸⁸ E.g., *Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey*, Inv. Nos. 731-TA-1099-1101 (Preliminary), USITC Pub. 3832 at 10 (Jan. 2006); *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961, and 962 (Final), USITC Pub. 3546 at 9 (Oct. 2002). In the 2002 investigations, the scope excluded grade 1080 tire cord and tire bead wire. The Commission nevertheless defined a single domestic like product, finding that grade 1070, grade 1080, and grade 1090 tire cord wire rod had “the same physical characteristics, uses, prices, channels of distribution and production processes.” *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, USITC Pub. 3546 at 9. In the 2006 investigations, the scope included grade 1080 tire cord and tire bead wire rod. After considering party arguments addressing whether tire cord and tire bead wire rod should be a separate domestic like product, the Commission again found one domestic like product, which included grade 1080 tire cord and tire bead wire rod. *Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey*, USITC Pub. 3832 at 9-11.

E. Impact of the Subject Imports²²⁹

Section 771(7)(C)(iii) of the Tariff Act provides that examining the impact of subject imports, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²³⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, gross profits, net profits, operating profits, cash flow, return on investment, return on capital, ability to raise capital, ability to service debts, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²³¹

²²⁹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination of sales at less value, Commerce found dumping margins of 280.02 percent for imports from Belarus, 436.80 to 756.93 percent for imports from Russia, and 84.10 percent for imports from the United Arab Emirates. Commerce Antidumping Duty Investigations, 82 Fed. Reg. at 56215. For the remaining investigations we refer, as the statute instructs, to Commerce’s preliminary margins. See 19 U.S.C. § 1677(35)(C)(ii). In its preliminary determinations, Commerce has found the following dumping margins: 22.06 percent for imports from Italy, 40.80 percent for imports from Korea, 135.46 to 142.26 percent for imports from South Africa, 10.61 percent for imports from Spain, 2.80 to 8.01 percent for imports from Turkey, 34.98 to 44.03 percent for imports from Ukraine, and 41.96 to 147.63 percent for imports from the United Kingdom. See *Carbon and Alloy Steel Wire Rod from Italy*, 82 Fed. Reg. 50381; *Carbon and Alloy Steel Wire Rod from Korea*, 82 Fed. Reg. 56220; *Carbon and Alloy Steel Wire Rod from South Africa*, 82 Fed. Reg. 50383 (Oct. 31, 2017) (preliminary affirmative determination of sales at less than fair value, preliminary affirmative determination of critical circumstances, and preliminary determination of no shipments); *Carbon and Alloy Steel Wire Rod from Spain*, 82 Fed. Reg. 57726 (Dec. 7, 2017) (amended preliminary determination of sales at less than fair value); *Carbon and Alloy Steel Wire Rod from Turkey*, 82 Fed. Reg. 50377; *Carbon and Alloy Steel Wire Rod from Ukraine*, 82 Fed. Reg. 50375 (Oct. 31, 2017) (preliminary affirmative determination of sales at less than fair value); *Carbon and Alloy Steel Wire Rod from the United Kingdom*, 82 Fed. Reg. 50394 (Oct. 31, 2017) (preliminary affirmative determination of sales at less than fair value and preliminary affirmative determination of critical circumstances). We take into account in our analysis the fact that Commerce has made preliminary or final findings that all subject producers in all ten subject countries are selling subject imports in the United States at less than fair value. In addition to this consideration, our impact analysis has considered other factors affecting domestic prices. Our analysis of the significant underselling and the other price effects of subject imports, described in both the price effects discussion and below, are particularly probative to an assessment of the impact of the subject imports.

²³⁰ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

²³¹ 19 U.S.C. § 1677(7)(C)(iii). This provision was amended by the Trade Preferences Extension Act of 2015, Pub. L. 114-27.

Most of the domestic industry's performance indicators declined from 2014 to 2016.²³² The domestic industry's share of apparent U.S. consumption in the merchant market fell from 59.3 percent in 2014 to 59.2 percent in 2015 and 58.2 percent in 2016.²³³ Its capacity declined from 4.9 million short tons in 2014 and 2015 to 4.7 million short tons in 2016.²³⁴ As previously discussed, domestic producers ArcelorMittal and Republic Steel ceased wire rod operations during the period of investigation.²³⁵

²³² As discussed above, the filing of the petition affected subject import volume and we are consequently according reduced weight to trade, output, and financial data for interim 2017.

²³³ CR/PR at Table IV-15. The domestic industry's market share in the merchant market was lower in interim 2017 at 57.6 percent than in interim 2016 at 57.8 percent. *See id.* The domestic industry's share of the overall market increased from 66.9 percent in 2014 to 67.1 percent in 2015, before decreasing to 66.7 percent in 2016. CR/PR at Table IV-13. The domestic industry's share of the overall market was lower in interim 2017 at 65.9 percent than in interim 2016 at 66.7 percent. *See id.*

²³⁴ CR/PR at Table III-4. The domestic industry's capacity was 3.50 million short tons in interim 2016 and interim 2017. *See id.*

²³⁵ Petitioners claim that subject imports were one of the factors that caused ArcelorMittal to shutter its Georgetown, South Carolina, mill in 2015 and Republic Steel to idle its Lorain, Ohio, mill in 2016. Nucor Prehearing Br. at 1-2; Nucor Posthearing Br. at Exhibit 1 pp.71-75; Hearing Tr. at 37, 82-83 (Rosenthal), 85-87 (Price), 111-112 (Price). Respondents contend that factors other than subject imports led to the closures. AWWA Prehearing Br. at 22-27; AWWA Posthearing Br. at 13-15; British Respondent Prehearing Br. at 9-12; British Respondent Posthearing Br. at Appendix B; Korean Respondent Prehearing Br. at 35-38; Turkish Respondents Prehearing Br. at 19-20; Turkish Respondents Posthearing Br. at 10. The British and Turkish respondents argue that the closures of ArcelorMittal's and Republic Steel's wire rod operations were not due to subject imports, and as such, the Commission should disregard the data of those companies in determining the domestic industry's production and market share. British Respondent Prehearing Br. at 6-8; British Respondent Posthearing Br. at 3-4; Turkish Respondents Prehearing Br. at 19; Turkish Respondents Posthearing Br. at 4; Hearing Tr. at 182 (Cunningham). The British respondent claims that in prior decisions, the Commission was careful to analyze domestic industry data when producers left the market for reasons other than subject imports. *See id.* at 7-8, citing *Liquid Sulfur Dioxide from Canada*, Inv. No. 731-TA-1098 (Preliminary), USITC Pub. 3826 (Dec. 2005); *Titanium Sponge from Japan and Kazakhstan*, Inv. No. 701-TA-587 and 731-TA-1385-1387 (Preliminary), USITC Pub. 4736 (Oct. 2017); and *Steel Wire Rope from China and India*, Inv. No. 731-TA-868 (Final), USITC Pub. 3406 (2001).

Contrary to the British respondents' contention, the Commission in its prior determinations did not "disregard" the data of domestic producers that exited the domestic industry in determining the domestic industry's production and market share. Rather, in the decisions cited by the British respondent, the Commission considered the domestic industry as a whole and examined the exits of certain domestic producers from the industry in its impact analyses. *See Liquid Sulfur Dioxide from Canada*, USITC Pub. 3826 at 20-23; *Titanium Sponge from Japan and Kazakhstan*, USITC Pub. 4736 at 29-32; *Steel Wire Rope from China and India*, USITC Pub. 3406 at 19 n.151. While the statute does provide one mechanism – the related parties provision – for the Commission to exclude data from certain domestic producers, respondents did not seek to exclude ArcelorMittal from the industry on this basis, as discussed above. As discussed above, we do not exclude ArcelorMittal despite it being a related party because of its principal interest in domestic production, among other factors.

(Continued...)

The domestic industry's production decreased from 3.7 million short tons in 2014 and 2015 to 3.6 million short tons in 2016.²³⁶ The domestic industry's commercial U.S. shipments decreased from 2.6 million short tons in 2014 and 2015 to 2.5 million short tons in 2016.²³⁷ Its capacity utilization decreased from 75.6 percent in 2014 to 75.2 percent in 2015, before increasing to 76.6 percent in 2016.²³⁸ Its ratio of end-of-period inventories to U.S. commercial shipments increased from 7.4 percent in 2014 to 7.5 percent in 2015 and 7.6 percent in 2016.²³⁹

Most employment-related indicators for the domestic industry declined overall from 2014 to 2016. The number of production-related workers ("PRWs"),²⁴⁰ wages paid,²⁴¹ and total

(...Continued)

In any event, the record does not include any data from Republic Steel because the company did not provide a usable questionnaire response in the preliminary phase of the investigations and did not provide any questionnaire response in the final phase. CR/PR at III-1 n.1. ArcelorMittal issued press releases announcing the Georgetown mill's closure explaining that the mill was "severely impacted by waves of unfairly traded imports from China and other countries." Nucor Posthearing Br. at Exhibit 31. Contemporaneous newspaper articles also pointed to unfairly traded imports as playing a role in the closure. *See id.* at Exhibits 33-37. Moreover, employees who lost their jobs when the Georgetown mill closed received trade adjustment assistance. Hearing Tr. at 59 (Hart). The evidence also indicates that the Georgetown mill faced problems unrelated to cumulated subject imports. The port on which the mill was located became clogged with silt and the Army Corps of Engineers refused to dredge the port, preventing access for larger ships to deliver raw materials to the mill. Moreover, Nucor opened a new, modern, state of the art wire rod mill located only 100 miles from the Georgetown mill. *See* AWPA Prehearing Br. at 23-25; British Respondent Prehearing Br. at 10-11; British Respondent Posthearing Br. at Appendix B; Turkish Respondents Prehearing Br. at 19; Turkish Respondents Posthearing Br. at 10. Significantly, irrespective of the forces contributing to the closure decision, the Georgetown mill's closure should not have dictated a decline in the domestic industry's production. Other U.S. producers had excess capacity exceeding the amount that ArcelorMittal shuttered, and therefore had the ability to increase their production to meet demand previously served by ArcelorMittal. *See* CR/PR at Table III-4.

²³⁶ CR/PR at Table III-4. The domestic industry's production was higher in interim 2017 at 2.9 million short tons than in interim 2016 at 2.8 million short tons. *See id.*

²³⁷ CR/PR at Table III-6. The domestic industry's commercial shipments were higher in interim 2017 at 2.0 million short tons than in interim 2016 at 1.9 million short tons. Its total U.S. shipments decreased from *** short tons in 2014 and 2015 to *** short tons in 2016 and were higher in interim 2017 at *** short tons than in interim 2016 at *** short tons. *See id.*

²³⁸ CR/PR at Table III-4. The domestic industry's capacity utilization was higher in interim 2017 at 83.0 percent than in interim 2016 at 78.8 percent. *See id.*

²³⁹ CR/PR at Table III-7. The domestic industry's ratio of end-of-period inventories to U.S. commercial shipments was higher in interim 2017 at 7.7 percent than in interim 2016 at 7.4 percent. Its ratio of end-of-period inventories to total shipments increased from *** percent in 2014 and 2015 to *** percent in 2016 and was higher in interim 2017 at *** percent than in interim 2016 at *** percent. *See id.*

²⁴⁰ CR/PR at Table III-9. The domestic industry's PRWs increased from 2,299 in 2014 to 2,410 in 2015, before decreasing to 2,222 in 2016. The number of PRWs was lower in interim 2017 at 2,238 than in interim 2016 at 2,242. *See id.*

hours worked²⁴² fluctuated between years but decreased overall from 2014 to 2016. Productivity also fluctuated between years but declined overall from 2014 to 2016.²⁴³ Unit labor costs increased from 2014 to 2016.²⁴⁴

The domestic industry's financial indicators in the merchant market generally declined from 2014 to 2016. Net sales,²⁴⁵ unit net sales value,²⁴⁶ gross profit,²⁴⁷ operating income,²⁴⁸

(...Continued)

²⁴¹ CR/PR at Table III-9. Wages paid increased from \$170.6 million in 2014 to \$172.3 million in 2015, before decreasing to \$168.3 million in 2016. Wages paid were higher in interim 2017 at \$129.1 million than in interim 2016 at \$124.6 million. *See id.*

²⁴² CR/PR at Table III-9. Total hours worked increased from 4.8 million in 2014 to 4.9 million in 2015, before decreasing to 4.8 million in 2016. Total hours worked were higher in interim 2017 at 3.60 million than in interim 2016 at 3.57 million. *See id.*

²⁴³ CR/PR at Table III-9. The domestic industry's productivity (in short tons per 1,000 hours) decreased from 766.8 in 2014 to 744.7 in 2015, before increasing to 751.0 in 2016. The domestic industry's productivity (in short tons per 1,000 hours) was higher in interim 2017 at 805.1 than in interim 2016 at 772.7. *See id.*

²⁴⁴ CR/PR at Table III-9. The domestic industry's unit labor costs increased from \$46.01 to \$46.84 in 2015 and \$47.13 in 2016. The domestic industry's unit labor costs were lower in interim 2017 at \$44.60 than in interim 2016 at \$45.25. *See id.*

²⁴⁵ CR/PR at Table VI-3. The domestic industry's net sales revenues in the merchant market declined from \$1.9 billion in 2014 to \$1.5 billion in 2015 and \$1.3 billion in 2016. Its net sales revenues in the merchant market were higher in interim 2017 at \$1.2 billion than in interim 2016 at \$1.0 billion. *See id.* In the overall market, the domestic industry's net sales revenues declined from \$2.6 billion in 2014 to \$2.1 billion in 2015 and \$1.9 billion in 2016. Its net sales revenues in the overall market were higher in interim 2017 at \$1.7 billion than in interim 2016 at \$1.4 billion. CR/PR at Table VI-1. The domestic industry's net sales of internal consumption and transfers to related firms declined from \$672.0 million in 2014 to \$560.7 million in 2015 and \$535.8 million in 2016. Its net sales of internal consumption and transfers to related firms were higher in interim 2017 at \$482.2 million than in interim 2016 at \$428.5 million. Calculated from CR/PR at Table VI-1.

²⁴⁶ CR/PR at Table VI-3. The domestic industry's unit net sales value in the merchant market declined from \$716 per short ton in 2014 to \$585 per short ton in 2015 and \$530 per short ton in 2016. Its unit net sales value in the merchant market was higher in interim 2017 at \$607 per short ton than interim 2016 at \$532 per short ton. *See id.* In the overall market, the domestic industry's unit net sales value declined from \$716 per short ton to \$585 per short ton in 2015 and \$530 per short ton in 2016. Its unit net sales value in the overall market was higher in interim 2017 at \$607 per short ton than interim 2016 at \$532 per short ton. CR/PR at Table VI-1.

²⁴⁷ CR/PR at Table VI-3. The domestic industry's gross profit in the merchant market declined from \$115.1 million in 2014 to \$69.6 million in 2015, before increasing to \$90.7 million in 2016. Its gross profit in the merchant market was higher in interim 2017 at \$99.4 million than in interim 2016 at \$49.1 million. *See id.* In the overall market, the domestic industry's gross profit declined from \$157.7 million in 2014 to \$111.6 million in 2015, before increasing to \$139.6 million in 2016. Its gross profit in the overall market was higher in interim 2017 at \$140.5 million than in interim 2016 at \$120.2 million. CR/PR at Table VI-1.

²⁴⁸ CR/PR at Table VI-3. The domestic industry's operating income in the merchant market decreased from \$52.6 million in 2014 to \$13.3 million in 2015, before increasing to \$25.1 million in (Continued...)

and net income²⁴⁹ declined overall from 2014 to 2016. Operating income as a share of net sales also declined overall from 2014 to 2016.²⁵⁰

Domestic producers' capital expenditures declined from 2014 to 2016.²⁵¹ Domestic producers also reported negative effects on investment and on growth and development due to subject imports.²⁵²

As discussed above, significant volumes of low-priced cumulated subject imports that were generally substitutable with the domestic like product entered the U.S. market and significantly undersold the domestic like product. Although wire rod imports from China retreated from the U.S. market following imposition of antidumping and countervailing duty orders covering those imports, which resulted in nonsubject imports decreasing their presence in the market, the domestic industry was unable to achieve any market share gains and, in fact, lost market share to the cumulated subject imports.²⁵³ The domestic industry's underutilization

(...Continued)

2016. Its operating income in the merchant market was higher in interim 2017 at \$48.0 million than in interim 2016 at \$28.4 million. *See id.* In the overall market, the domestic industry's operating income decreased from \$75.4 million in 2014 to \$35.8 million in 2015, before increasing to \$52.9 million in 2016. Its operating income in the overall market was higher in interim 2017 at \$72.8 million than in interim 2016 at \$55.0 million. CR/PR at Table VI-1. The domestic industry's operating income in the captive market decreased from \$22.8 million in 2014 to \$22.5 million in 2015, before increasing to \$27.8 million in 2016. Its operating income in the captive market was lower in interim 2017 at \$24.8 million than in interim 2016 at \$26.6 million. Calculated from CR/PR at Tables VI-1 & VI-3.

The domestic industry's wire rod operations generated higher operating income in 2016 than in 2015 *** because of ***. CR at VI-12, PR at VI-9. Individually, the majority of reporting firms experienced operating losses in every full year during the period of investigation. *See id.*

²⁴⁹ CR/PR at Table VI-3. The domestic industry's net income in the merchant market decreased from \$46.4 million in 2014 to \$5.7 million in 2015, before increasing to \$21.1 million in 2016. Its net income in the merchant market was higher in \$46.9 million than in interim 2016 at \$25.3 million. *See id.* The domestic industry's net income in the overall market decreased from \$62.2 million in 2014 to \$22.1 million in 2015, before increasing to \$44.3 million in 2016. Its net income in the overall market was higher in interim 2017 at \$68.5 million than in interim 2016 at \$48.3 million. CR/PR at Table VI-1.

²⁵⁰ CR/PR at Table VI-3. The domestic industry's operating income as a share of net sales in the merchant market decreased from 2.8 percent in 2014 to 0.9 percent in 2015, before increasing to 1.9 percent in 2016. Its operating income as a share of net sales in the merchant market was higher in interim 2017 at 3.9 percent than in interim 2016 at 2.8 percent. *See id.* The domestic industry's operating income as a share of net sales in the overall market decreased from 2.9 percent in 2014 to 1.7 percent in 2015, before increasing to 2.8 percent in 2016. Its operating income as a share of net sales in the overall market was higher in interim 2017 at 4.3 percent than in interim 2016 at 3.8 percent. CR/PR at Table VI-1.

²⁵¹ CR/PR at Table VI-7. The domestic industry's capital expenditures declined from \$90.9 million in 2014 to \$68.7 million in 2015 and \$52.9 million in 2016. Its capital expenditures were higher in interim 2017 at \$41.6 million than in interim 2016 at \$33.8 million. *See id.*

²⁵² CR/PR at Tables VI-9-10.

²⁵³ As discussed above, Chairman Schmidlein, Vice Chairman Johanson, and Commissioner Williamson also find that cumulated subject imports depressed U.S. prices in 2014 and 2015.

of capacity led to fixed costs being spread across fewer sales than would have occurred otherwise. Consequently, from 2014 to 2016, the domestic industry's financial performance deteriorated as its output and revenues declined. We therefore find that cumulated subject imports had a significant impact on the domestic industry.²⁵⁴

We have considered the Turkish respondents' argument that the domestic industry's vertical integration and existence of domestic preference programs insulated the domestic industry from competition with subject imports.²⁵⁵ The record indicates, however, that of the domestic industry's U.S. shipments, the majority is directed to the merchant market and is not captively consumed. Domestic producers' merchant market shipments accounted for between 69.1 and 71.4 percent of their total U.S. shipments each year from 2014 to 2016.²⁵⁶ Moreover, prices in the merchant market affected revenues in the captive market. All domestic producers reported that transfers of wire rod to related companies occurred at fair market value.²⁵⁷ Consequently, average unit values for transfers to affiliated entities incurred similar declines as commercial sales average unit values.²⁵⁸ In sum, the record does not support the conclusion that the vertical integration of the domestic industry insulated domestic producers from the effects of competition by cumulated subject imports.

We acknowledge that subject imports are not able to compete on Buy America(n) procurements, but available information suggests that Buy America(n) preferences apply to a relatively small share of wire rod purchases in the U.S. market.²⁵⁹ Moreover, these preferences did not prevent cumulated subject imports from making significant volume and market share gains during the period of investigation. Accordingly, these preference programs also did not insulate the domestic industry from direct competition with subject imports or from the adverse effects of the low-priced subject imports.

We have considered whether there are other factors that may have had an impact on the domestic industry during the period of investigation to ensure that we are not attributing

²⁵⁴ Commissioner Broadbent observes that application of the captive production provision, as amended by the Trade Preferences Extension Act of 2015, has a bearing on her assessment of the impact of subject imports in these investigations. As discussed in section V.B.1 above, the Commission did not apply the captive production provision in the 2014-15 investigations on wire rod from China because the third criterion for applying the provision was not satisfied. Consistent with the Trade Preferences Extension Act of 2015 which eliminated the third criterion, the Commission has applied the captive production provision in these investigations. Therefore, 19 U.S.C. § 1677(7)(C)(iv) provides that "the Commission, in determining market share and the factors affecting financial performance {...}, shall focus primarily on the merchant market for the domestic like product." As a result, Commissioner Broadbent has placed primary weight within her analysis on the fact that the domestic industry continued to lose merchant market share and experienced a slight decline in its profitability from merchant market sales, despite imports from China losing 8.5 percentage points of market share. In the overall market, the domestic industry's profitability and market share remained stable.

²⁵⁵ Turkish Respondents Prehearing Br. at 3-4, 8-10; Turkish Respondents Posthearing Br. at 5-7.

²⁵⁶ CR/PR at Table III-6.

²⁵⁷ CR at III-14-15, PR at III-9.

²⁵⁸ CR/PR at Table VI-1.

²⁵⁹ Gerdau, Keystone, and Charter Steel Posthearing Br. at Exhibit 8.

injury from such other factors to subject imports. Although apparent U.S. consumption declined during the period of investigation, the decline was modest and fails to explain either the significant increase in the volume and market share of cumulated subject imports or the domestic industry's inability to increase, or even to maintain, its market share after wire rod imports from China largely departed the U.S. market.²⁶⁰

We have also considered the role of nonsubject imports in these investigations. Nonsubject imports' share of apparent U.S. consumption in the merchant market decreased from 30.5 percent in 2014 to 25.5 percent in 2015 and 25.2 percent in 2016.²⁶¹ Although wire rod imports from Canada, the largest source of nonsubject imports in 2016, increased, the pricing data show that they were predominantly priced higher than both subject imports and the domestic like product.²⁶² Moreover, wire rod imports from six nonsubject countries are currently subject to antidumping duty orders and wire rod from two nonsubject countries are subject to countervailing duty orders.²⁶³ Accordingly, we find that nonsubject imports cannot explain the domestic industry's declines in market share or deteriorating condition over the period of investigation.

Accordingly, we conclude that subject imports have had a significant impact on the domestic industry.

VI. Critical Circumstances

A. Legal Standards and Party Arguments

In its final antidumping duty determination concerning imports of wire rod from Russia, Commerce found that critical circumstances exist with respect to all subject producers and exporters in that country.²⁶⁴ Because we have determined that the domestic industry is materially injured by reason of subject imports from Russia, we must further determine "whether the imports subject to the affirmative {Commerce critical circumstances} determination ... are likely to undermine seriously the remedial effect of the antidumping

²⁶⁰ We also discussed above that declines in demand cannot explain the magnitude of declines in prices for domestically produced products in 2014 and 2015.

²⁶¹ CR/PR at Table IV-15. Nonsubject imports' market share in the merchant market was higher in interim 2017 at 28.4 percent than in interim 2016 at 24.8 percent. *See id.* Nonsubject imports' market share in the overall market decreased from 24.8 percent in 2014 to 20.6 percent in 2015 and 20.1 percent in 2016. Nonsubject imports' market share in the overall market was higher in interim 2017 at 22.8 percent than in interim 2016 at 19.6 percent. CR/PR at Table IV-13.

²⁶² One importer reported pricing data for nonsubject imports from Canada, accounting for *** percent of U.S. commercial shipments of wire rod from Canada in 2016. CR at H-3, PR at H-3. These data show that prices for nonsubject imports from Canada were higher than the domestic like product in 24 quarterly comparisons and lower than the domestic like product in 21 quarterly comparisons; they were higher than cumulated subject imports in 106 quarterly comparisons and lower than cumulated subject imports in 31 quarterly comparisons. CR/PR at Table H-4.

²⁶³ CR/PR at Table I-1.

²⁶⁴ Commerce Antidumping Duty Investigations, 82 Fed. Reg. at 56215.

Total Market

Table C-1

Wire rod: Summary data concerning the U.S. market, 2014-16, January to September 2016, and January to September 2017

(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	Calendar year		2016	January to September		2014-16	Calendar year		Jan-Sep 2016-17
	2014	2015		2016	2017		2014-15	2015-16	
U.S. consumption quantity:									
Amount.....	5,447,162	5,430,928	5,321,081	4,104,862	4,322,014	(2.3)	(0.3)	(2.0)	5.3
Producers' share (fn1).....	66.9	67.1	66.7	66.7	65.9	(0.3)	0.1	(0.4)	(0.7)
Importers' share (fn1):									
Belarus.....	---	0.2	0.7	0.9	0.6	0.7	0.2	0.5	(0.2)
Italy.....	0.0	0.0	0.6	0.3	0.7	0.6	(0.0)	0.6	0.4
Korea.....	2.0	2.4	1.9	2.1	0.8	(0.1)	0.4	(0.5)	(1.3)
Russia.....	0.2	0.1	1.9	2.2	1.3	1.7	(0.1)	1.8	(0.9)
South Africa.....	---	0.8	0.4	0.5	0.7	0.4	0.8	(0.4)	0.2
Spain.....	0.6	1.5	1.4	1.2	1.1	0.8	0.9	(0.1)	(0.1)
Turkey.....	3.9	4.8	1.8	1.7	2.6	(2.0)	0.9	(2.9)	0.9
Ukraine.....	0.3	1.5	3.0	3.2	2.4	2.8	1.2	1.6	(0.8)
United Arab Emirates.....	0.0	0.3	0.4	0.5	---	0.4	0.3	0.1	(0.5)
United Kingdom.....	1.3	0.8	1.0	1.1	0.8	(0.3)	(0.5)	0.1	(0.3)
Subject sources.....	8.3	12.4	13.2	13.7	11.2	4.9	4.1	0.8	(2.5)
Canada.....	9.6	10.3	10.4	10.3	10.1	0.8	0.7	0.0	(0.2)
China.....	6.9	0.0	0.0	0.0	0.0	(6.9)	(6.8)	(0.0)	(0.0)
All other sources.....	8.3	10.2	9.7	9.0	12.8	1.5	1.9	(0.5)	3.5
Nonsubject sources.....	24.8	20.6	20.1	19.6	22.8	(4.7)	(4.2)	(0.4)	3.2
All import sources.....	33.1	32.9	33.3	33.3	34.1	0.3	(0.1)	0.4	0.7
U.S. consumption value:									
Amount.....	3,796,857	3,189,202	2,842,255	2,188,179	2,587,275	(25.1)	(16.0)	(10.9)	18.2
Producers' share (fn1).....	67.2	65.0	64.8	65.1	65.5	(2.4)	(2.2)	(0.2)	0.3
Importers' share (fn1):									
Belarus.....	---	0.1	0.4	0.5	0.4	0.4	0.1	0.3	(0.1)
Italy.....	0.0	0.0	0.4	0.2	0.5	0.4	(0.0)	0.4	0.3
Korea.....	1.8	2.1	1.8	1.9	0.9	(0.0)	0.3	(0.3)	(1.1)
Russia.....	0.2	0.1	1.2	1.4	1.0	1.0	(0.1)	1.2	(0.4)
South Africa.....	---	0.6	0.3	0.4	0.6	0.3	0.6	(0.3)	0.2
Spain.....	0.6	1.6	1.6	1.3	1.3	1.0	1.1	(0.1)	(0.1)
Turkey.....	3.3	4.0	1.5	1.4	2.1	(1.8)	0.7	(2.5)	0.7
Ukraine.....	0.2	1.1	2.1	2.1	1.8	1.9	0.9	1.0	(0.4)
United Arab Emirates.....	0.0	0.2	0.3	0.3	---	0.3	0.2	0.1	(0.3)
United Kingdom.....	1.2	0.8	0.9	1.0	0.8	(0.4)	(0.4)	0.1	(0.1)
Subject sources.....	7.4	10.6	10.5	10.6	9.2	3.1	3.2	(0.1)	(1.4)
Canada.....	10.7	11.2	11.5	11.4	11.4	0.8	0.6	0.2	(0.0)
China.....	5.2	0.0	0.0	0.0	0.0	(5.2)	(5.2)	(0.0)	(0.0)
All other sources.....	9.6	13.2	13.3	12.9	13.9	3.7	3.6	0.1	1.1
Nonsubject sources.....	25.5	24.5	24.7	24.3	25.3	(0.7)	(1.0)	0.3	1.1
All import sources.....	32.8	35.0	35.2	34.9	34.5	2.4	2.2	0.2	(0.3)
U.S. imports from:									
Belarus:									
Quantity.....	---	9,059	35,381	35,359	27,757	fn2	fn2	290.6	(21.5)
Value.....	---	3,131	11,583	11,571	11,228	fn2	fn2	269.9	(3.0)
Unit value.....	\$---	\$346	\$327	\$327	\$405	fn2	fn2	(5.3)	23.6
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Italy:									
Quantity.....	346	246	33,163	12,007	29,609	9,484.7	(28.9)	13,380.9	146.6
Value.....	543	291	12,697	4,533	11,948	2,236.6	(46.4)	4,259.7	163.6
Unit value.....	\$1,570	\$1,184	\$383	\$378	\$404	(75.6)	(24.6)	(67.7)	6.9
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Korea:									
Quantity.....	109,026	128,862	101,968	86,481	35,662	(6.5)	18.2	(20.9)	(58.8)
Value.....	69,377	67,290	51,872	42,291	22,203	(25.2)	(3.0)	(22.9)	(47.5)
Unit value.....	\$636	\$522	\$509	\$489	\$623	(20.1)	(17.9)	(2.6)	27.3
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Russia:									
Quantity.....	12,329	6,857	103,322	90,154	57,893	738.0	(44.4)	1,406.8	(35.8)
Value.....	7,552	2,230	35,215	30,310	25,484	366.3	(70.5)	1,479.1	(15.9)
Unit value.....	\$613	\$325	\$341	\$336	\$440	(44.4)	(46.9)	4.8	30.9
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
South Africa:									
Quantity.....	---	45,451	22,049	22,049	31,156	fn2	fn2	(51.5)	41.3
Value.....	---	18,830	8,000	8,000	14,465	fn2	fn2	(57.5)	80.8
Unit value.....	\$---	\$414	\$363	\$363	\$464	fn2	fn2	(12.4)	28.0
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Spain:									
Quantity.....	31,778	79,976	72,779	49,246	49,338	129.0	151.7	(9.0)	0.2
Value.....	22,392	52,358	44,566	29,373	32,341	99.0	133.8	(14.9)	10.1
Unit value.....	\$705	\$655	\$612	\$596	\$656	(13.1)	(7.1)	(6.5)	9.9
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Turkey:									
Quantity.....	210,096	259,183	97,761	69,753	113,681	(53.5)	23.4	(62.3)	63.0
Value.....	124,577	126,483	42,798	29,852	53,301	(65.6)	1.5	(66.2)	78.6
Unit value.....	\$593	\$488	\$438	\$428	\$469	(26.2)	(17.7)	(10.3)	9.6
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
Ukraine:									
Quantity.....	14,625	79,053	161,451	130,925	103,482	1,003.9	440.5	104.2	(21.0)
Value.....	8,684	35,022	59,507	46,571	45,305	585.3	303.3	69.9	(2.7)
Unit value.....	\$594	\$443	\$369	\$356	\$438	(37.9)	(25.4)	(16.8)	23.1
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---
United Arab Emirates:									
Quantity.....	28	17,673	22,169	22,132	---	79,039.3	63,017.9	25.4	(100.0)
Value.....	18	6,952	7,631	7,618	---	42,847.1	39,026.8	9.8	(100.0)
Unit value.....	\$635	\$393	\$344	\$344	\$---	(45.7)	(38.0)	(12.5)	(100.0)
Ending inventory quantity.....	---	---	---	---	---	---	---	---	---

Table continued on next page.

Table C-1--Continued

Wire rod: Summary data concerning the U.S. market, 2014-16, January to September 2016, and January to September 2017

(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	2014	Calendar year 2015	2016	January to September 2016	2017	2014-16	Calendar year 2014-15	2015-16	Jan-Sep 2016-17
U.S. imports from:									
United Kingdom:									
Quantity.....	71,379	45,507	51,622	45,494	36,254	(27.7)	(36.2)	13.4	(20.3)
Value.....	46,428	24,795	24,329	21,270	21,427	(47.6)	(46.6)	(1.9)	0.7
Unit value.....	\$650	\$545	\$471	\$468	\$591	(27.5)	(16.2)	(13.5)	26.4
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
Subject sources:									
Quantity.....	449,609	671,866	701,654	563,600	484,832	56.1	49.4	4.4	(14.0)
Value.....	279,572	337,383	298,198	231,389	237,703	6.7	20.7	(11.6)	2.7
Unit value.....	\$622	\$502	\$425	\$411	\$490	(31.7)	(19.2)	(15.4)	19.4
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
Canada:									
Quantity.....	524,324	561,752	552,375	421,875	434,431	5.3	7.1	(1.7)	3.0
Value.....	405,564	358,637	326,208	249,909	295,378	(19.6)	(11.6)	(9.0)	18.2
Unit value.....	\$773	\$638	\$591	\$592	\$680	(23.7)	(17.5)	(7.5)	14.8
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
China:									
Quantity.....	374,785	1,672	81	81	36	(100.0)	(99.6)	(95.2)	(55.3)
Value.....	196,661	887	56	56	34	(100.0)	(99.5)	(93.7)	(39.5)
Unit value.....	\$525	\$530	\$686	\$686	\$928	30.8	1.1	29.4	35.3
All other sources:									
Quantity.....	451,589	553,790	518,471	383,059	552,688	14.8	22.6	(6.4)	44.3
Value.....	364,582	420,248	376,912	281,490	360,378	3.4	15.3	(10.3)	28.0
Unit value.....	\$807	\$759	\$727	\$735	\$652	(10.0)	(6.0)	(4.2)	(11.3)
Ending inventory quantity (fn3).....	***	***	***	***	***	***	***	***	***
Nonsubject sources:									
Quantity.....	1,350,698	1,117,214	1,070,927	805,016	987,155	(20.7)	(17.3)	(4.1)	22.6
Value.....	966,807	779,772	703,176	531,455	655,790	(27.3)	(19.3)	(9.8)	23.4
Unit value.....	\$716	\$698	\$657	\$660	\$664	(8.3)	(2.5)	(5.9)	0.6
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
All import sources:									
Quantity.....	1,800,307	1,789,080	1,772,581	1,368,616	1,471,988	(1.5)	(0.6)	(0.9)	7.6
Value.....	1,246,379	1,117,155	1,001,373	762,845	893,494	(19.7)	(10.4)	(10.4)	17.1
Unit value.....	\$692	\$624	\$565	\$557	\$607	(18.4)	(9.8)	(9.5)	8.9
Ending inventory quantity.....	117,182	150,944	122,654	118,657	140,507	4.7	28.8	(18.7)	18.4
U.S. producers:									
Average capacity quantity.....	4,900,953	4,889,826	4,661,502	3,497,913	3,488,453	(4.9)	(0.2)	(4.7)	(0.3)
Production quantity.....	3,707,416	3,677,468	3,570,360	2,754,756	2,895,305	(3.7)	(0.8)	(2.9)	5.1
Capacity utilization (fn1).....	75.6	75.2	76.6	78.8	83.0	0.9	(0.4)	1.4	4.2
U.S. shipments:									
Quantity.....	3,646,855	3,641,848	3,548,500	2,736,246	2,850,026	(2.7)	(0.1)	(2.6)	4.2
Value.....	2,550,478	2,072,047	1,840,882	1,425,334	1,693,781	(27.8)	(18.8)	(11.2)	18.8
Unit value.....	\$699	\$569	\$519	\$521	\$594	(25.8)	(18.6)	(8.8)	14.1
Export shipments:									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Ending inventory quantity.....	270,611	271,472	268,396	270,799	291,976	(0.8)	0.3	(1.1)	7.8
Inventories/total shipments (fn1).....	***	***	***	***	***	***	***	***	***
Production workers.....	2,299	2,410	2,222	2,242	2,238	(3.3)	4.8	(7.8)	(0.2)
Hours worked (1,000s).....	4,835	4,938	4,754	3,565	3,596	(1.7)	2.1	(3.7)	0.9
Wages paid (\$1,000).....	170,593	172,268	168,288	124,641	129,142	(1.4)	1.0	(2.3)	3.6
Hourly wages (dollars).....	\$35.28	\$34.89	\$35.40	\$34.96	\$35.91	0.3	(1.1)	1.5	2.7
Productivity (short tons per 1,000 hour).....	766.8	744.7	751.0	772.7	805.1	(2.1)	(2.9)	0.8	4.2
Unit labor costs.....	\$46.01	\$46.84	\$47.13	\$45.25	\$44.60	2.4	1.8	0.6	(1.4)
Net sales:									
Quantity.....	3,680,257	3,676,608	3,573,436	2,755,429	2,871,656	(2.9)	(0.1)	(2.8)	4.2
Value.....	2,578,070	2,096,056	1,856,769	1,437,464	1,709,007	(28.0)	(18.7)	(11.4)	18.9
Unit value.....	\$701	\$570	\$520	\$522	\$595	(25.8)	(18.6)	(8.9)	14.1
Cost of goods sold (COGS).....	2,420,417	1,984,458	1,717,124	1,317,267	1,568,486	(29.1)	(18.0)	(13.5)	19.1
Gross profit or (loss).....	157,653	111,598	139,645	120,197	140,521	(11.4)	(29.2)	25.1	16.9
SG&A expenses.....	82,227	75,825	86,734	65,225	67,706	5.5	(7.8)	14.4	3.8
Operating income or (loss).....	75,426	35,773	52,911	54,972	72,815	(29.9)	(52.6)	47.9	32.5
Net income or (loss).....	62,191	22,140	44,319	48,343	68,483	(28.7)	(64.4)	100.2	41.7
Capital expenditures.....	90,906	68,673	52,873	33,847	41,560	(41.8)	(24.5)	(23.0)	22.8
Unit COGS.....	\$658	\$540	\$481	\$478	\$546	(26.9)	(17.9)	(11.0)	14.3
Unit SG&A expenses.....	\$22	\$21	\$24	\$24	\$24	8.6	(7.7)	17.7	(0.4)
Unit operating income or (loss).....	\$20	\$10	\$15	\$20	\$25	(27.8)	(52.5)	52.2	27.1
Unit net income or (loss).....	\$17	\$6	\$12	\$18	\$24	(26.6)	(64.4)	106.0	35.9
COGS/sales (fn1).....	93.9	94.7	92.5	91.6	91.8	(1.4)	0.8	(2.2)	0.1
Operating income or (loss)/sales (fn1).....	2.9	1.7	2.8	3.8	4.3	(0.1)	(1.2)	1.1	0.4
Net income or (loss)/sales (fn1).....	2.4	1.1	2.4	3.4	4.0	(0.0)	(1.4)	1.3	0.6

Notes:

Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

fn1.--Reported data are in percent and period changes are in percentage points.

fn2.--Undefined.

fn3.--Includes inventories of imports from China.

Sources: Compiled from data submitted in response to Commission questionnaires and official U.S. import statistics using HTS statistical reporting numbers 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035, accessed October 10, 20

Merchant Market

Table C-2

Wire rod: Summary data concerning the merchant U.S. market, 2014-16, January to September 2016, and January to September 2017

(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data					Period changes				
	2014	Calendar year 2015	2016	January to September 2016	2017	2014-16	Calendar year 2014-15	2015-16	Jan-Sep 2016-17	
U.S. consumption quantity:										
Amount.....	4,427,667	4,380,478	4,241,954	3,245,101	3,470,915	(4.2)	(1.1)	(3.2)	7.0	
Producers' share (fn1).....	59.3	59.2	58.2	57.8	57.6	(1.1)	(0.2)	(0.9)	(0.2)	
Importers' share (fn1):										
Belarus.....	---	0.2	0.8	1.1	0.8	0.8	0.2	0.6	(0.3)	
Italy.....	0.0	0.0	0.8	0.4	0.9	0.8	(0.0)	0.8	0.5	
Korea.....	2.5	2.9	2.4	2.7	1.0	(0.1)	0.5	(0.5)	(1.6)	
Russia.....	0.3	0.2	2.4	2.8	1.7	2.2	(0.1)	2.3	(1.1)	
South Africa.....	---	1.0	0.5	0.7	0.9	0.5	1.0	(0.5)	0.2	
Spain.....	0.7	1.8	1.7	1.5	1.4	1.0	1.1	(0.1)	(0.1)	
Turkey.....	4.7	5.9	2.3	2.1	3.3	(2.4)	1.2	(3.6)	1.1	
Ukraine.....	0.3	1.8	3.8	4.0	3.0	3.5	1.5	2.0	(1.1)	
United Arab Emirates.....	0.0	0.4	0.5	0.7	---	0.5	0.4	0.1	(0.7)	
United Kingdom.....	1.6	1.0	1.2	1.4	1.0	(0.4)	(0.6)	0.2	(0.4)	
Subject sources.....	10.2	15.3	16.5	17.4	14.0	6.4	5.2	1.2	(3.4)	
Canada.....	11.8	12.8	13.0	13.0	12.5	1.2	1.0	0.2	(0.5)	
China.....	8.5	0.0	0.0	0.0	0.0	(8.5)	(8.4)	(0.0)	(0.0)	
All other sources.....	40.7	40.8	41.8	42.2	42.4	1.1	0.2	0.9	0.2	
Nonsubject sources.....	30.5	25.5	25.2	24.8	28.4	(5.3)	(5.0)	(0.3)	3.6	
All import sources.....	40.7	40.8	41.8	42.2	42.4	1.1	0.2	0.9	0.2	
U.S. consumption value:										
Amount.....	3,125,393	2,628,898	2,307,097	1,759,721	2,105,122	(26.2)	(15.9)	(12.2)	19.6	
Producers' share (fn1).....	60.1	57.5	56.6	56.6	57.6	(3.5)	(2.6)	(0.9)	0.9	
Importers' share (fn1):										
Belarus.....	---	0.1	0.5	0.7	0.5	0.5	0.1	0.4	(0.1)	
Italy.....	0.0	0.0	0.6	0.3	0.6	0.5	(0.0)	0.5	0.3	
Korea.....	1.8	2.1	1.8	1.9	0.9	(0.0)	0.3	(0.3)	(1.1)	
Russia.....	0.2	0.1	1.5	1.7	1.2	1.3	(0.2)	1.4	(0.5)	
South Africa.....	---	0.7	0.3	0.5	0.7	0.3	0.7	(0.4)	0.2	
Spain.....	0.7	2.0	1.9	1.7	1.5	1.2	1.3	(0.1)	(0.1)	
Turkey.....	4.0	4.8	1.9	1.7	2.5	(2.1)	0.8	(3.0)	0.8	
Ukraine.....	0.3	1.3	2.6	2.2	2.2	2.3	1.1	1.2	(0.5)	
United Arab Emirates.....	0.0	0.3	0.3	0.4	---	0.3	0.3	0.1	(0.4)	
United Kingdom.....	1.5	0.9	1.1	1.2	1.0	(0.4)	(0.5)	0.1	(0.2)	
Subject sources.....	8.9	12.8	12.9	13.1	11.3	4.0	3.9	0.1	(1.9)	
Canada.....	13.0	13.6	14.1	14.2	14.0	1.2	0.7	0.5	(0.2)	
China.....	6.3	0.0	0.0	0.0	0.0	(6.3)	(6.3)	(0.0)	(0.0)	
All other sources.....	11.7	16.0	16.3	16.0	17.1	4.7	4.3	0.4	1.1	
Nonsubject sources.....	30.9	29.7	30.5	30.2	31.2	(0.5)	(1.3)	0.8	1.0	
All import sources.....	39.9	42.5	43.4	43.4	42.4	3.5	2.6	0.9	(0.9)	
U.S. producers:										
Commercial U.S. shipments										
Quantity.....	2,627,360	2,591,398	2,469,373	1,876,485	1,998,927	(6.0)	(1.4)	(4.7)	6.5	
Value.....	1,879,014	1,511,743	1,305,724	996,876	1,211,628	(30.5)	(19.5)	(13.6)	21.5	
Unit value.....	\$715	\$583	\$529	\$531	\$606	(26.1)	(18.4)	(9.4)	14.1	
Commercial sales										
Quantity.....	2,666,397	2,625,649	2,493,495	1,895,668	2,020,557	(6.5)	(1.5)	(5.0)	6.6	
Value.....	1,910,147	1,535,316	1,320,989	1,009,006	1,226,854	(30.8)	(19.6)	(14.0)	21.6	
Unit value.....	\$716	\$585	\$530	\$532	\$607	(26.0)	(18.4)	(9.4)	14.1	
Cost of goods sold (COGS).....	1,795,046	1,465,679	1,230,242	931,508	1,127,415	(31.5)	(18.3)	(16.1)	21.0	
Gross profit or (loss).....	115,101	69,637	90,747	77,498	99,439	(21.2)	(39.5)	30.3	28.3	
SG&A expenses.....	62,466	56,377	65,610	49,074	51,463	5.0	(9.7)	16.4	4.9	
Operating income or (loss).....	52,635	13,260	25,137	28,424	47,976	(52.2)	(74.8)	89.6	68.8	
Net income or (loss).....	46,408	5,661	21,115	25,281	46,919	(54.5)	(87.8)	273.0	85.6	
Unit COGS.....	\$673	\$558	\$493	\$491	\$558	(26.7)	(17.1)	(11.6)	13.6	
Unit SG&A expenses.....	\$23	\$21	\$26	\$26	\$25	12.3	(8.3)	22.5	(1.6)	
Unit operating income or (loss).....	\$20	\$5	\$10	\$15	\$24	(48.9)	(74.4)	99.6	58.4	
Unit net income or (loss).....	\$17	\$2	\$8	\$13	\$23	(51.3)	(87.6)	292.8	74.1	
COGS/sales (fn1).....	94.0	95.5	93.1	92.3	91.9	(0.8)	1.5	(2.3)	(0.4)	
Operating income or (loss)/sales (fn1).....	2.8	0.9	1.9	2.8	3.9	(0.9)	(1.9)	1.0	1.1	
Net income or (loss)/sales (fn1).....	2.4	0.4	1.6	2.5	3.8	(0.8)	(2.1)	1.2	1.3	

Notes:

fn1.--Reported data are in percent and period changes are in percentage points.
fn2.--Undefined.

Source: Compiled from data submitted in response to Commission questionnaires and official U.S. import statistics using HTS statistical reporting numbers 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035, accessed October 10, 20

EXHIBIT 10

World Health Organization COVID-19 Daily Confirmed Cases Data

	<u>Americas</u>	<u>USA</u>	<u>USA % of Americas</u>	<u>Canada</u>	<u>Canada % of Americas</u>	<u>Latin America</u>	<u>Latin America % of Americas</u>	<u>Latin America % of World</u>	<u>World</u>
April 15, 2020	28,404	24,446	86.1%	1,360	4.8%	2,598	9.1%	3.5%	73,220
June 22, 2020	90,665	32,349	35.7%	390	0.4%	57,926	63.9%	38.0%	152,323

Source: WHO Coronavirus Disease (COVID-19) Dashboard at covid19.who.int. Latin America defined as Americas less USA and Canada.

EXHIBIT 11

WAMU 88.5 **Now**

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PLAYLIST



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Coronavirus Live Updates

THE CORONAVIRUS CRISIS

1st Known U.S. COVID-19 Death Was Weeks Earlier Than Previously Thought

April 22, 2020 · 10:04 AM ET

BILL CHAPPELL



Medical students, faculty and volunteers take blood samples during a coronavirus antibody study in Mountain View, Calif., on April 3. Santa Clara County's medical examiner says a person who died on Feb. 6 has posthumously tested positive for COVID-19.

Ray Chavez/MediaNews Group/The Mercury News via Getty Images

The first U.S. death known to be from COVID-19 occurred on Feb. 6 — nearly three weeks before deaths in Washington state that had been believed to be the country's

first from the coronavirus, according to officials in Santa Clara County, Calif. The person died at home and at a time when testing in the U.S. was tightly limited not only by capacity but by federal criteria.

The person is one of three people posthumously identified as dying from COVID-19 in Santa Clara County, after the medical examiner-coroner carried out autopsies and sent samples to the Centers for Disease Control and Prevention. The other two deaths took place on Feb. 17 and March 6.

"These three individuals died at home during a time when very limited testing was available only through the CDC," the county's health department said as it announced the findings. "Testing criteria set by the CDC at the time restricted testing to only individuals with a known travel history and who sought medical care for specific symptoms."

The Bay Area county, which had previously reported its first COVID-19 death on March 9, says it will likely identify more coronavirus deaths as its investigation continues.

Revelations about the deaths in early February underscore a point that public health officials often make when talking about a viral outbreak: that it's difficult, if not impossible, to get an accurate real-time picture of a disease's actual impact. By the time test results and statistics emerge, experts say, the information is weeks out of date.

At the time of the person's death on Feb. 6, the first known death outside of China had only been reported less than a week earlier, in the Philippines. U.S. cases then numbered in the tens, not the thousands.

Two days before the death in Santa Clara, the Centers for Disease Control and Prevention was urging people to wash hands and take other precautions to curb transmission of the virus. But the agency also said via Twitter, "CDC does not currently recommend the use of facemasks to help prevent novel #coronavirus.

#2019nCoV is not spreading in communities in the US" – two positions it later reversed, as the disease's global impact grew.

At the start of February, COVID-19 had not yet been declared a pandemic and it didn't yet have an official name; it was still mainly known as the "2019 novel coronavirus."

By the end of February, President Trump announced the first U.S. coronavirus death had occurred on Feb. 28. Within days, officials in King County, Wash., said two people had died from the disease earlier, on Feb. 26. And they noted that they were seeing signs of community spread of the virus, as people were being hospitalized without having any known exposure to it.

The U.S. has now confirmed more than 825,000 COVID-19 cases, including 45,000 deaths, as of Wednesday morning, according to data compiled by Johns Hopkins University.

coronavirus in u.s. covid-19

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EXHIBIT 12

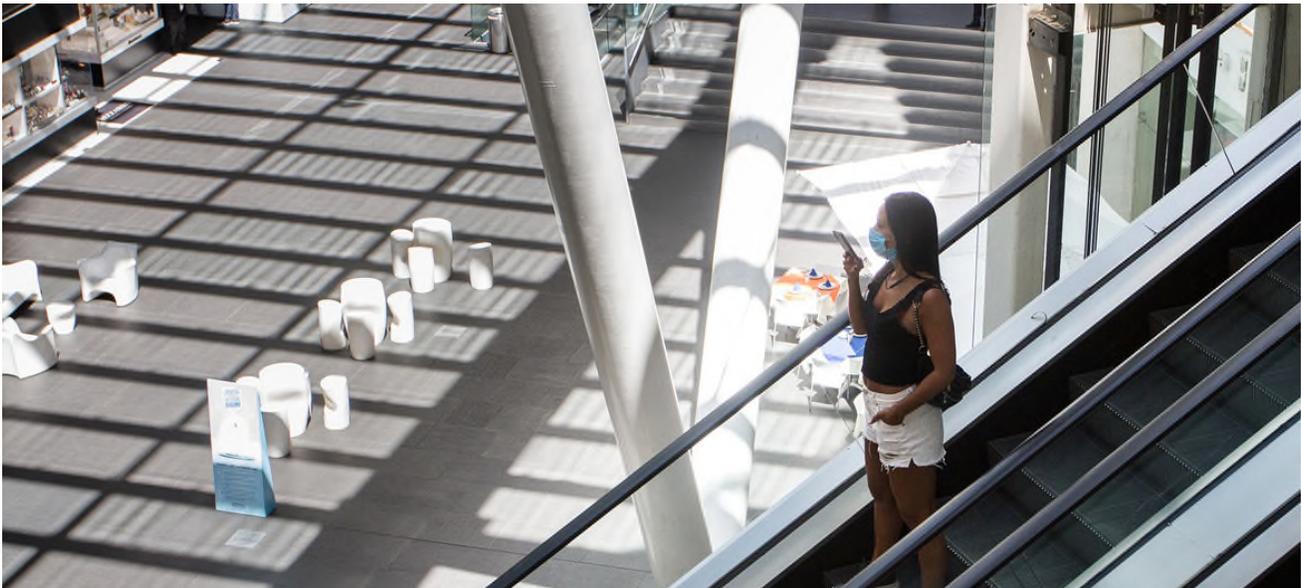


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COVID-19 to cause biggest economic contraction ever in Latin America & Caribbean



U.N. Mexico/Alexis Aubin | Shopping centres in Mexico City are largely empty as people are kept away by the threat of the coronavirus .COVID-19.

21 April 2020 | [Economic Development \(/en/news/topic/economic-development\)](#)

The COVID-19 pandemic will herald the worst economic contraction in the history of Latin American and the Caribbean, with a projected -5.3 per cent drop in activity this year, according to a report by the UN office for the region, ECLAC (<https://www.cepal.org/en>), published on Tuesday.

ECLAC said to find a contraction of this magnitude would mean going back to the Great Depression in 1930, when there was a -5.0 per cent drop, or 1914, when growth plummeted -4.9 per cent.

“The effects of COVID-19 (<https://www.un.org/coronavirus>) will cause the biggest recession that the region has suffered since 1914 and 1930. A sharp increase in unemployment is forecast, with negative effects on poverty and inequality”, ECLAC chief Alicia Bárcena said during a virtual press conference from its headquarters in Santiago, Chile.

Several sectors in decline

The report, *Assessing the Effects of COVID-19 to Plan the Recovery* (<https://www.cepal.org/en/node/51263>), is ECLAC’s second study tracking the economic and social effects of the coronavirus (<https://www.un.org/coronavirus>) crisis in Latin American and Caribbean countries. The first was issued earlier this month.

Exceptional measures are required to confront an unprecedented crisis. There will be no progress without international cooperation and solidarity, [@aliciabarcena](https://twitter.com/aliciabarcena?ref_src=twsrc%5Etfw) (https://twitter.com/aliciabarcena?ref_src=twsrc%5Etfw) underscored in launch of report on effects **#COVID19** (https://twitter.com/hashtag/COVID19?src=hash&ref_src=twsrc%5Etfw) on **#LAC** (https://twitter.com/hashtag/LAC?src=hash&ref_src=twsrc%5Etfw) economies. <https://t.co/IH8UXfEMV1> (<https://t.co/IH8UXfEMV1>) [pic.twitter.com/bNAOr5xwIK](https://t.co/bNAOr5xwIK) (<https://t.co/bNAOr5xwIK>)
— ECLAC (@eclac_un) April 21, 2020
(https://twitter.com/eclac_un/status/1252634363587682304?ref_src=twsrc%5Etfw)

Prior to the pandemic, the region had reported nearly seven years of low growth, averaging less than 0.5 per cent. The impacts of COVID-19 include a reduction in international trade, falling commodity prices, lower demand for tourism services and a drop in remittances, sent home from workers abroad.

The report projects that South America will contract -5.2 per cent because several countries will be affected by lower activity by consumers in China, an important market for exports. Central American countries will experience a -2.3 per cent decline due to reduced economic activity in the United States, which is both a main trading partner and remittance source. Meanwhile, the Caribbean will see a -1.5 per cent drop brought on by decreased demand for tourism services.

Unemployment and poverty to rise

The labour market is also expected to suffer, Ms. Bárcena made clear. Unemployment is forecast to reach roughly 11.5 per cent, up from 8.1 per cent last year. This means the number of people out of a job would rise to nearly 38 million.

Small and medium-sized enterprises (SMEs) provide more than 50 per cent of jobs in formal employment, thus increasing the “negative impact” on a sector already battered by the crisis. ECLAC added that “gender inequality will accentuate with measures such as school closures, social isolation and greater numbers of people who are ailing, since the burden of unpaid work borne by women will increase.”

Unemployment and the decline in economic activity will also have a knock-on effect on household incomes and the ability to meet basic needs. The report anticipates that the poverty rate will rise by nearly 4.5 percentage points this year, meaning nearly 30 million more people across the region will find themselves in “situations of poverty”. An additional 16 million will join the ranks of the extreme poor.

Preparing for the ‘post-COVID-19 world’

The ECLAC report further projects that the pandemic will usher in long-lasting changes. For example, some companies are already adapting their operations to social distancing measures, thus accelerating the move towards automation and digitalization.

The pandemic also will reveal “an intensification of multilateralism’s fragility”. While globalization will not be rolled back, “there will be a more regionalized global economy centred around three poles: Europe, North America and East Asia”, according to the report.

Ms. Bárcena recommended that countries should prepare for what she called “the post-

COVID-19 world”, given their dependence on imported manufactured goods.

Coronavirus Portal & News Updates

Readers can find information and guidance on the outbreak of the novel coronavirus (2019-nCoV) from the UN, World Health Organization and UN agencies here. (<https://www.un.org/coronavirus>)

For daily news updates from UN News, click here. (<https://news.un.org/en/events/un-news-coverage-coronavirus-outbreak>)

“To have an impact in the new global economy, the region must move towards greater regional integration in terms of production, trade and technology”, she advised.

“Our countries’ coordination on macroeconomic and production matters is crucial for negotiating the terms of the new normal, particularly with regard to an urgent aspect of the current crisis and in the medium term: the issue of financing for a new development pattern with equality and environmental sustainability.”

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ECLAC (/EN/TAGS/ECLAC) | COVID-19 (/EN/TAGS/COVID-19) | CORONAVIRUS (/EN/TAGS/CORONAVIRUS)

EXHIBIT 13

Latin America Steel industry reduces production in response to lower demand

Companies reorganize operations and prepare to face the impacts of the economic crisis resulting from the pandemic

Alacero - São Paulo, Brazil, June, 2020. Steel production, similar to other industrial sectors in the Latin American region, has been affected by the economic crisis induced by Covid-19, registering a 34% drop compared to the same month last year.

The decrease reflects the generalized low demand and interruption of operations in response to the effects of the slow-down. It is estimated that this situation will persevere until the third quarter and will be the norm for the industry in the short term.

Global production decreased 13.5% in April 2020 compared to April 2019, while China's production grew 0.2% in the same period. Compared to March 2020, the world production fell 7% and China's rose 8%. Unlike Latin America, China resumed its growth after lifting its quarantine and implementing a sizeable economic stimulus. "The risk is that China, which has begun its recovery, will seek to place its surplus via export, as it has been doing, thus generating greater damage to the Latin American industry and delaying or restricting its recovery, which will become necessary in the coming months", alerts Francisco Leal, General Manager of Alacero.

Comparatively, Latin America produced a total of 3.55 million tons (Mt) of raw steel in April, which represents a reduction of 34% compared to the same month last year and of 14% in the year to date production, which reached 18.3 Mt (see picture 1). In April, raw steel production via the BOF route decreased 22% compared to March (3.56 Mt), a figure that had not been seen since 2009.

For the production of rolled steel products, the drop is 32% compared to the same month last year, but in the year to date it is 10%. In April, the effects of the pandemic began to spread; however, the impact has been felt mostly in Argentina and Brazil, with a decrease of 73% and 37%, respectively, compared to April 2019. The volume of rolled steel products for Latin America is -2.9 Mt, something which has not happened since January 2009. In March, the apparent consumption of steel fell 9% compared to the same month of the previous year, and the year to date decrease is 4%. The new consumption forecast for the year so far is a reduction of 16.5% (54 Mt).

In a strategy to balance supply and demand, some plants have shut down the operations of their blast furnaces. In April and May seven BFs were closed due to Covid-19 representing a combined capacity of almost 7 million tons. With this, capacity utilization as of April 2020 within Latin America is at 42% - Brazil (43%), Mexico (60%), Argentina (18%). There is a production capacity of up to 7.9 Mt / month without considering Venezuela. In turn, global consumption has suffered a reduction in capacity utilization. In the United States, capacity utilization is at 54%, CIS and the Middle East are operating at 55%.

Latin America's comeback will occur differently among its countries, and the region will probably be one of the last to normalize its economic activity. "The Latin American case reflects what is happening in the whole world with the exception of China, which is making a V-shaped recovery", says Leal.

In view of the economic crisis we are going through, we believe that it is essential for governments and industry to analyze and implement strategies to have a robust steel industry, with high integration with its value chains, defense of their domestic markets and first-rate products and services for their customers.

Furthermore, Francisco Leal warns "of the financial risk related to operating the industry at a low capacity utilization for a long time". Our industry is a capital-intensive and high fixed-cost business that needs to work at 80% of its capacity to ensure a modern and efficient production plant, as well as retention of its human resources". ●●

FIGURE 1

Producto Product	April					Accumulated				
	2020	Participation	2019	Participation	Var. % 2020 vs 2019	2020 Until April	Participation	2019 Until April	Participation	Var. % 2020 vs 2019
Crude Steel	3.551		5.383		-34 %	18.293		21.257		-14 %
H.Eléctrico / EAF	1.599	45 %	2.456	46 %	-35 %	8.676	47 %	9.708	46 %	-11 %
BOF / OBC	1.953	55 %	2.927	54 %	-33 %	9.616	53 %	11.550	54 %	-17 %

Source: Alacero

Contact

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EXHIBIT 14

WORLD STEEL IN FIGURES 2019



APPARENT STEEL USE 2012 TO 2018

million tonnes, finished steel products

	2012	2013	2014	2015	2016	2017	2018
Austria	3.7	3.6	3.6	3.9	3.8	4.1	4.1
Belgium-Luxembourg	4.2	4.2	4.3	4.3	4.4	4.6	4.6
Czech Republic	5.9	5.9	6.2	6.6	6.7	6.9	7.5
France	12.6	12.6	12.5	13.2	13.0	14.1	14.1
Germany	37.5	38.0	39.6	39.3	40.5	41.0	40.8
Italy	21.5	21.9	21.9	24.5	23.7	25.1	26.4
Netherlands	4.0	3.7	3.5	3.5	4.0	4.0	4.7
Poland	10.4	10.4	12.3	12.6	13.1	13.6	14.9
Romania	3.3	3.3	3.8	4.0	4.1	4.2	4.6
Spain	10.4	10.9	11.6	12.7	12.6	12.7	14.3
Sweden	3.5	3.6	3.4	3.4	3.9	4.1	4.1
United Kingdom	9.6	9.6	10.7	10.5	10.9	10.9	10.8
Other EU (28)	14.0	14.7	15.5	16.0	17.2	17.4	18.9
European Union (28)	140.7	142.4	149.0	154.5	157.9	162.7	169.7
Turkey	28.5	31.3	30.8	34.4	34.1	35.9	30.6
Others	5.6	5.6	6.2	5.7	6.5	6.5	7.8
Other Europe	34.1	36.9	37.0	40.1	40.6	42.4	38.4
Russia	42.8	43.3	43.1	39.8	38.7	40.9	41.2
Ukraine	6.1	5.6	4.2	3.3	4.2	4.5	4.6
Other CIS	10.1	11.3	10.3	9.3	8.1	9.0	10.4
CIS	59.1	60.2	57.7	52.4	51.1	54.3	56.2
Canada	15.6	14.8	15.8	13.3	15.0	16.6	17.3
Mexico	20.9	20.6	23.5	24.9	25.5	26.5	25.4
United States	96.2	95.7	107.0	96.1	91.9	97.7	100.2
NAFTA	132.7	131.1	146.2	134.4	132.4	140.8	142.9
Argentina	4.9	5.1	5.0	5.3	4.2	4.9	4.8
Brazil	26.6	28.0	25.6	21.3	18.2	19.6	21.1
Venezuela	3.0	2.9	2.0	1.8	0.7	0.5	0.2
Others	14.6	15.7	16.6	17.7	16.8	17.2	17.3
Central and South America	49.1	51.7	49.3	46.1	39.9	42.2	43.3
Egypt	9.5	9.2	10.2	10.9	11.7	10.2	11.1
South Africa	5.3	5.7	5.1	5.3	5.0	4.7	4.7
Other Africa	18.2	21.5	22.1	22.5	21.0	20.1	21.2
Africa	32.9	36.4	37.4	38.7	37.6	35.0	37.0
Iran	19.0	19.8	19.9	19.7	19.1	20.0	19.6
Other Middle East	31.8	32.9	34.6	34.1	34.0	33.3	30.6
Middle East	50.7	52.7	54.5	53.8	53.1	53.3	50.1
China	660.1	741.4	710.8	672.3	681.0	773.8	835.0
India	72.4	73.7	76.1	80.2	83.6	88.7	96.0
Japan	64.0	65.2	67.7	63.0	62.2	64.4	65.4
South Korea	54.1	51.8	55.5	55.8	57.1	56.3	53.6
Taiwan, China	17.8	18.6	19.6	17.5	18.3	17.7	17.9
Other Asia	70.3	75.8	81.7	88.7	97.9	94.4	99.8
Asia	938.6	1 026.4	1 011.3	977.6	1 000.1	1 095.3	1 167.5
Oceania	7.7	6.8	7.6	7.4	6.9	6.6	7.0
World	1 445.6	1 544.6	1 549.9	1 504.9	1 519.5	1 632.5	1 712.1

APPARENT STEEL USE PER CAPITA 2012 TO 2018

kilograms, finished steel products

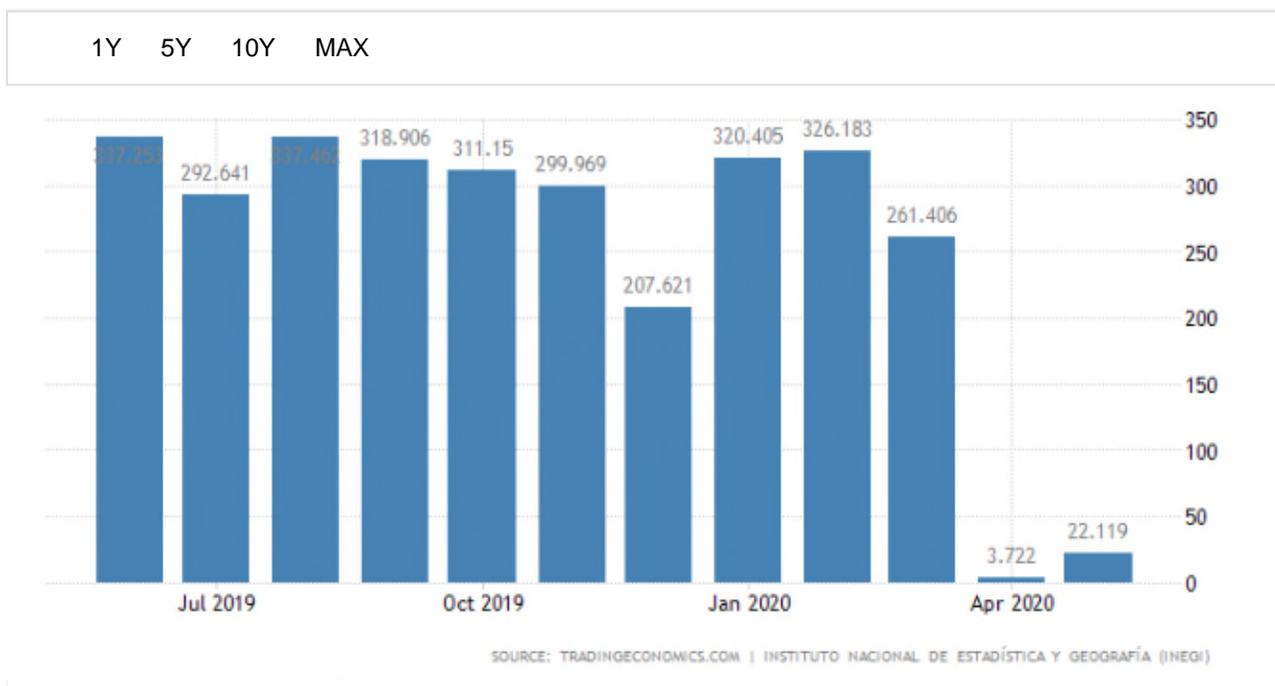
	2012	2013	2014	2015	2016	2017	2018
Austria	429.5	415.7	417.7	450.7	440.3	468.8	474.1
Belgium-Luxembourg	365.7	358.3	367.1	365.2	367.5	379.3	383.3
Czech Republic	552.6	553.6	584.5	623.8	631.0	649.8	703.0
France	198.1	197.3	195.1	205.3	201.2	217.4	215.9
Germany	462.5	467.8	486.5	480.6	493.9	499.1	495.5
Italy	360.2	367.1	368.0	411.5	399.4	422.7	445.0
Netherlands	239.8	222.2	205.0	206.4	236.8	233.7	272.2
Poland	271.6	271.4	320.6	328.7	344.0	356.3	390.9
Romania	164.7	164.3	191.8	201.1	205.5	213.0	235.0
Spain	222.7	233.9	249.3	273.9	271.3	273.8	308.5
Sweden	367.0	373.4	349.7	345.6	393.7	416.4	409.1
United Kingdom	150.1	148.4	163.9	160.5	165.0	165.3	162.3
Other EU (28)	186.9	197.1	208.8	215.5	232.4	235.7	255.7
European Union (28)	278.1	281.2	293.8	304.3	310.6	319.6	332.9
Turkey	381.8	413.0	399.5	439.3	428.6	444.9	373.4
Others	166.6	166.5	184.8	168.8	190.8	190.2	241.2
Other Europe	315.0	337.2	334.1	357.6	357.4	369.3	336.0
Russia	298.4	301.6	300.1	276.8	269.2	283.8	285.9
Ukraine	135.6	123.4	94.3	74.1	95.6	100.7	105.6
Other CIS	106.5	117.2	105.7	94.0	80.7	88.9	101.6
CIS	208.1	211.1	201.6	182.4	177.1	187.7	193.7
Canada	446.3	419.8	443.0	371.2	414.6	453.4	469.0
Mexico	173.1	167.9	189.0	197.6	199.8	204.8	194.4
United States	307.0	303.3	336.6	300.5	285.1	301.2	306.5
NAFTA	282.9	276.9	306.2	278.9	272.4	287.2	289.0
Argentina	116.4	119.1	116.5	121.0	95.9	111.1	108.0
Brazil	132.5	138.4	125.4	103.4	87.7	93.5	100.0
Venezuela	100.0	94.7	66.3	59.2	23.3	16.0	5.3
Others	67.9	72.3	75.5	79.5	74.6	75.4	75.1
Central and South America	100.6	104.9	98.9	91.6	78.6	82.2	83.7
Egypt	107.8	102.5	110.9	115.8	122.1	104.3	111.4
South Africa	99.4	105.8	93.8	95.7	88.7	83.6	81.3
Other Africa	18.9	21.7	21.7	21.6	19.5	18.2	18.8
Africa	29.8	32.1	32.1	32.4	30.7	27.9	28.7
Iran	248.2	255.7	253.5	248.5	238.0	245.9	238.5
Other Middle East	239.4	240.9	253.9	246.2	238.6	230.3	204.9
Middle East	222.8	226.8	230.0	222.8	215.8	213.0	197.1
China	480.0	536.2	511.3	481.3	485.2	549.0	590.1
India	57.3	57.6	58.8	61.3	63.2	66.2	70.9
Japan	498.0	508.4	528.2	491.9	486.7	505.0	514.1
South Korea	1 082.4	1 031.7	1 101.9	1 102.9	1 123.7	1 104.6	1 047.2
Taiwan, China	764.1	795.7	835.3	746.3	775.9	748.0	753.5
Other Asia	66.3	70.5	75.0	80.4	87.5	83.4	87.0
Asia	240.7	260.6	254.4	243.6	247.0	268.2	283.5
Oceania	207.0	180.1	197.0	190.1	175.4	163.1	170.9
World	202.9	214.3	212.5	203.9	203.6	216.3	224.5

EXHIBIT 15

Mexico Car Production

Summary Calendar Forecast Stats Download ▾ () Alerts

Mexico's car output dropped 93.7 percent year-on-year to 22,119 units in May 2020, as the coronavirus pandemic forced many factories to halt production. Among major automakers, output declined to zero at Volkswagen and Audi. In addition, production was down at General Motors (-88.8 percent), Ford Motor (-97.9 percent), FCA México (-94.0 percent), Honda (-91.5 percent), KIA (-91.3 percent), Mazda (-98.4 percent), Nissan (-96.6 percent) and Toyota (-82.8 percent).



Actual	Previous	Highest	Lowest	Dates	Unit	Frequency	
22.12	3.72	381.99	3.72	1988 - 2020	Thousand Units	Monthly	NSA

Calendar	GMT	Actual	Previous	Consensus	TEForecast
2020-03-06	12:00 PM	Feb	4.5%	-4.1%	

Calendar	GMT		Actual	Previous	Consensus	TEForecast
2020-04-06	11:00 AM	Mar	-24.6%	4.5%		-3.1%
Mexico Car Production						
2020-05-08	11:00 AM	Apr	-98.8%	-24.6%		-32%
Summary	Calendar	Forecast	Stats	Download ▾ ()	Alerts	
2020-06-05	11:00 AM	May	-93.7%	-98.8%		-70%
2020-08-06	11:00 AM	Jul				
2020-09-04	11:00 AM	Aug				
2020-11-09	12:00 PM	Oct				
2020-12-04	12:00 PM	Nov				
<p>Go to our Calendar (https://tradingeconomics.com/calendar) for more events. Or learn more about the Calendar API (https://tradingeconomics.com/api/?source=calendar-for-ticker) for direct access.</p>						

News Stream

Mexico Car Production Plunge for 3rd Straight Month

Mexico's car output dropped 93.7 percent year-on-year to 22,119 units in May 2020, as the coronavirus pandemic forced many factories to halt production. Among major automakers, output declined to zero at Volkswagen and Audi. In addition, production was down at General Motors (-88.8 percent), Ford Mo... more ()
2020-06-05

Mexico Car Production Slumps to Record Low

Car production in Mexico dropped 98.8 percent year-on-year to an all-time low of 3,722 units in April 2020, as the coronavirus pandemic forced many factories to close. Among major automakers, output declined to zero at General Motors, Nissan, Volkswagen, FCA México, BMW Group, Honda, Audi, Toyota an... more ()
2020-05-08

Mexico Car Output Drops 24.6% in March

Car production in Mexico dropped 24.6 percent year-on-year to 261 thousand units in March 2020, after increasing 4.5 percent in the previous month. Among major automakers, output declined at General Motors (-14.7 percent to 66.4 thousand), FCA Mexico (-38.1 percent to 30.8 thousand), Nissan (-25.3 p... more ()
2020-04-06

Mexico Car Production Rebounds in February

Car production in Mexico increased 4.5 percent over a year earlier to 326.2 thousand units in February 2020, rebounding from a 4.1 percent fall in the previous month. Among major automakers, output grew at General Motors (21.2 percent to 74.6 thousand), FCA Mexico (27.7 percent to 51.4 thousand) and... more ()
2020-03-06

+

EXHIBIT 16



Mexico Economic Outlook

May 19, 2020

Preliminary data revealed that the economy shrank for the fourth successive quarter and at the steepest rate since the 2009 global financial crisis in Q1, as the Covid-19 pandemic started to take its toll. A still-reeling industrial sector and a sharp pullback in services activity led the downturn. In Q2, however, it is expected that the full brunt of the coronavirus shock will be felt. Output in the automotive sector, which forms the backbone of the country's manufacturing industry, collapsed by 99% in April as plants shut down operations. Moreover, business closures and evaporated demand led both the manufacturing and services PMI to plunge to historic lows in the same month while a record number of formal jobs were lost from March. Meanwhile, on 13 May, authorities announced the gradual lifting of restrictions to get the economy back online, with the crucial auto industry among the first to restart operations.

Mexico Economic Growth

The economy is set to suffer a deep recession this year. Social distancing measures are set to hammer household spending; investment will be derailed amid elevated uncertainty; and exports will crumble as the pandemic ravages global demand. The shaky finances of debt-saddled Pemex and economic difficulties in the U.S. are major risks ahead. FocusEconomics panelists project the economy to contract 7.1% in 2020, which is down 2.0 percentage points from last month's forecast, and grow 2.6% in 2021.

Mexico Economy Data

	2015	2016	2017	2018	2019
Population (million)	121	122	124	125	126
GDP per capita (USD)	9,654	8,804	9,379	9,791	-
GDP (USD bn)	1,168	1,077	1,159	1,221	-
Economic Growth (GDP, annual variation in %)	3.3	2.9	2.1	2.1	-0.1
Domestic Demand (annual variation in %)	3.0	3.1	1.8	2.0	-
Consumption (annual variation in %)	2.7	3.8	3.2	2.3	-
Investment (annual variation in %)	5.0	1.0	-1.6	0.9	-
Industrial Production (annual variation in %)	1.2	0.4	-0.2	0.5	-1.8

	2015	2016	2017	2018	2019
Retail Sales (annual variation in %)	5.0	5.3	-0.3	1.5	-
Unemployment Rate	4.0	3.4	3.1	3.4	2.9
Fiscal Balance (% of GDP)	-3.4	-2.5	-1.1	-2.1	-1.6
Public Debt (% of GDP)	45.4	49.4	46.9	46.9	47.0
Money (annual variation in %)	5.1	6.8	8.3	4.7	7.6
Inflation Rate (CPI, annual variation in %, eop)	2.1	3.4	6.8	4.8	2.8
Inflation Rate (CPI, annual variation in %)	2.7	2.8	6.0	4.9	3.6
Inflation (PPI, annual variation in %)	1.3	10.3	5.2	6.1	1.0
Policy Interest Rate (%)	3.25	5.75	7.25	8.25	7.25
Stock Market (annual variation in %)	-0.4	6.2	8.1	-15.6	4.6
Exchange Rate (vs USD)	17.18	20.73	19.65	19.65	18.93
Exchange Rate (vs USD, aop)	15.88	18.69	18.91	19.23	19.25
Current Account (% of GDP)	-2.6	-2.2	-1.7	-1.8	-
Current Account Balance (USD bn)	-30.7	-24.0	-20.2	-22.2	-
Trade Balance (USD billion)	-14.7	-13.1	-11.0	-13.6	5.8
Exports (USD billion)	381	374	409	451	461
Imports (USD billion)	395	387	420	464	455
Exports (annual variation in %)	-4.1	-1.7	9.5	10.1	2.3
Imports (annual variation in %)	-1.2	-2.1	8.6	10.4	-1.9
International Reserves (USD)	177	177	173	175	181
External Debt (% of GDP)	35.6	38.3	37.7	36.6	-

Sample Report

5 years of Mexico economic forecasts for more than 30 economic indicators.

Sample Report

Get a sample report showing our regional, country and commodities data and analysis.

Mexico Facts

	Value	Change	Date
Bond Yield	6.87	-0.24 %	Dec 31
Exchange Rate	18.93	-0.29 %	Jan 01

EXHIBIT 17

**THE BUSINESS PROPRIETARY
EXHIBIT IS NOT SUSCEPTIBLE TO
SUMMARIZATION AND THEREFORE
IS NOT PROVIDED WITH THIS
PUBLIC VERSION**

EXHIBIT 18



Public Version

A-201-830

Circumvention Inquiry

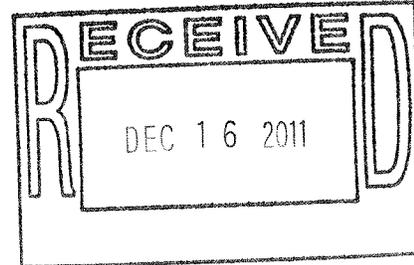
~~Business Proprietary Document~~

Office 3; Operations: JL; EBG

DATE: December 13, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations



RE: Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Mexico

SUBJECT: Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters

Summary

We preliminarily determine that carbon and certain alloy steel wire rod (wire rod) with an actual diameter between 4.75 millimeters (mm) and 5.00 mm¹ produced by Deacero S.A. de C.V. (Deacero) constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the Order.² This affirmative finding applies solely to Deacero because information supplied by Ternium Mexico S.A. de C.V. (Ternium) indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

Background

In separate submissions filed on February 11, 2011, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc., and Rocky Mountain Steel, a division of Evraz Inc. NA, (collectively, the Coalition) and Nucor Corporation and Cascade Steel Rolling Mills, Inc. (collectively, Petitioners) requested that the Department initiate a scope inquiry, under 351.225(k)(2), to determine whether wire rod with an actual diameter between 4.75 and 5.00 mm is within the scope of the Order.

On June 8, 2011, the Department of Commerce (the Department) initiated a circumvention inquiry into whether wire rod exported to the United States by Deacero and Ternium with an actual diameter between 4.75 and 5.00 mm constitutes merchandise altered in form or

¹ The Department is using slightly different wording in this Federal Register notice from the wording in the initiation notice to clarify that Deacero's shipments of 4.75 mm wire rod are covered by this circumvention inquiry.

² See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 65945 (October 29, 2002) (Order).



appearance in such minor respects that it should be included within the scope.³ In its June 15, 2011, submission Ternium stated that it does not produce or sell wire rod with an actual diameter between 4.75 and 5.00 mm. Ternium included a product brochure which lists the diameter ranges and diameter tolerances of its wire products. The brochure does not include wire rod with actual diameters less than 5.5 mm.

The scope of the Order, comments submitted by interested parties since the publication of the Initiation, as well as the statutory and regulatory framework on which the Department based its preliminary finding are contained in the Federal Register notice that accompanies this memorandum.

Scope of Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of wire rod with actual diameters of 4.75 mm to 5.00 mm. This merchandise entered the United States under Harmonized Tariff Schedule classification 7213.91.3093.

Arguments from Parties⁴

The U.S. Industry

In their February 11, 2011, separate submissions, the Coalition and Petitioners (collectively, the U.S. Industry) contend that the physical characteristics of the products at issue do not differ from subject wire rod. The U.S. Industry argues that wire rod with an actual diameter between 4.75 mm and 5.00 mm is produced in an identical manner and to the same specifications as subject wire rod. The U.S. Industry argues that, as with subject wire rod, wire rod with an actual diameter between 4.75 mm and 5.00 mm is sold in irregularly wound coils, primarily for subsequent drawing and finishing by wire re-drawers. It adds that drawing wire rod to an actual diameter of 4.75 mm does not alter the wire rod's metallurgical qualities or chemistry.

The U.S. Industry further contends that wire rod with an actual diameter between 4.75 mm and 5.00 mm is sold as a direct substitute for, and is interchangeable with, subject wire rod. See the February 11, 2011, submission of the Coalition at Exhibit 2, which contains an affidavit from an employee at one of the Coalition member plants. As such, the U.S. industry argues that the physical characteristics of wire rod with an actual diameter between 4.75 mm and 5.00 mm is the same as wire rod subject to the Order and, therefore, fulfills the "physical characteristics" criteria of the Department's minor alteration analysis.

The U.S. Industry further asserts that producing wire rod with an actual diameter between 4.75 mm and 5.00 mm does not require retooling and that such wire rod enters under the same HTSUS categories as subject wire rod. In addition, the U.S. Industry argues that the Department

³ See Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order, 76 FR 33218 (June 8, 2011) (Initiation).

⁴ Interested parties have submitted multiple submissions in this circumvention inquiry. For the sake of brevity, we have limited the summary of arguments received from interested parties to the U.S. Industry's initial allegation and Deacero's initial response to the allegation because these arguments contain all of the relevant information.

On this basis, the U.S. Industry argues that the wire rod at issue constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the Order.

Deacero⁶

Deacero asserts that petitioners' circumvention arguments are unfounded. Citing to testimonials from its U.S. customers, Deacero argues that wire rod with a nominal diameter of 4.75 mm is purchased because it offers significant commercial and technological benefits, namely that it enables wire drawers to perform less processing to produce wire, thereby reducing costs. See Deacero's March 14, 2011, submission at Exhibit 7; see also Deacero's March 23, 2011, submission, which contains additional U.S. customer testimonials. Deacero further argues that its customer testimonials demonstrate that wire rod with an actual diameter between 4.75mm and 5.5 mm do not serve as substitutes for each other. Id. According to Deacero, the customer testimonials demonstrate that the use of 4.75 mm wire rod as the starting point in the production process lessens the need for multiple redrawing of the merchandise which, in turn, results in tensile characteristics that are superior to that 5.5 mm wire rod. Id. Deacero adds that it is also a consumer of the 4.75 mm wire rod it produces and that it sells 4.75 mm wire rod in the Mexican market as well as in Canada. See Deacero's March 14, 2011, submission at Exhibits 7 and 15. Deacero asserts that the fact that it sells 4.75 mm wire rod in Canada, where no antidumping order exists on such products from Mexico, demonstrates that 4.75 mm wire rod is a legitimate product produced in the ordinary course of business.

Further, Deacero contends that producing 4.75 mm wire rod required substantial capital investments in one of its plants. Deacero also claims that wire rod with a 4.75 mm diameter sells at a premium in the United States thereby demonstrating that it is a product with legitimate demand.

Analysis

First Prong: Overall Physical Characteristics

Deacero states that the "key physical difference between 4.75 mm wire rod and subject wire rod is the diameter." See Deacero's July 22, 2011, Questionnaire Response (First QNR Response) at 34. However, while the difference in diameter constitutes a physical difference between the products at issue and subject wire rod, we find that, by itself, it is not a meaningful difference for purposes of our minor alterations inquiry. In response to our questionnaire, Deacero provided a list identifying the product code, steel grade, gauge/diameter, and tensile strength for all diameters and grades of wire rod it produces. See Deacero's October 5, 2011, Questionnaire Response (Second QNR Response) at Exhibit S-1. Our review of these data indicate that the minimum and maximum tensile strength of the products vary by grade and not by diameter. For example, the data indicate that wire rod of grade [] with a [] diameter has the same minimum and maximum tensile strength as 4.75 mm wire rod of the same grade. Id. Deacero also provided data indicating the chemical content of each grade of wire rod it produces. Our

⁶ Illinois Tool Works Inc. (ITW) also submitted comments contesting the allegations of the U.S. industry. ITW's comments reiterate the arguments made by Deacero. See ITW's March 25, 2011, submission.

review of the data indicates that the chemical content varies solely by grade, not by diameter. Specifically, Deacero's production records lack any reference to diameter and instead track chemical content based on grade. Id. Based on this information, we conclude that the data from Deacero indicate that wire rod products of the same grade will not vary in terms of tensile strength and chemical content, even where the products are of different diameters.

Our conclusion in this regard is bolstered by a metallurgical analysis Deacero conducted on 4.75 mm and 5.50 mm wire rod with a grade of []. See Second QNR Response at Exhibit S-7. The metallurgical analysis indicates that while [] differences exist between the two products in terms of chemical characteristics, the differences are small enough to conform to Deacero's range tolerances for [] grade wire rod. See Second QNR Response at Exhibit S-7 and S-1. Similarly, Deacero provided information on tensile strength for two different grades of wire rod, [] and [] at 4.75 mm and 5.5 mm diameters. See Second QNR Response at Exhibit S-6. Regarding these data, Deacero acknowledges that, within each grade, "all characteristics of the rod, besides diameter, were identical." Id.

Furthermore, the International Trade Commission (ITC) has previously found that "ductility, hardness, and tensile strength of the steel are positively correlated with carbon content." See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, AD/CVD Operations, "Excerpts from Petition," (May 16, 2011) (Petitioner Memorandum), quoting a section 204 investigation conducted by the ITC. We find this information from the ITC further undercuts Deacero's claims that a 0.25 mm difference in diameter imparts meaningful physical differences between 4.75 mm wire rod and subject wire rod (e.g., wire rod with an actual diameter of 5.0 mm). Rather, the ITC report demonstrates that it is chemical content, such as carbon content, that distinguishes one wire rod product from another in terms of such characteristics as ductility. As demonstrated above, the data supplied by Deacero indicate that the chemical content of its wire rod products varies by grade and not by diameter.

Deacero argues that in spite of the lack of variation in chemical content and tensile strength between similar grade wire rod with diameters between 4.75 mm and 5.5 mm, the products are, nonetheless, distinct as evidenced by an internal metallurgical study. See Second Deacero QNR Response at 15 and Exhibit S-7, in which Deacero argues that the study indicates that the [

[]. We find these purported differences between 4.75 mm and 5.5 mm wire rod are not significant enough to outweigh the similarities in physical characteristics that exist between the two products. As Deacero acknowledges, these purported differences are not significant enough to warrant any mention on the [] that the firm generates in the ordinary course of business. See Second QNR Response at 15. Further, the data supplied by Deacero indicate that the purported differences between 4.75 mm and 5.5 mm wire rod involving [] did not alter Deacero's placement of the two products in the same grade category, []. See Second Deacero QNR Response at Exhibit S-7. In addition, we note that the product matching criteria the Department relies on for purposes of conducting investigations and administrative reviews of the Order does not include []. See Attachment I, which contains the product matching criteria that the Department includes in the initial

questionnaire issued to respondents in this proceeding.

We further disagree with Deacero's claim that purported differences in the production processes, such as [] and [] between 4.75 mm and subject wire rod (e.g., 5.5 mm wire rod) demonstrate the existence of physical differences between the products. The data supplied by Deacero indicate that it utilizes [] stands to produce wire rod, regardless of diameter, and that the [] used on these stands do not vary by diameter. See Second QNR Response at Exhibit S-2. Further, the data indicate that the [] and [] do not vary between 4.75 mm and subject wire rod until the [] stand. Id. Moreover, the data indicate that similar differences in [] and [] also exist amongst in-scope wire rod. For example, there is variation among [] and [] for subject wire rod with diameters of [], and [] mm after the []. Id. Concerning, [], the variations noted by Deacero that exist between 4.75 and 5.5 mm wire rod also exist amongst subject wire rod. For example, [], and [] mm wire rod do not share the same [] in the [] stands utilized during the wire rod production process. Id. Thus, rather than distinguish 4.75 mm wire rod from subject wire rod, we find that the production data supplied by Deacero merely reflect a constant series of adjustments to production equipment that are employed to produce each of the various diameters of wire rod.

Deacero also argues that differences in physical characteristics exist between the downstream products drawn from 4.75 mm wire rod and subject merchandise, such as 5.5 mm wire rod. We find Deacero's claims in this regard are misplaced. Our analysis is not focused on differences in downstream products but rather on the extent to which the wire rod at issue differs from subject wire rod. As explained above, we find no meaningful differences exist.

Furthermore, we find that record evidence contradicts Deacero's claims that 4.75 mm wire rod can be used to make downstream wire products that cannot be made using 5.5 mm wire rod. Deacero initially stated that "[]:"

See First QNR Response at 25. In our questionnaire, we asked Deacero to provide documentation that supported its claim. In its response, Deacero responded with the following:

Deacero clarifies that the statement on page 25 of its response should read: [] This is the conclusion reached by the study that Deacero provided in Exhibit 19 of that response. The fact that 5.5 mm wire rod [] is one of the important benefits of using 4.75 mm wire rod for Deacero and its customers.

See Second QNR Response at 9. In a footnote, Deacero provides further clarification on this point by referencing a customer affidavit included in its First QNR Response in which its U.S. customer states that [] See Second QNR Response at 9, footnote 12. A separate U.S. customer of Deacero provided similar

information. See First QNR Response at 27, in which a U.S. customer of Deacero acknowledges that it could produce [] from 5.5 mm with the []. Thus, we find record evidence indicates that subject wire, such as 5.5 mm wire rod, can be drawn into the same products as 4.75 mm wire rod, provided that additional steps (such as cold-drawing) are employed.

The ITC's description of wire rod further supports the view that 4.75 mm wire rod and subject wire are not distinguishable by virtue of their respective downstream products:

Wire rod is a hot-rolled intermediate steel product of circular or approximately circular cross section that is typically produced in fractional diameters from 7/32 inch (5.6 mm) to 47/64 inch (18.7 mm), and sold in irregularly wound coils, primarily for subsequent drawing and finishing by wire drawers.⁷

The ITC also found that “all categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils . . . comprising a continuum spanning at least 11 major categories of products, defined by end-use ranging from low-carbon wire rod . . . to highest-end products.” *Id.* at 9, emphasis added. Thus, we find that both subject wire rod and wire rod with a diameter of 4.75 mm to 5.00 mm are hot-rolled, intermediate steel products of circular cross-section, sold in irregularly wound coils, and primarily used for subsequent drawing and finishing by wire drawers. See First QNR response at 1-5 and 27.

On this basis, we preliminarily determine that the products at issue do not differ from subject wire rod in terms of physical characteristics.

Second and Third Prongs: Expectations of the Ultimate Users and End-Use

We preliminarily determine that Deacero has not demonstrated that the expectations of individual users and end-use differ with regard to wire rod with diameters of 4.75 mm and 5.5 mm. In its questionnaire responses, Deacero provided affidavits from U.S. customers that purchased wire rod with a diameter of 4.75 mm. These affidavits indicate that the users purchased the wire rod to draw into wire for resale or products []. See First QNR Response at 26-31. We find these uses are not distinct from the manner in which subject wire rod is used. For example, as part of its section 204 investigation, the ITC stated that wire rod “is primarily intended for drawing into industrial or standard quality wire that, in turn, is used for the manufacture of such products as coat hangers, wire mesh, and chain link fences.” See Petition Memorandum at 12, which includes an excerpt from the ITC's section 204 investigation. We note in describing the uses of wire rod the ITC did not distinguish between wire rod with diameters of 4.75 mm and 5.5 mm.

Fourth Prong: Channels of Trade and Advertising

Deacero acknowledges that it does not advertise or market its wire rod products. See First QNR

⁷ See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine, Pub. 3546 (October 2002) (ITC Report) at I-5, which is included as Attachment I of the Coalition's October 18, 2011, submission.

Response at 33. This acknowledgement is supported in an affidavit from Deacero's sales staff. See id. at Exhibit 11, in which the Vice President of Industrial Sales for Deacero states that the firm "does not really []". Further, information from Deacero indicates that it uses the same personnel to sell wire rod with diameters between 4.75 mm and 5.5 mm and subject wire rod. See id. at Exhibit 5, which lists its industry sales and export sales staff. Thus, we preliminarily determine that Deacero has not provided any basis to conclude that the channels of trade and advertising differ with regard to the products at issue and subject wire rod.

Fifth Prong: Cost of Any Modification Relative to the Total Value of the Products at Issue

Information from Deacero indicates that it spent [] at its Celaya mill and [] at its Saltillo mill to set-up and produce wire rod with diameters between 4.75 mm and 5.5 mm. See Second QNR Response at 7. Deacero further indicates that its exports of wire rod with diameters between 4.75 and 5.00 mm were valued at [] during 2008 through 2011. See First QNR Response at Exhibit 9. Thus, these data indicate that Deacero's cost to modify its production facilities to produce wire rod with diameters between 4.75 mm and 5.0 mm were [] percent of the value of U.S. sales of such wire rod products. We preliminarily determine that the record evidence, as reflected in this low ratio, does not support Deacero's claim that it incurred significant costs in modifying its production facilities to manufacture 4.75 mm wire rod.

Conclusion

We preliminarily determine that wire rod with actual diameters of 4.75 mm to 5.0 mm and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, and the channels of marketing. Further, we preliminarily determine that the costs incurred to produce wire rod with actual diameters of 4.75 mm to 5.0 mm are insignificant relative to the total value of Deacero's U.S. sales of such wire rod products during the same period of time. Accordingly, we preliminary determine that shipments, by Deacero, of wire rod with an actual diameter of 4.75mm to 5.00 mm constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the Order.

We further find that our affirmative preliminary determination applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

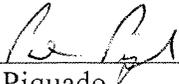
Recommendation

On this basis, we recommend that pursuant to section 781(c) of the Tariff Act of 1930, as amended, and 19 CFR 351.225, the Department preliminarily issue an affirmative circumvention determination in which it finds that Deacero's shipments of wire rod with an actual diameter between 4.75 and 5.0 mm constitute circumvention of the Order. If this recommendation is accepted, we will instruct U.S. Customs and Border Protection to suspend liquidation and collect cash deposits equal to the all others rate of 20.11 percent ad valorem for all entries of wire rod with an actual diameter between 4.75 mm and 5.00 mm, produced and/or exported by Deacero that are entered or withdraw from warehouse on or after June 8, 2011, the publication date of the Initiation in the Federal Register.⁸

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

12/13/2011

Date

⁸ Deacero has never been individually examined by the Department during the history of the Order. For this reason Deacero's shipments of subject merchandise are subject to the all others rate.

ATTACHMENT I



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-201-830
Wire Rod from Mexico
ARP: 10/01/09-9/30/10
Public Document
Office 3: JL

January 10, 2011

ArcelorMittal Las Truchas, S.A. de C.V.
c/o Daniel J. Cannistra
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW,
Washington DC 20004-2595

Dear Mr. Cannistra:

I am writing to you on behalf of Import Administration, a unit of the United States Department of Commerce. On November 29, 2010, we initiated an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico in order to determine whether merchandise imported into the United States that you are believed to produce and/or export is being sold at dumped prices. Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the normal value of the merchandise; *i.e.*, the United States price is less than the price at which identical or similar merchandise is sold in a foreign market (usually the home market of the producer and/or exporter of the merchandise), or less than the constructed value of the merchandise. The product covered by this review is carbon and certain alloy steel wire rod from Mexico. We are examining sales, entries or shipments during the period October 1, 2009, to September 30, 2010. We initiated the review based on a request filed by ArcelorMittal las Truchas, S.A. de C.V. (AMLT) (respondent), and Nucor Corporation, Cascade Steel Rolling Mills Inc., and Gerdau Ameristeel U.S. Evraz Rocky Mountain Steel, Inc., (collectively, the petitioners) on behalf of the United States industry producing the merchandise under review.

We are soliciting the information requested in the enclosed questionnaire to determine whether subject merchandise that you produced and/or exported was in fact sold in, or to, the United States at dumped prices. General instructions for responding to the questionnaire follow immediately after the table of contents. We have divided the questionnaire itself into five sections, A through E, and attached supplemental information, including a glossary of terms, in Appendices I through V. Please review the contents page and ensure that you have received all the sections of the questionnaire. If you have not received the entire questionnaire, please contact the official in charge immediately.

All parties are requested to respond to sections A (General Information), B (Sales in the Home Market or to Third Countries), and C (Sales to the United States). If, after examining sections A and C of the questionnaire, you conclude that your company and its affiliates did not have any



U.S. sales or shipments during the review period identified above, please submit a statement to that effect, following the data submission requirements specified in the general instructions. If you do not submit such a statement for the administrative record in this case, we may conclude that your company has not been responsive to this questionnaire and may proceed on the basis of the facts otherwise available, as defined in the glossary at Appendix I of the attached questionnaire.

In accordance with section 773(b)(2)(A)(ii) of the Act, because we determined to disregard sales by your company that were below the cost of production in the most recently completed administrative review of your company, you are requested to respond at this time to section D of the questionnaire.

If any of the products covered by this review underwent additional processing in the United States before they were delivered to customers unaffiliated with your company, you are in general required to respond to section E (Cost of Further Manufacturing or Assembly Performed in the United States). However, if you believe the value added in the United States exceeds substantially the value of the merchandise imported into the United States (*i.e.*, the value added in the United States represents at least 65 percent of the price of the merchandise charged to the first customers unaffiliated with your company), please contact the official in charge in writing immediately.

Please refer to the cover page and general instructions of the enclosed questionnaires for the time period covered by each portion of this review, the due dates for responding to the questionnaire, and the instructions for filing the response. Please also note that we are requesting that you submit electronic copies of the submissions with the narrative portion of the submission formatted in WordPerfect or Microsoft Word, and the exhibits formatted in Adobe Acrobat portable document file. Remember that delivery of electronic media is to be made only to the Central Records Unit, Room 1870 of the main Commerce building. Also, please keep in mind that, questionnaire responses must be received by the Central Records Unit before 5 p.m. on the day of the applicable deadline. If you have any questions about these or any other matters, please contact the official in charge.

If you are unable to respond to this questionnaire within the specified time limits, you must formally request an extension of time in writing before the due date. We will attempt to accommodate any difficulties that you encounter in answering this questionnaire. However, that accommodation cannot conflict with our obligation to conduct the review within the deadlines and informational requirements established by United States law.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Greynolds", with a long, sweeping flourish extending to the right.

Eric Greynolds
Program Manager, Office 3
AD/CVD Operations

Enclosure

**UNITED STATES DEPARTMENT OF COMMERCE
IMPORT ADMINISTRATION
OFFICE OF ANTIDUMPING AND
COUNTERVAILING DUTY ENFORCEMENT**

REQUEST FOR INFORMATION

ArcelorMittal las Truchas, S.A. de C.V. (AMLT)

Carbon and Certain Alloy Steel Wire Rod from Mexico (A-201-830)

PERIOD OF REVIEW: October 1, 2009 to September 30, 2010

RESPONSE DUE DATE: Sections A - E: **Close of Business, February 17, 2011**

OFFICIAL IN CHARGE:

PROGRAM		LEAD	
MANAGER:	Eric Greynolds	ANALYST:	Jolanta Lawska
PHONE:	(202) 482-6071	PHONE:	(202) 482-8362
FAX:	(202) 482-4001	FAX:	(202) 482-4001
INTERNET:	Eric.Greynolds@trade.gov	INTERNET:	Jolanta.Lawska@trade.gov

Return the Questionnaire Response to:

**Office of AD/CVD Enforcement 3
Import Administration
U.S. Department of Commerce
Fourteenth Street and Constitution Avenue, N.W.
Room 1870
Washington, D.C. 20230**

Import Administration Website: <http://ia.ita.doc.gov>

SECTION B

Sales in the Home Market or to a Third Country

I. General Explanation of Section B

This section of the questionnaire provides instructions for reporting your sales of the **foreign like product** in your home market or a third-country market. The choice of the appropriate market is based, in part, on your response to question 1 in section A.

For simplicity, the instructions refer to the **foreign market**. The foreign market is the home market or a third-country market, whichever will be used to determine normal value.

Please submit a copy of the computer program/spreadsheet/worksheet that you used to calculate the prices, expenses, and adjustments reported in your foreign-market sales lists. The documentation submitted should provide detail on any formulas used for the calculation of the figures provided in the sales lists, identify any factors used therein, and identify the price or unit basis to which the factors are applied.

II. Computer File of Foreign Market Sales

A. Sales Reporting

In accordance with the instructions provided in this section, prepare a computer data file containing sales of the foreign like product made in the comparison market. Because **contemporaneous sales** must be used to determine **normal value**, the reporting period for these sales depends on the dates of sale for the U.S. sales you report in response to section C of this questionnaire. Report all sales of the foreign like product during the three months preceding the earliest month of U.S. sales, all months from the earliest to the latest month of U.S. sales, and the two months after the latest month of U.S. sales. If this is less than twelve months in total, please contact the official in charge immediately.

Report all sales of the foreign like product, whether or not you consider particular merchandise to be that which is most appropriately compared to your sales of the subject merchandise. The Department will then select the appropriate comparison sales from your sales listing. Do not, however, report canceled sales.

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FIELD NUMBER 2.2: Prime vs. Secondary Merchandise

FIELD NAME: PRIMEH

DESCRIPTION: Indicate whether the merchandise is prime or non-prime (secondary) merchandise. Please describe in detail how secondary merchandise is categorized internally and marketed.

Note also that this field should **not** be included in the construction of the CONNUM.

- 1 = Prime
- 2 = Non-Prime

FIELD NUMBERS 3.1 – 3.12: Product Characteristics and Other Product Identifiers

NOTE: Use only product characteristics 3.1 through 3.8 for the purpose of assigning control numbers (CONNUMs).

FIELD NUMBER 3.1: Grade Range

FIELD NAME: GRDRANGH

DESCRIPTION: Identify the AWS, non-AWS welding grade, or AISI grade range category, according to the code list below. *Note: silicon-killed grades that are not welding grades, along with all aluminum-killed grades and products that are neither silicon-killed nor aluminum-killed, should be reported under the appropriate AISI grade.* Identify products you claim were sold without grades. In such instances, provide documentation and explanation as to why the product was sold without a grade.

<u>Grade Range</u>	<u>Code</u>
Silicon-killed welding grades (AWS grades)	001
Silicon-killed welding grades (non-AWS grades)	003
AISI grades 1000 to 1099	006
AISI boron grades 1000 to 1099	007
AISI grades 1300 to 1399	500
AISI boron grades 1300 to 1399	510
AISI grades 1500 to 1599	014
AISI boron grades 1500 to 1599	015
AISI grades 4000 to 4999	860
AISI grades 5000 to 5999	540

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AISI boron grades 5000 to 5999	550
AISI boron grades E50000 to E59999	560
AISI grades 6000 to 6999	760
AISI grades 8000 to 8999	910
AISI boron grades 8000 to 8999	920
AISI grades 9000 to 9999	940
AISI boron grades 9000 to 9999	950

FIELD NUMBER 3.2: Carbon Content Range

FIELD NAME: CARRANGH

DESCRIPTION: Report the maximum specified carbon content percentage, according to the grade range below.

<u>Content Percentage Range</u>	<u>Code</u>
0.00% to 0.06%	01
>0.06% to 0.15%	04
>0.15% to 0.23%	05
>0.23% to 0.44%	07
>0.44% to 0.59%	08
>0.59% to 0.70%	11
>0.70% to 0.80%	12
>0.80%	14

FIELD NUMBER 3.3: Surface Quality

FIELD NAME: SQH

DESCRIPTION: Use the following codes to report surface quality level.

<u>Description</u>	<u>Code</u>
Does not meet surface defect and decarburization standards for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord	1

Meets surface defect and decarburization standards for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord	2
---	---

In the narrative section of your response, provide a detailed discussion of how you determined which surface quality code to report for your sales. Include all technical materials, such as International Fastener Institute (IFI) and AISI standards, customer specifications, and other requirements used to classify the

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surface quality.

Identify in your narrative all of the applications you determined to be "critical" in the context of your reporting of this field (i.e., CHQ, PC strand, tire bead, tire cord, and any others not identified above) and describe the surface defect and decarburization requirements associated with those applications.

FIELD NUMBER 3.4: Deoxidization

FIELD NAME: DEOXH

DESCRIPTION: Report the deoxidization practice used to determine certain physical characteristics, according to the codes below.

<u>Content Percentage Range</u>		<u>Code</u>
Silicon-killed - - grain refined	1	
Silicon-killed - - other (i.e., not grain refined)		2
Aluminum-killed		6
Other - - (e.g., pseudo-rimmed, rimmed, capped). Describe in detail in your narrative the specific types you include in this subcategory.		7

FIELD NUMBER 3.5: Maximum Total Residual Content

FIELD NAME: RESIDH

DESCRIPTION: Report the total *aggregate* residual content, by percentage range, for the sum of the following: copper, chromium, nickel, molybdenum, tin, and other undesirable elements for the grade.

<u>Content Percentage Range</u>		<u>Code</u>
>0.60%		1
>0.46% to 0.60%		2
>0.31% to 0.46%		3
>0.15% to 0.31%		4
0.15% or less		5

List in your narrative response each specification/grade combination, and for each identify all of the elements considered undesirable and the maximum allowable content for each of those elements.

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FIELD NUMBER 3.6: Heat Treatment

FIELD NAME: HEATH

DESCRIPTION: Report if heat-treated.

<u>Description</u>	<u>Code</u>
Not heat-treated	1
Heat-treated	2

Describe in detail in your narrative all types of heat treatments relevant for the observations in the sales database. Examples of heat treatments include annealing, spheroidize annealing, and patenting.

FIELD NUMBER 3.7: Diameter Range

FIELD NAME: DIARANGH

DESCRIPTION: Report product diameter according to the diameter range below.

<u>Range in Millimeters</u>	<u>Code</u>
<5.5mm	1
5.5mm to 12.7mm	3
>12.7	4

FIELD NUMBER 3.8: Coating

FIELD NAME: COATINGH

DESCRIPTION: Report if coated.

<u>Description</u>	<u>Code</u>
Not coated	1
Coated, but not metallic-coated.	2
Metallic-coated (including galvanized)	4

In the narrative section of your response, describe all types of coatings (each specific metallic coating and each specific non-metallic coating) pertinent for your reporting of "2" or "4" for this field. Note that "coated" does not mean temporary coatings such as rust-preventive oils.

Other Product Identifiers:

Fields 3.9 and 3.10 must be reported to assist the Department (e.g., for sale identification and verification purposes), but should not be used to assign control numbers (CONNUMs). You may report additional product identifiers that you believe are relevant to your product mix, but do not use these identifiers in the construction of CONNUMs or for any sales matching or cost reporting purpose without explicit instructions from the Department.

FIELD NUMBER 3.9: Grade

FIELD NAME: GRADEH

DESCRIPTION: Report the specific steel grade of the sale according to the specification under which the sale was made. For example, for ASTM A510 grade 1023, you would report 1023.

FIELD NUMBER 3.10: Specification

FIELD NAME: GRADSTDH

DESCRIPTION: Report the specification (e.g., ASTM A510, ASTM A752, etc.). You should include the name or abbreviation for the standard system (e.g., ASTM) followed by the specification itself (e.g., A510). For each specification that is not public (e.g., not ASTM, JIS, DIN, KS, etc.), provide in your narrative response the requirements of that specification associated with the product characteristics used for defining the CONNUMs (fields 3.1 through 3.8 above)

FIELD NUMBER 3.11: Diameter

FIELD NAME: DIAMH

DESCRIPTION: Report the diameter of the product as sold. Specify for each sale observation whether this measurement is in millimeters or inches.

B-15

FIELD NUMBER 3.12: Maximum Specified Carbon Content Percentage

FIELD NAME: CARBH

DESCRIPTION: Report the maximum specified carbon content of the product as sold, expressed as a percentage (to the nearest one-hundredth of one percent). Report this item as a numeric variable without decimal points (*e.g.*, 0.15% would be reported as 15).

Fields 4 through 7.

Report the information requested concerning the customer and the channel of distribution for the merchandise. In the section A response, you have described the various channels through which you distribute the merchandise. The response to field 7 should correspond to the description you have provided in your response to section A.

FIELD NUMBER 4.0: Customer Code

FIELD NAME: CUSCODH

DESCRIPTION: Report the name of the customer or the internal accounting code designating the customer, as used in your normal course of business.

NARRATIVE: Provide a list of customer names and codes as an attachment to your response. If known, identify customers that export some or all of their purchases of the foreign like product. Explain how you determined which sales were for consumption in the foreign market.

FIELD NUMBER 4.1: Consolidated Customer Code

FIELD NAME: CCUSCODH

DESCRIPTION: Report only one name or code for each of your customers, even if more than one name or accounting code exists for that customer in your books and records. For example, if you use different codes for regional offices of the same customer, report the same code for this customer, regardless of the location of the office.

SECTION C

Sales to the United States

I. General Explanation of Section C

This section of the questionnaire provides instructions for reporting your sales of the **subject merchandise** in or to the United States. Normally, we will compare the prices at which this merchandise is sold in the United States with the prices at which the **foreign like product** is sold in the foreign market in order to determine whether the subject merchandise was sold at less than **normal value** in the United States during the period of review ("POR").

Please submit a copy of the computer program/spreadsheet/worksheet that you used to calculate the prices, expenses, and adjustments reported in your U.S. sales lists. The documentation submitted should provide detail on any formulas used for the calculation of the figures provided in the sales lists, identify any factors used therein, and identify the price or unit basis to which the factors are applied.

II. Summary of U.S. Sales File

Please complete the U.S. market sales database summary that appears in Appendix VII.

At the top of the spreadsheet is a place to indicate the date the spreadsheet was submitted to the Department. You are responsible for ensuring that the spreadsheet is consistent with the accompanying narrative response and any accompanying databases submitted on electronic media. Each time you revise your questionnaire response, such as in answer to a supplemental questionnaire, and your response requires a change in a spreadsheet, you must submit a revised spreadsheet with the date the revision is submitted to the Department.

Please submit the worksheet computer file in a standard spreadsheet format, such as Excel (.xls) or Lotus 1-2-3 (.wk1, .wk3, .wk4). You must include as well a printout of this spreadsheet that is identical in content to the computer file.

If you have any questions concerning completion and submission of this spreadsheet, please contact the official in charge by no later than fourteen calendar days after the issuance of this questionnaire (the issuance date of this questionnaire appears on the first page of the cover letter).

III. Computer File of U.S. Sales

In accordance with the instructions provided in this section, prepare a separate computer data file containing each sale made during the POR of the subject merchandise, including sales of further manufactured merchandise. This file format is designed to accommodate **export price** ("EP") and **constructed export price** ("CEP") transactions.

Y = Yes, the transaction is an overrun.
 N = No, the transaction is not an overrun.

FIELD NUMBER 2.2: Prime vs. Secondary Merchandise

FIELD NAME: PRIMEU

DESCRIPTION: Indicate whether the merchandise is prime or non-prime (secondary) merchandise. Please describe in detail how secondary merchandise is categorized internally and marketed. Please note that if the subject merchandise meets a specification, it should not be classified as non-prime merchandise **solely** because it does not meet the specification originally intended.

1 = Prime Merchandise
 2 = Non-Prime Merchandise

NARRATIVE: If subject merchandise is classified as non-prime, please explain the basis for this classification.

FIELD NUMBERS 3.1 – 3.12: Product Characteristics and Other Product Identifiers

NOTE: Use only product characteristics 3.1 through 3.8 for the purpose of assigning control numbers (CONNUMs).

FIELD NUMBER 3.1: Grade Range

FIELD NAME: GRDRANGU

DESCRIPTION: Identify the AWS, non-AWS welding grade, or AISI grade range category, according to the code list below. *Note: silicon-killed grades that are not welding grades, along with all aluminum-killed grades and products that are neither silicon-killed nor aluminum-killed, should be reported under the appropriate AISI grade. Identify products you claim were sold without grades. In such instances, provide documentation and explanation as to why the product was sold without a grade.*

<u>Grade Range</u>	<u>Code</u>
Silicon-killed welding grades (AWS grades)	001
Silicon-killed welding grades (non-AWS grades)	003
AISI grades 1000 to 1099	006
AISI boron grades 1000 to 1099	007

AISI grades 1300 to 1399	500
AISI boron grades 1300 to 1399	510
AISI grades 1500 to 1599	014
AISI boron grades 1500 to 1599	015
AISI grades 4000 to 4999	860
AISI grades 5000 to 5999	540
AISI boron grades 5000 to 5999	550
AISI boron grades E50000 to E59999	560
AISI grades 6000 to 6999	760
AISI grades 8000 to 8999	910
AISI boron grades 8000 to 8999	920
AISI grades 9000 to 9999	940
AISI boron grades 9000 to 9999	950

FIELD NUMBER 3.2: Carbon Content Range

FIELD NAME: CARRANGU

DESCRIPTION: Report the maximum specified carbon content percentage, according to the grade range below.

<u>Content Percentage Range</u>	<u>Code</u>
0.00% to 0.06%	01
>0.06% to 0.15%	04
>0.15% to 0.23%	05
>0.23% to 0.44%	07
>0.44% to 0.59%	08
>0.59% to 0.70%	11
>0.70% to 0.80%	12
>0.80%	14

FIELD NUMBER 3.3: Surface Quality

FIELD NAME: SQU

DESCRIPTION: Use the following codes to report surface quality level.

<u>Description</u>	<u>Code</u>
Does not meet surface defect and decarburization standards for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord	1
Meets surface defect and decarburization standards for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord	2

In the narrative section of your response, provide a detailed discussion of how you determined which surface quality code to report for your sales. Include all technical materials, such as International Fastener Institute (IFI) and AISI standards, customer specifications, and other requirements used to classify the surface quality.

Identify in your narrative all of the applications you determined to be "critical" in the context of your reporting of this field (i.e., CHQ, PC strand, tire bead, tire cord, and any others not identified above) and describe the surface defect and decarburization requirements associated with those applications.

FIELD NUMBER 3.4: Deoxidization

FIELD NAME: DEOXU

DESCRIPTION: Report the deoxidization practice used to determine certain physical characteristics, according to the codes below.

<u>Content Percentage Range</u>		<u>Code</u>
Silicon-killed - - grain refined	1	
Silicon-killed - - other (<i>i.e.</i> , not grain refined)		2
Aluminum-killed		6
Other - - (<i>e.g.</i> , pseudo-rimmed, rimmed, capped). <i>Describe in detail in your narrative the specific types you include in this subcategory.</i>		7

FIELD NUMBER 3.5: Maximum Total Residual Content

FIELD NAME: RESIDU

DESCRIPTION: Report the total *aggregate* residual content, by percentage range, for the sum of the following: copper, chromium, nickel, molybdenum, tin, and other undesirable elements for the grade.

<u>Content Percentage Range</u>		<u>Code</u>
>0.60%		1
>0.46% to 0.60%		2
>0.31% to 0.46%		3
>0.15% to 0.31%		4
0.15% or less		5

List in your narrative response each specification/grade combination, and for each identify all of the elements considered undesirable and the maximum allowable content for each of those elements.

FIELD NUMBER 3.6: Heat Treatment

FIELD NAME: HEATU

DESCRIPTION: Report if heat-treated.

<u>Description</u>	<u>Code</u>
Not heat-treated	1
Heat-treated	2

Describe in detail in your narrative all types of heat treatments relevant for the observations in the sales database. Examples of heat treatments include annealing, spheroidize annealing, and patenting.

FIELD NUMBER 3.7: Diameter Range

FIELD NAME: DIARANGU

DESCRIPTION: Report product diameter according to the diameter range below.

<u>Range in Millimeters</u>	<u>Code</u>
<5.5mm	1
5.5mm to 12.7mm	3
>12.7	4

FIELD NUMBER 3.8: Coating

FIELD NAME: COATINGU

DESCRIPTION: Report if coated.

<u>Description</u>	<u>Code</u>
Not coated	1
Coated, but not metallic-coated.	2
Metallic-coated (including galvanized)	4

In the narrative section of your response, describe all types of coatings (each specific metallic coating and each specific non-metallic coating) pertinent for your reporting of "2" or "4" for this field. Note that "coated" does not mean temporary coatings such as rust-preventive oils.

Other Product Identifiers:

Fields 3.9 and 3.10 must be reported to assist the Department (e.g., for sale identification and verification purposes), but should not be used to assign control numbers (CONNUMs). You may report additional product identifiers that you believe are relevant

to your product mix, but do not use these identifiers in the construction of CONNUMs or for any sales matching or cost reporting purpose without explicit instructions from the Department.

FIELD NUMBER 3.9: Grade

FIELD NAME: GRADEU

DESCRIPTION: Report the specific steel grade of the sale according to the specification under which the sale was made. For example, for ASTM A510 grade 1023, you would report 1023.

FIELD NUMBER 3.10: Specification

FIELD NAME: GRADSTDU

DESCRIPTION: Report the specification (*e.g.*, ASTM A510, ASTM A752, etc.). You should include the name or abbreviation for the standard system (*e.g.*, ASTM) followed by the specification itself (*e.g.*, A510). For each specification that is not public (*e.g.*, not ASTM, JIS, DIN, KS, etc.), provide in your narrative response the requirements of that specification associated with the product characteristics used for defining the CONNUMs (fields 3.1 through 3.8 above)

FIELD NUMBER 3.11: Diameter

FIELD NAME: DIAMU

DESCRIPTION: Report the diameter of the product as sold. Specify for each sale observation whether this measurement is in millimeters or inches.

FIELD NUMBER 3.12: Maximum Specified Carbon Content Percentage

FIELD NAME: CARBU

DESCRIPTION: Report the maximum specified carbon content of the product as sold, expressed as a percentage (to the nearest one-hundredth of one percent). Report this item as a numeric variable without decimal points (*e.g.*, 0.15% would be reported as 15).

Fields 4 through 8.

Report the information requested concerning the sale type, customer and the channel of distribution for the merchandise. In the section A response, you have described the various channels through which you distribute the merchandise. The response to field 8 should correspond to the description you have provided in your response to section A.

FIELD NUMBER 4.0: Sale Type

FIELD NAME: SALEU

DESCRIPTION: Identify the sale as either "EP" (export price) or "CEP" (constructed export price).

FIELD NUMBER 5.0: Consignment Identifier

FIELD NAME: CONSIGNU

DESCRIPTION: Identify the sale as either "C" (consignment sale) or "NC" (non-consignment sale).

FIELD NUMBER 6.0: Customer Code

FIELD NAME: CUSCODU

DESCRIPTION: Report the name of the customer or the internal accounting code designating the customer, as used in your normal course of business.

NARRATIVE: Provide a list of customer names and codes as an attachment to your narrative response.

FIELD NUMBER 6.1: Consolidated Customer Code

FIELD NAME: CCUSCODU

DESCRIPTION: Report only one name or code for each of your customers, even if



A-201-830
Circumvention Inquiry
Public Version
Office 3; Operations: JL; EBG

DATE: September 24, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Antidumping Duty (AD) Order on Carbon and Certain Alloy Steel Wire Rod from Mexico

SUBJECT: Final Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter of 4.75 Millimeters (mm) to 5.00 mm

Background

On December 20, 2011, the Department of Commerce (the Department) issued the Preliminary Determination in the above-mentioned AD circumvention inquiry. See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 76 FR 78882 (December 20, 2011) (Preliminary Determination), and accompanying Issues and Decision Memorandum (Preliminary Decision Memorandum). On January 12, 2012, Deacero S.A. de C.V. (Deacero) submitted its case brief. On January 23, 2012, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc, Rocky Mountain Steel, and Members of the Wire Rod Producers Coalition (collectively, the Coalition) and Nucor Corporation (Nucor) submitted rebuttal briefs.¹ No party requested a hearing.

As discussed below, we continue to find that Deacero's shipments of certain alloy steel wire rod (wire rod) with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero are circumventing the Order.² In addition, we continue to find that our affirmative final determination applies solely to Deacero because information supplied by Ternium Mexico S.A. de C.V. (Ternium), the other respondent included in petitioners' initial circumvention filing, indicates that it did not produce or sell merchandise subject to this circumvention inquiry. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments from parties.

¹ The Department refers to the Coalition and Nucor collectively as petitioners.

² See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 65945 (October 29, 2002) (Order).



Comment 1: Whether Initiation of a Minor Alteration Inquiry is Contingent Upon Whether the Products at Issue Existed Prior to the Investigation

Comment 2: Whether the Products at Issue Were Commercially Available Prior to the Investigation

Comment 3: Whether the Department Should Perform the Minor Alteration Five-Prong Analysis by Comparing 4.75 mm Wire Rod to All Wire Rod Listed in the Scope

Comment 4: First Prong of the Minor Alteration Analysis – Physical Characteristics

Comment 5: Second Prong of the Minor Alteration Analysis - Expectations of the Ultimate Users

Comment 6: Third Prong of the Minor Alteration - End Use of Products at Issue

Comment 7: Fourth Prong of the Minor Alteration Analysis - Channels of Trade and Advertising

Comment 8: Fifth Prong of the Minor Alteration Analysis - Cost of Any Modification Relative to the Total Value of the Products at Issue

Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of wire rod with an actual diameter of 4.75 mm to 5.00 mm. This merchandise, produced by Deacero, entered the United States under Harmonized Tariff Schedule (HTS) classification 7213.91.3093.

Discussion of the Issues:

Comment 1: Whether Initiation of a Minor Alteration Inquiry is Contingent Upon Whether the Products at Issue Existed Prior to the Investigation

Deacero argues that as an initial matter, the Tariff Act of 1930, as amended (the Act), clearly requires that there must have been an alteration of the subject merchandise. Deacero contends that it therefore follows that a product that existed prior to an original investigation and that petitioners did not include within the scope cannot be considered an alteration of the subject merchandise. Deacero argues that the mere fact that there may be a minor difference between a product and subject merchandise cannot, on its own, serve as the basis for finding the product within the scope.

Deacero further argues that this conclusion is supported by the Court of International Trade's (CIT) ruling in Hylsa, which in turn relied upon the Court's findings in Wheatland. See Hylsa S.A. de C.V. v. United States, 22 CIT 44 (1998) (Hylsa); see also Wheatland Tube Co. v. United States, 973 F. Supp. 149 (CIT 1997) (Wheatland). Deacero argues that in Hylsa, the CIT determined that the Department could not treat line pipe as a minor alteration of the subject merchandise (standard pipe) because line pipe existed in the U.S. market at the time of the

investigation. Deacero argues that in Hylsa the CIT therefore ordered the Department to terminate the minor alteration inquiry and, in doing so, noted that petitioners should not be relieved of the legal consequences of failing to include a particular product within their scope definition. See Hylsa, 22 CIT at 49.

Deacero argues that in Nippon Steel, the Court of Appeals for the Federal Circuit (CAFC) confirmed the approach taken in Hylsa when it ruled that the Department is not prohibited from conducting a minor alteration inquiry simply because the product at issue falls outside the scope of the order. Deacero argues that the CAFC distinguished the product at issue in Nippon Steel from those addressed in Hylsa and Wheatland on the basis that the products in the two latter cases were well known at the time the orders were issued and did not involve products produced by means of insignificant alternations. See Nippon Steel v. United States, 219 F.3d. 1348, 1356 (Nippon Steel). Thus, Deacero argues that these three cases, when read together, establish that the Department may not treat a product that existed before the original investigation and that was not included in the scope of the order as an alternation of subject merchandise.

Deacero claims that this principle (i.e., that the Department must consider whether a product is, in fact, an alteration of subject merchandise before conducting the five-prong analysis), is reflected in the Department's approach in later-developed merchandise inquiries. See Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order, 76 FR 33218 (June 8, 2011) (Initiation) and accompanying Issues and Decisions Memorandum (Initiation Memorandum) at 13 – 17: “The examination of the five factors enumerated under section 781(d)(1) of the Act are predicated on the Department determining that the product at issue constitutes a later-developed product.” Deacero contends that the Department must likewise determine whether a product existed prior to the original investigation, and therefore can be considered an alteration of the subject merchandise, before applying the five-prong circumvention analysis.

Petitioners dispute Deacero's arguments and contend that the minor alteration statute, section 781(c) of the Act, does not require that the altered product has been developed after the investigation. According to petitioners, section 781(c) of the Act indicates Congress' concern that foreign producers were making minor changes, subsequent to the issuance of AD orders, in an effort to bring products outside the literal scope of the orders. Petitioners further argue that the legislative history concerning section 781(c) of the Act instructs the Department to apply the five-prong test when conducting a minor alteration inquiry. See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987). Petitioners argue that the five-prong test does not involve making any determination that the product at issue existed at the time of the investigation.

Petitioners note that section 781(d) of the Act contains a circumvention provision involving later-developed merchandise. Petitioners explain that sub-paragraph (d) directs the Department not only to apply the five-prong test but also examine whether the products at issue were developed after the investigation. Petitioners contend that reading this last provision into the minor alteration analysis would render that analysis superfluous as it would do nothing not already done by the later-developed product analysis. Petitioners argue that the Supreme Court has stated that a statute should be construed to give effect to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. See Corley v. United States, 129 S. Ct. 1558, 1560 (2009) (Corley).

Petitioners argue that the cases cited by Deacero to support its views concerning the

minor alteration analysis are not relevant to facts of the instant proceeding. Petitioners contend that Hylsa and Wheatland dealt with the “propriety of Commerce’s conducting a scope rather than a minor alteration inquiry.” See Target Corp. v. United States, 609 F.3d 1352, 1362 (Federal Circuit 2010) (Target Corp.), in which petitioners claim the CAFC explained that reliance on cases addressing conventional scope inquiries is misplaced. Petitioners further argue that the CAFC has repeatedly explained that Wheatland’s “broad language . . . must be interpreted in light of the issue before the court.” See Nippon Steel, 219 F.3d at 1352. Petitioners contend that, while the Wheatland Court found that the minor alteration provision of the Act “does not apply to products unequivocally excluded from the order in the first place,” the Court did so in the context of addressing whether it was arbitrary for the Department to conduct a scope inquiry. See Wheatland, 161 F.3d at 1370.

Petitioners further assert that the CAFC has determined that Wheatland held that the Department justifiably had decided to conduct a scope investigation but that Wheatland did not hold that the Department had no authority to conduct a minor alteration inquiry. See Nippon Steel, 219 F.3d at 1355. On this basis, petitioners argue that Wheatland is not relevant to the instant proceeding because it did not involve a minor alteration inquiry. See Nippon Steel, 219 F.3d at 1356.

In addition, petitioners cite to several past decisions to argue that the Department’s long-standing practice in minor alteration inquiries does not involving determining whether the products at issue existed at the time of the investigation. See, e.g., Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, 76 FR 50996 (August 17, 2011).

Department’s Position: We disagree with Deacero’s argument that the existence of the products at issue prior to the initiation of an investigation precludes the Department from conducting a minor alterations analysis. Section 781(c)(1) of the Act states that the class or kind of merchandise subject to an AD order shall include articles altered in form or appearance in minor respects whether or not included in the same tariff classification. As evidenced by the legislative history, when conducting a minor alteration inquiry, section 781(c) of the Act instructs the Department to examine the following five criteria: 1. overall physical characteristics; 2. expectations of the ultimate user; 3. end-use; 4. channels of trade and advertising; and 5. cost of any modification relative to the total value of the products at issue. See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987). The Department’s practice reflects the legislative intent. See, e.g., Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, 74 FR 33991, 33992 (July 14, 2009), unchanged in Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China, 74 FR 40565 (August 12, 2009).

In addition to the criteria above, the Department has in prior anticircumvention proceedings considered other factors as relevant to the circumvention allegation. These factors include: (i) the circumstances under which the subject products entered the United States, (ii) the timing of these entries during the circumvention review period, and (iii) the total quantity of the merchandise entered during this period. See Brass Sheet and Strip from Germany: Negative Preliminary Determination of Circumvention of Antidumping Duty Order, 55 FR 32655 (August 10, 1990); see also Preliminary Determination of Circumvention of Antidumping Order: Cut-to-

Length Carbon Steel Plate From Canada, 65 FR 64926 (October 31, 2000). We disagree with Deacero's claim that Hylsa, Wheatland, and Nippon Steel preclude the Department from conducting a minor alteration analysis in instances in which the products at issue existed prior to the initiation of an investigation. In Nippon Steel, the Court explained that Wheatland differed from the facts of Nippon Steel in "critical respects," namely that Wheatland:

... involved a scope determination (whether the antidumping duty order covered a particular product) rather than, as here, a minor alterations inquiry into whether alterations in a product took it outside the scope of the order.

See Nippon Steel, 219 F.3d at 1356. The Nippon Steel Court further stated that, "Although {in Wheatland} the Court held that Commerce justifiably had decided to conduct a scope investigation, it did not hold that Commerce had no authority to conduct a minor alterations inquiry." See Nippon Steel, 219 F.3d at 1356. In addition, the Nippon Steel Court held that Wheatland:

... does not cover Commerce's decision to institute a minor alterations inquiry in the present case since, as {Wheatland} stated, such an inquiry properly covers products that are so insignificantly changed from a covered product that they should be considered within the scope of the order even though the alterations remove them from the order's literal scope.⁷

See Nippon Steel, 219 F.3d at 1357, citing Wheatland, 973 F. Supp. 149 at 1371. Thus, based on the above, we reject Deacero's claims that Wheatland and Nippon Steel stand for the proposition that the existence of a product prior to the initiation of an investigation precludes the Department from conducting a minor alterations analysis of said product.³ In light of our finding in this regard, we determine that the initiation of a minor alteration inquiry is not contingent upon whether the product at issue existed prior to the investigation.

Comment 2: Whether the Products at Issue Were Commercially Available Prior to the Investigation

Deacero notes that the Department has found that 4.75 mm wire rod was commercially available prior to the investigation. See Initiation Memorandum at 14. Deacero further argues that petitioners' own past statements indicate they understood that the product was excluded from the scope of the Order, despite their earlier claims that the scope of the order was ambiguous. Deacero cites to the 2005 petition in which petitioners included 4.75 mm wire rod and specifically distinguished the scope of the 2005 petition from the scope of the Order. See Antidumping Duty Petition, Volume I, Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, Germany, and Turkey, (November 10, 2005) at 8, "Note that the scope of this investigation differs from previous investigations in that the lower diameter limit of the previous investigation was 5.0 mm while this case covers CASWR products beginning at 4.75 mm." Deacero further argues that industry reports support the finding that 4.75 mm wire rod was commercially available in the United States prior to the imposition of the Order. See the

³ Our determination in this regard applies with equal measure to Hylsa, the findings of which were based upon those of Wheatland.

Kawasaki Steel Technical Report No. 47 (Kawasaki Report), which was included in Deacero's March 21, 2011, submission; see also Certain Steel Wire Rod from Brazil and Japan, Investigation Numbers 731-TA-646 and 648 (March 1994) (ITC 1994 Final Determination), United States International Trade Commission (ITC) Pub. 2761 at 162-163, which according to Deacero demonstrates that the firm Charter Rolling produced 4.75 mm wire rod in the United States in the 1990s.

Thus, argues Deacero, because a minor alteration inquiry cannot be initiated if the product at issue existed prior to the investigation and because record evidence demonstrates that 4.75 mm wire rod was commercially available in the United States at the time of the investigation, the Department is compelled to issue a negative final determination.

Petitioners argue that the Kawasaki Report was not released until 2002, long after the commencement of the wire rod investigation and that the report does not indicate whether small diameter wire rod was commercially available outside of Japan, if at all. Though the Kawasaki Report mentions that it developed and introduced 4-roll mills capable of producing small diameter wire rod in 1998, petitioners argue that the report does not provide information on the period in which Kawasaki began commercial production of small diameter wire rod. Petitioners therefore argue that it was incorrect for the Department to determine in the Initiation Memorandum that 4.75 mm wire rod was commercially available before or during the investigation.

Petitioners further argue that an accurate reading of the ITC 1994 Final Determination indicates that it does not provide any information on the alleged sale of 4.00 mm to 5.00 mm wire rod by Charter Rolling. Petitioners further argue that information from Deacero indicates that Charter Rolling [

]. See Deacero's July 22, 2011, (Questionnaire Response (First QNR Response) at Exhibit 18. Thus, petitioners argue that to the extent that Charter Rolling produced small diameter wire rod, it did so well before the filing of the wire rod petition.

On this basis, petitioners argue that, even if the Department improperly hinges its ability to conduct a minor alteration analysis on whether 4.75 mm wire rod was commercially available, record evidence clearly demonstrates that such products were not commercially available in the United States at the time the wire rod petition was filed.

Department's Position: As explained above, we reject the notion that the existence of the products at issue prior to the initiation of an investigation precludes the Department from conducting a minor alterations analysis of said product. For the same reasons, we have reached the same conclusion with regard to commercial viability.

Comment 3: Whether the Department Should Perform the Minor Alteration Five-Prong Analysis by Comparing 4.75 mm Wire Rod to All Wire Rod Listed in the Scope

Deacero argues that in the Preliminary Determination the Department adopted a biased approach in which it compared the attributes of 4.75 mm wire rod to subject wire rod, namely 5.5 mm wire rod.⁴ Deacero asserts the Department should have based its analysis of physical characteristics by comparing 4.75 mm wire rod to the full spectrum of subject wire rod.

⁴ We use the term subject wire rod to refer to diameters of wire rod listed in the scope of the Order, e.g., wire rod with diameters ranging from 5.00 mm to 19.00 mm wire rod.

Petitioners counter that in conducting the five-prong analysis, the Department relied on comparisons of 4.75 mm to 5.00 mm as well as all other diameters of subject wire rod. Petitioners note that the Department supported its findings in the Preliminary Determination by noting that the ITC found that “all categories” of wire rod are hot-rolled products that are sold in irregularly wound coils “spanning at least 11 major categories of products” and that the Department concluded “. . . that both subject wire rod and wire rod with a diameter of 4.75 mm to 5.00 mm are hot-rolled intermediate steel products.” See Preliminary Determination Memorandum at 7.

Department’s Position: We disagree with Deacero that it is improper to compare the products at issue (i.e., wire rod with a diameter of 4.75 mm to 5.0 mm) to wire rod with a diameter of 5.5 mm for purposes of conducting a minor alteration inquiry under section 781(c) of the Act. As an initial matter, we note that the minor alteration analysis requires a comparison of the products at issue to subject merchandise. Wire rod with a diameter of 5.5 mm is listed in the scope of the Order and, therefore, we find that comparing 5.5 mm wire rod to the products at issue is appropriate.

Deacero’s argument implies that the Department should have instead based its minor alteration analysis on a comparison of the products at issue to larger diameter wire rod listed in the Order (e.g., wire rod with a diameter of 19 mm). Such an argument assumes that a distinction exists in the scope of the Order between smaller and larger diameter wire rod products. We find that no such distinction exists. Rather, information on record characterizes subject wire rod as a single product. For example, the ITC described wire rod as a “product” that is “typically produced in fractional diameters from 7/32 inch (5.6 mm) to 47/64 inch (18.7 mm). See Preliminary Decision Memorandum at 7, citing to Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine, Pub. 3546 (October 2002) (ITC Report) at I-5. The ITC further determined that:

all categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils . . . comprising a continuum spanning at least 11 major categories of products, defined by end-use ranging from low-carbon wire rod . . . to highest-end products.

Id., emphasis added. On this basis, we determine that it is appropriate for the Department to compare the products at issue to subject wire rod with a diameter of 5.5 mm when conducting its minor alteration analysis.

Notwithstanding our finding in this regard, Deacero incorrectly asserts that in the Preliminary Determination the Department conducted the minor alteration analysis by exclusively comparing the products at issue (i.e., wire rod with a diameter of 4.75 mm to 5.0 mm) to wire rod with a diameter of 5.5 mm. In the Preliminary Determination, the Department compared the products at issue to a variety of subject wire rod. For example, in the Preliminary Determination the Department determined that wire rod of grade [] with a [] diameter has the same minimum and maximum tensile strength as 4.75 mm wire rod of the same grade. See Preliminary Decision Memorandum at 4. The Department further found that the chemical content of Deacero’s wire rod varied solely by grade, not by diameter. Id. The Department similarly noted that the ITC Report demonstrates that it is chemical content (such as carbon content), and not diameter, that distinguishes one wire rod product from another in terms of such

characteristics as ductility. Id.

Therefore, as reflected in the Preliminary Determination, in conducting its analysis, the Department plainly relied on various comparisons. Based on this analysis, we reject Deacero's claims that the Department's comparisons were somehow improper or biased.

Comment 4: First Prong of the Minor Alteration Analysis – Physical Characteristics

Deacero argues that industry data confirm that there is a cut off between large diameter wire rod and small diameter wire rod, which it defines as less than 5.5 mm. See Kawasaki Report at 44-45. Deacero further contends that ignoring the diameter difference of 4.75 mm wire rod to 5.5 mm wire rod due to the lack of differences in chemical properties and tensile strength would lead to absurd results in that the chemical content and tensile strength for any steel products are primarily a function of grade. Thus, argues Deacero, under such a flawed approach, products such as billets, 4.00 mm wire rod, 19.5 mm wire rod, and 0.69 mm wire would be considered minor alterations of subject merchandise.

Deacero explains that in the Preliminary Determination the Department, as part of its physical characteristics analysis, concluded that subject wire rod, such as rod with a diameter of 5.5 mm, can be drawn into the same products as 4.75 mm wire rod, provided that additional steps, such as cold-drawing, are employed. See Preliminary Decision Memorandum at 6-7. Deacero argues the Department's conclusion fails to consider the competitive advantages of 4.75 mm wire rod. Deacero argues that the Department ignored the costs associated with the extra processing required on larger diameter wire rod products compared to 4.75 mm wire rod. Deacero cites to previously submitted affidavits from its customers attesting to the cost savings associated with using 4.75 mm wire rod in its wire drawing production processes. It adds that the Kawasaki Report also mentions the secondary processing steps that can be eliminated through the use of 4.75 mm wire rod.

Deacero further argues that it is the Department's practice to find that product alterations that are beneficial to the overall physical characteristics are a factor that favors a negative circumvention finding. See Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Steel Flat Products from Japan, 68 FR 19499, 19503 (April 21, 2003) (Preliminary Results of CORE from Japan), which states "The information on the record demonstrates that boron is beneficial to the overall physical characteristics of the final product." Thus, asserts Deacero, in the final determination the Department should address the advantages to customers of using 4.75 mm wire rod rather than subject merchandise.

Deacero argues that in the Preliminary Determination the Department failed to address evidence that 4.75 mm wire rod requires more precise adjustments to the production process than subject merchandise. Specifically, Deacero claims that the Department ignored the fact that the [] is [] for [] mm wire rod than for larger diameters and that the [] are [] during much of the production process for 4.75 mm wire rod than for other diameters. Deacero asserts that information in the Kawasaki Report supports its claims in this regard. In addition, Deacero asserts that the [] is unique for 4.75 mm wire rod. Further, Deacero argues that the Department failed to properly consider that Deacero was unable to produce 4.75 mm wire rod at one of its mills on a commercially viable basis due to the technical difficulties encountered during production.

Petitioners argue that the Department properly examined the diameter, the chemical content, and the minimum and maximum tensile strengths of all diameters of wire rod at issue

and concluded that difference in diameter did not, by itself, constitute a meaningful difference in physical characteristics. See Preliminary Determination Memorandum at 4-5. Petitioners further argue that wire rod is produced in a range of different diameters and that Deacero provide no evidence of a bright line distinction between wire rod with diameters of 4.75 mm to 5.00 mm and subject wire rod.

Petitioners contest the notion that the Department's approach in the Preliminary Determination would result in a finding of insignificant differences for the same grades of billets, wire rod, and wire. Petitioners assert such a claim is absurd as each product type is produced by different industries. Petitioners argue that the Department provided Deacero with several opportunities to submit information to support its claims that the physical characteristics of wire rod with diameters of 4.75 mm to 5.00 mm differ significantly from subject wire rod but that Deacero itself acknowledged that diameter was the only difference. See Preliminary Determination Memorandum at 5.

Petitioners argue that the Department correctly focused its analysis in the Preliminary Determination on the extent to which 4.75 mm wire rod differs from subject wire rod and not on the purported differences in downstream products. Petitioners claim that in CORE from Japan, the Department determined that there were "commercially and metallurgically viable reasons" for the producers to add boron to the CORE steel. See Preliminary Results of CORE from Japan, 68 FR at 19502, unchanged in Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan, 68 FR 33676 (June 5, 2003) (CORE from Japan). Thus, argue petitioners, in CORE from Japan, as in the instant proceeding, the Department focused on the physical characteristics of the subject merchandise and not, as Deacero claims, on the physical differences of the downstream products produced from subject merchandise. *Id.* Petitioners further argue that the Department has already dismissed Deacero's argument that the Department must assess the physical characteristics of the downstream product. See Preliminary Decision Memorandum at 6.

Petitioners contend that, contrary to Deacero's claims, the Department performed a detailed examination of the information on the record concerning the production process and concluded that this information failed to distinguish the production process for wire rod with diameters of 4.75 mm to 5.00 mm from that of subject wire rod. See Preliminary Decision Memorandum at 6, in which the Department discusses the [], [], and number of stands utilized to produce 4.75 mm wire rod and subject wire rod. Petitioners also contend that the Kawasaki Report fails to identify any significant physical differences between 4.75 mm wire rod and subject wire rod. In addition, petitioners argue that in the Preliminary Determination the Department properly rejected Deacero's claims that an internal study demonstrated the physical differences between 4.75 mm wire rod and subject wire rod. See Preliminary Decision Memorandum at 5. Petitioners argue that the purported physical differences mentioned in the internal report are not mentioned in Deacero's mill certificates or even in the Department's matching criteria.

Petitioners state that information from Deacero indicates that its Saltillo mill, in fact, has the capability to produce 4.75 mm wire rod but that Deacero chose to concentrate its production at the Celaya mill. See Deacero's October 5, 2011, submission at 1 (Second QNR Response). Petitioners further state that information from Deacero indicates that the Celaya mill [] as the Saltillo Mill and, thus, Deacero's decision to produce 4.75 mm wire rod exclusively at its Celaya mill is a business decision and does not reflect any heightened difficulty or special production process for 4.75 mm wire rod. See Deacero's July

22, 2011, submission at Exhibit 8.

Department's Position: We continue to find that the products at issue and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics. Deacero claims that diameter is the "key physical difference between 4.75 mm wire rod and subject wire rod." See Deacero's July 22, 2011, Questionnaire Response (First QNR Response). However, as noted in the Preliminary Determination, data submitted by Deacero indicate that the minimum and maximum tensile strength of its wire rod products vary by grade and not by diameter. See Preliminary Decision Memorandum at 4. In addition, data from Deacero indicate that chemical content also varies solely by grade and not by diameter. *Id.* at 5. Thus, the data from Deacero indicate that wire rod products of the same grade will not vary in terms of tensile strength and chemical content, even where the products are of different diameters. *Id.*

A metallurgical analysis submitted by Deacero confirms this conclusion. See Second QNR Response at Exhibit S-6 containing a study that compares the metallurgical properties of 4.75 mm and 5.50 mm wire rod. Regarding the study, Deacero acknowledges that within each grade, "all characteristics of the rod, besides diameter, were identical." *Id.* Further, information from the ITC indicates that it is carbon content, as opposed to diameter that distinguishes one wire rod product from another in terms of such physical characteristics as ductility. See Preliminary Decision Memorandum at 5.

We disagree with Deacero's claim that in the Preliminary Determination the Department failed to address evidence that 4.75 mm wire rod requires more precise adjustments to the production process than subject wire rod. In the Preliminary Determination, the Department provided a detailed analysis of Deacero's claim. See Preliminary Decision Memorandum at 6, in which the Department discusses the [] and [] used to produce 4.75 mm wire rod and subject wire rod. Based on this information, the Department concluded that rather than distinguish 4.75 mm wire rod from subject wire rod, the production data supplied by Deacero "merely reflect a constant series of adjustments to production equipment that are employed to produce each of the various diameters of wire rod." *Id.* The arguments of Deacero have not led us to reconsider our conclusion from the Preliminary Determination.

We disagree with Deacero that the Department must consider competitive advantages when determining whether the overall physical characteristics of 4.75 mm wire rod are distinct from subject wire rod. The proper focus of this prong is on the extent to which 4.75 mm wire rod is distinct from subject wire rod. The first prong of the minor alterations analysis contains no requirement to examine the overall physical characteristics of the downstream product.

We also disagree with Deacero that CORE from Japan should compel the Department to reach a negative circumvention finding. In CORE from Japan, the Department examined whether the respondent circumvented the order by means of adding boron to CORE steel in a manner that constituted a minor alternation under section 781(c) of the Act. See Preliminary Results of CORE from Japan, 68 FR at 19503, unchanged in CORE from Japan, 68 FR at 33676. In that proceeding, the Department ultimately determined that there were "metallurgically viable reasons for the addition of boron" and that the addition of boron was "beneficial to the overall physical characteristics of the product." *Id.* On this basis, in CORE from Japan the Department determined that the product at issue did not constitute a minor alteration and, thus, was outside the scope of the order. Therefore, in CORE from Japan the Department focused on the extent to which boron altered the physical characteristics of the product at issue. As discussed above, we

find that the 0.25 mm difference in diameter between 4.75 mm wire rod and subject wire rod does not constitute a meaningful difference in terms of overall physical characteristics for purposes of our minor alterations inquiry. As such, the facts of the instant proceeding are distinct from those of CORE from Japan.

Regarding Deacero's Saltillo mill, the extent to which the mill is unable to produce 4.75 mm wire rod on a commercially viable basis does not alter the fact that there are no meaningful physical differences between 4.75 mm wire rod and wire rod listed in the scope of the Order (e.g., 5.5 mm wire rod).

We further disagree with the presumption that an affirmative finding would lead to results in which such products as billets, 4.00 mm wire rod, 19.5 mm wire rod, and 0.69 mm wire would be considered minor alterations of subject wire rod. As petitioners point out, the examples cited by Deacero represent products produced by different industries, e.g., wire producers, wire rod producers, and billet producers. Further, Deacero's hypothetical examples ignore the fact that overall physical characteristics comprise only one of five factors that the Department examines as part of its minor alteration analysis. Thus, it is incorrect to assume that in the context of a proceeding conducted under section 781(c) of the Act, the Department would refuse to distinguish between wire, billet, and wire rod products simply because they share physical similarities in terms of chemical content and tensile strength.

Lastly, we acknowledge that it may be less costly to draw 4.75 mm wire rod down to narrower gauges of wire compared to larger diameters of subject wire rod, but such impacts on the cost of production are properly evaluated under the fifth criterion of the minor alteration analysis and not under the criterion that deals with overall physical characteristics.

Comment 5: Second Prong of the Minor Alteration Analysis - Expectations of the Ultimate Users

Deacero argues that the Department failed to provide an adequate explanation to support its findings in the Preliminary Determination that the expectations of end users do not differ with regard to wire rod with diameters of 4.75 mm and subject wire rod (e.g., 5.5 mm wire rod). On this point, Deacero asserts that it began producing 4.75 mm wire rod [

] over 5.5 mm wire rod, thereby demonstrating that the expectations of its customers differed with regard to 4.75 mm wire rod compared to subject wire rod.

Deacero also argues that the Department did not give proper consideration to customer affidavits related to benefits of using 4.75 mm wire rod rather than using 5.5 mm wire rod. According to Deacero, the record evidence shows that "customers have very different expectations for 4.75 mm wire rod versus 5.5 mm wire rod" and that the use of 4.75 mm wire rod provides significant benefits to its customers. See Deacero's January 13, 2012, case brief at 15; see also *id.* at 17 – 18, in which Deacero cites to previously filed customer affidavits that state that the use of 4.75 mm wire rod leads to fewer breakages, eliminates the number of times that [], and results in cost savings.

Further demonstrating how the expectations of ultimate users differ with regard to 4.75 mm wire rod, argues Deacero, is the fact that customers purchase 4.75 mm wire rod when AD considerations are not an issue. Deacero argues that the Canadian producer Ivaco, which is not subject to an AD order, continues to produce and sell 4.75 mm wire rod to customers in the U.S. market. See Deacero's March 14, 2011, submission. Deacero also states that it sells 4.75 mm

wire rod in countries other than the United States. Thus, Deacero argues that ultimate users' demand for 4.75 mm wire rod demonstrates the benefits of the product.

Moreover, Deacero urges the Department to follow its approach in CORE from Japan, where Deacero claims the Department's negative determination was based, in part, on giving proper consideration to customers' statements and on the fact that the product at issue, CORE to which boron was added, "was better able to meet specific expectations of the ultimate user." See 68 FR at 19503.

Petitioners argue that the Department addressed the issue of the expectation of the ultimate users in the Preliminary Determination and properly concluded that Deacero failed to demonstrate that the expectations of such users are different with respect to 4.75 mm wire rod versus subject wire rod (e.g., 5.5 mm wire rod). According to petitioners, the Department concluded that "5.5 mm wire rod can be drawn into the same products as 4.75 mm wire rod, provided that additional steps (such as cold-drawing) are employed. See Preliminary Decision Memorandum at 6 – 7.

Petitioners argue that Deacero fails to address the Department's basis for its decision in CORE from Japan. According to petitioners, in CORE from Japan the Department based its findings on the fact that there were "commercially and metallurgically viable reasons for the addition of boron in the context of the Continuous Annealing Process" and that "the addition of boron is not immaterial to the performance characteristics of the final product." See 68 FR at 19502.

Petitioners further argue that the customer affidavits submitted by Deacero failed to demonstrate that the use of 4.75 mm wire rod results in fewer conversion costs than the use of larger diameter wire rod. Specifically, petitioners assert that the evidence provided by Deacero demonstrates that most of Deacero's customers testimonials do not identify cost saving of more than the current 20 percent AD deposit rate, thereby suggesting that Deacero's customers use 4.75 wire rod merely as a substitute for 5.5 mm wire rod. Petitioners further argue that Deacero's sales of 4.75 mm wire rod to countries other than the United States were [] and, thus, fail to demonstrate the existence of a demand for 4.75 mm wire rod in markets where no AD duties on larger gauge wire rod are in place.

Department's Position: We find that there is little record evidence of any significant difference in the expectations of ultimate users; however, record evidence demonstrates that 4.75 mm wire rod and subject wire rod (such as 5.5 mm wire rod) are manufactured into the same types of products (e.g., wire mesh, nails, etc.) and, therefore, have the same end uses. We find this similarity in end use engenders similar expectations among ultimate users. In its Section 204 Investigation, the ITC stated that "wire rod is primarily intended for drawing into industrial or standard quality wire that, in turn, is used for the manufacture of such products as coat hangers, wire mesh, and chain link fences." See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, AD/CVD Operations, "Excerpts from Petition," (May 16, 2011) (Petition Memorandum), quoting Certain Steel Wire Rod Investigation No. TA-20406, USITC Pub. 3451 at I-3, August 2001 (Section 204 Investigation). In the underlying investigation of the instant proceeding, the ITC similarly found that standard industrial quality wire rod is drawn into nails, coat hangers, mesh for concrete reinforcement bar, and fencing. See ITC Report at I-7. The ITC further determined that "all categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils . . . comprising a continuum spanning at least 11

major categories of products, defined by end-use ranging from low-carbon wire rod . . . to highest-end products.” See ITC Report at 9, emphasis added.

Information from Deacero and its customers also indicates that the ultimate uses of 4.75 mm wire rod do not differ from subject wire rod. In its submissions, Deacero initially claimed that 4.75 mm wire rod can be used to produce downstream wire products that cannot be made using subject wire rod (e.g., 5.5 mm wire rod). See, e.g., First QNR Response at 25. However, in response to supplemental questions from the Department, Deacero revised its prior statement stating that larger diameter wire rod cannot [

] . See Second QNR Response at 9, emphasis added. Thus, rather than contend that it is not possible to draw 5.5 mm wire down to the same gauge as 4.75 mm wire rod, Deacero merely states that 5.5 mm wire rod cannot be [

] provided that additional production steps are applied. Our conclusion in this regard is supported by statements from Deacero’s customers. In affidavits, customers of Deacero state that [

] . See Second QNR Response at 9, footnote 12. In a separate affidavit, a customer acknowledges that it could produce [] from 5.5 mm wire rod with the [] . See First QNR Response at 27. Moreover, we find that there is no information on the record demonstrating that 5.5 mm wire rod that has been drawn down to 4.75 mm wire cannot be made into the same products as wire rod that was initially drawn down to 4.75 mm.

Further, we find Deacero’s arguments that its sales of 4.75 mm wire rod to countries other than the United States demonstrates differences in the expectations of ultimate users are not persuasive given that such sales are [] (e.g., [] percent in 2008, [] percent in 2009, and [] percent in 2010) relative to Deacero’s U.S. sales of 4.75 mm wire rod. See First QNR Response at Exhibits 9 and 16.

To the extent that use of 4.75 mm wire rod results in variable cost savings in end-users’ production of downstream products relative to subject wire rod, we find that these cost savings have not been demonstrated to be significant enough to outweigh the fact that 4.75 mm wire rod and subject wire rod are used to produce the same products and thus, create similar expectations among ultimate users. See Section 204 Investigation at I-3, ITC Report at I-7, and Second QNR Response at 9, footnote 12.

Moreover, the process of drawing wire rod down to various different diameters involves drawing the rod through different sized dies to get the desired diameter. See First QNR Response at customer affidavit from [], Exhibit 18, paragraph 5. Wire rods can only be drawn down so far before heating is required to permit additional drawing. *Id.* If drawn too far without heating, the wire rod will become brittle and break. The drawing and heating steps are essentially the same for larger diameters and smaller diameters. *Id.* at Exhibit 18, paragraph 6. Deacero argues that the 4.75 mm wire rod is so different from 5.5 mm wire rod that it should not be treated the same. However, we find that the differences between 4.75 mm wire rod and 5.5 mm wire rod, are really no different than the differences between, for example, 5.5 mm wire rod and 6 mm wire rod or 6 mm wire rod and 6.5 mm rod, up to 19 mm wire rod, the largest diameter wire rod covered by the Order. Wire rod of a 4.75mm diameter is merely on the low end of the spectrum of wire rod. While the number of heatings required may vary depending on what gauge of steel rod one starts with and how many times and how far it has been drawn, we find that these differences are not significant such that 4.75 mm wire rod

qualifies as a different product than that covered by the order.

Concerning CORE from Japan, as explained above, we find the facts of that case are distinct from those of the instant proceeding. In CORE from Japan, the Department determined that there were “commercially and metallurgically viable reasons for the addition of boron in the context of the Continuous Annealing Process.” In the instant proceeding, we have not reached such a conclusion. Rather, we find that there is not sufficient evidence of a commercially viable reason for the small reduction in the diameter of the wire rod. But for a 0.25 mm difference in diameter, 4.75 mm wire rod is not distinct from subject wire rod in terms of physical characteristics or use, and there is little evidence of any significant difference in the expectations of ultimate users.

Comment 6: Third Prong of the Minor Alteration - End Use of Products at Issue

Deacero disputes the Department’s finding in the Preliminary Determination that end use does not differ between 4.75 mm wire rod and subject wire rod, such as 5.5 mm wire rod. In particular, Deacero argues that the Department inappropriately relied on portions of the ITC’s Section 204 Investigation for its Preliminary Determination because, according to Deacero, the Section 204 investigation covered only wire rod with diameters between 5 mm and 19 mm. See Petition Memorandum.

Further, Deacero notes that in assessing the use of 4.75 mm wire rod, the Department has inappropriately considered whether the product is substitutable for the same uses as subject wire rod. Deacero contends that the Department’s analysis about the end uses for 4.75 wire rod is too broad. Citing to customer affidavits, Deacero argues the record evidence clearly demonstrates that its customers use 4.75 mm wire rod to produce specific products that cannot be made using 5.5 mm wire rod and, therefore, the two products are not substitutable.

Petitioners support the Department’s finding in the Preliminary Determination that Deacero did not demonstrate that the end use differs with regard to 4.75 mm wire rod and subject wire rod. Petitioners claim that Deacero’s argument that 4.75 mm wire rod can be drawn to narrower gauges and, thus, make smaller products than 5.5 mm wire rod is without merit because the record evidence indicates that many of the smaller end products noted by Deacero can be produced using 5.5 mm wire rod.

Petitioners explain that the fact that the Section 204 Investigation focused on wire rod with diameters of 5.00 mm to 19 mm indicates that 4.75 mm wire rod was not commercially available at the time of this investigation. Therefore, petitioners argue that the Department’s finding that the uses for 4.75 mm wire rod are not distinct in the manner in which subject wire rod is used is consistent with the Department’s regulations and supported by record evidence.

Therefore, petitioners argue that Deacero’s claim that the Department should consider substitution for specific products is without basis. According to petitioners, 19 CFR 351.225(k)(2)(iii) states that that the Department should consider the ultimate use of the product, therefore there is no requirement that the Department must include every possible gauge of every possible product produced on every machine at each of the downstream products.

Department’s Position: As discussed above, record evidence from Deacero and its customers indicates that 4.75 mm wire rod and subject wire rod can be manufactured into the same types of products, which include such products as wire mesh and nails. The Section 204 Investigation states that wire rod is “primarily intended” to be drawn in to wire that is “. . . in turn . . . used for

the manufacture of such products as coat hangers, wire mesh, and chain link fences.” See Petition Memorandum. The ITC reached the same conclusion in the underlying investigation when it found that standard industrial quality wire rod is drawn into nails, coat hangers, mesh for concrete reinforcement bar, and fencing. See ITC Report at I-7. Thus, the determinations reached by the ITC concerning the end uses of wire rod are no different from the end uses for 4.75 mm and subject wire rod as described by Deacero and its customers. Therefore, we disagree with Deacero’s claim that information from the ITC, such as the Section 204 Investigation, is irrelevant to our analysis of end use. Moreover, as noted above with respect to Comment 5, Deacero has not demonstrated the 4.75 mm wire rod can be used to produce products that 5.5 mm wire rod cannot be used to make. On this basis, we continue to find that 4.75 mm wire rod and subject wire rod are not distinct in term of their end use.

Comment 7: Fourth Prong of the Minor Alteration Analysis - Channels of Trade and Advertising

Deacero disputes the Department’s finding in the Preliminary Determination that Deacero has not provided any basis to conclude that the channels of trade and advertising differ with regard to 4.75 mm wire rod and subject wire rod. Deacero contends that in prior cases, the Department has determined that, even where respondents use the same channels of marketing to sell the product at issue as the products subject to the order, this factor does not support an affirmative determination. See CORE from Japan, 68 FR at 19503: “In this case, showing the same channels of marketing were used does not support a finding of circumvention,” see also Brass Sheet and Strip From West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order, (Brass Sheet from Germany) 55 FR 32655, 32657-58 (August 10, 1990). Deacero further argues that it has not sold other wire rod products in the United States since it started selling 4.75 mm wire rod and, therefore, it is not possible to apply the fourth prong of the minor alterations analysis to its operations.

Petitioners argue that the Department correctly found in the Preliminary Determination that Deacero used the same channels of trade and advertising to sell 4.75 mm and subject wire rod, such as 5.5 mm wire rod. Petitioners state that Deacero’s arguments are without merit because Deacero’s organization chart indicates that the firm uses the same channels of distribution to market 4.75 mm wire rod and subject wire rod. Therefore, petitioners argue that these similarities in terms of marketing and channels of trade support an affirmative final determination.

Further, petitioners claim that the cases cited to by Deacero are not relevant to the facts of this case. According to petitioners, in CORE from Japan the Department repeatedly stated that the decision was based on the specific facts of the case. See 68 FR at 19499. As to Brass Sheet from Germany, according to petitioners, the Department based its negative determination on other facts that outweigh the similarities in advertising and channels of trade. See 55 FR at 32655.

Department’s Position: As explained in the Preliminary Determination, Deacero has acknowledged that it does not advertise or market its wire rod products. See Preliminary Decision Memorandum at 7 – 8, referencing First QNR Response at 33. This acknowledgement is supported in an affidavit from Deacero’s sales staff. See First QNR Response at Exhibit 11, in which the Vice President of Industrial Sales for Deacero states that the firm “does not really

[]” Further, information from Deacero indicates that it uses the same personnel to sell wire rod with diameters between 4.75 mm and subject wire rod (e.g., 5.5 mm and wire rod). See id. at Exhibit 5, which lists Deacero industry sales and export sales staff. Thus, we continue to find that Deacero has not provided any basis to conclude that the channels of trade and advertising differ with regard to the products at issue and subject wire rod.

We disagree with Deacero that the similarity between 4.75 mm and subject wire rod in terms of marketing and channels of distribution is irrelevant due to the fact that Deacero does not sell wire rod with a diameter larger than 5.00 mm in the United States since it began selling 4.75 mm wire rod in the market. As noted above, Deacero conducts no marketing whatsoever of its wire rod products, including other non-U.S. markets in which Deacero sells 4.75 mm wire rod. Thus, rather than being irrelevant, this information demonstrates the lack of a distinction between 4.75 mm wire rod and subject wire rod in terms of marketing and channels of distribution.

We also disagree with the notion that CORE from Japan and Brass Sheet from Germany should lead the Department to ignore these similarities in marketing and channels of trade. Though the Department issued negative determinations in those proceedings based on the totality of evidence examined under the minor alterations analysis, the Department did not ignore the fourth prong of the analysis dealing with marketing and channels of trade, as suggested by Deacero. Rather, the Department conducted an analysis of the fourth prong and found that the marketing and channels of distribution of the products at issue and subject merchandise were the same. See CORE from Japan, 68 FR at 19503; see also Brass Sheet from Germany, 55 FR at 32655.

Comment 8: Fifth Prong of the Minor Alteration Analysis - Cost of Any Modification Relative to the Total Value of the Products at Issue

According to Deacero, the Department compared Deacero’s research and development (R&D) costs at the Celaya and Saltillo mills ([]) to Deacero’s exports of 4.75 mm wire rod for the years 2008-2011 ([]) to yield a ratio of [] percent. See Preliminary Decision Memorandum at 8. Deacero asserts that this calculation provides an artificial comparison that is merely designed to obtain the lowest possible cost ratio. It argues that the arbitrary nature of this comparison is illustrated by a simple example. Deacero adds that if petitioners had filed the request for a scope inquiry as soon as Deacero began exporting 4.75 mm wire rod at the end of 2008, the ratio would be a significant [] percent instead of [] percent. First QNR Response at Exhibit 9.

Deacero argues that the Department previously has considered the cost of modification and R&D expended (in absolute terms) as evidence to support a finding that the overall cost was significant. See CORE from Japan, 68 FR at 19503. Deacero argues that the fabrication cost of producing 4.75 mm wire rod is higher than the cost of producing subject wire rod (e.g., 5.5 mm wire rod). Deacero claims that it demonstrated that the cost of production at the wire rod rolling stage was higher for 4.75 mm wire rod than 5.5 mm wire rod by [] percent in 2008, [] percent in 2009, and [] percent in 2010. See Second QNR Response at 5 and Exhibit S-3. Deacero further argues that, in order to produce 4.75 mm wire rod at the Celaya and Saltillo mills, it made significant investments ([] USD for Celaya and [] USD for Saltillo. Deacero argues that its experience developing and funding the production of 4.75 mm wire rod is

consistent with statements made by U.S. producers, such as [], to Deacero's U.S. customers that they cannot produce 4.75 mm "without substantial investments to upgrade their mills." See First QNR Response at Exhibit 18.

According to petitioners, evidence on the record demonstrates that the costs Deacero claims it incurred to begin production of 4.75 mm to 5.00 mm wire rod were not significant either in absolute terms or by comparison to the value of its sales of 4.75 mm to 5.00 mm wire rod. Petitioners argue that Deacero reported making total investments of US\$ [] from 2001 to the present and that its submissions to the Department "lists the main investments Deacero has made, including the investments in important assets (e.g., machinery, land and buildings) during the last 10 years" and that "all of the investments that correspond directly to the production of wire rod are identified in the exhibit." See First QNR Response at 12 and Exhibit 10. Yet, argue petitioners, Deacero's ten-year list of "main investments" in "important assets" fails to include the [

] See First QNR Response at Exhibit 10. Thus, assert petitioners, Deacero did not separately record the expenses it claims it incurred to set-up the production of 4.75 mm to 5.00 mm wire rod as "main investments" or as "important assets" in its accounting records. See *id.*

Petitioners further argue that the absolute amount Deacero claims it spent to set-up production of 4.75 mm to 5.00 mm wire rod of US\$ [] represents [] percent (i.e., just over []) of the US\$ [] Deacero invested in its plant and equipment from 2001 to the present, and represents a little more than [] percent (i.e., a little more than []) of Deacero's average annual investment expenditures of US\$ [] since 2001. See Deacero's January 23, 2012, Case Brief at 23. Petitioners further argue that the miniscule absolute value of the total expenditures claimed by Deacero for 4.75 mm to 5.00 mm wire rod is artificially inflated because it includes amounts for [] and also includes costs Deacero claims it incurred at its Saltillo Mill where it does not produce 4.75 mm to 5.00 mm wire rod. See First QNR Response at 18 and Exhibit 12.

Finally, petitioners disagree with the notion that the Department should determine that Deacero's cost of modifications relative to the value of the imported product is significant because Deacero reported it costs [] percent to [] percent more per-ton to produce 4.75 mm to 5.00 mm wire rod than for 5.5 mm wire rod. See Deacero's January 23, 2012, Case Brief at 23. Petitioners argue that Deacero did not, provide any information on the per ton prices Deacero charged its U.S. customers for 4.75mm to 5.00mm wire rod. *Id.*

Department's Position: We continue to find that the costs incurred to develop and produce 4.75 mm wire rod are not sufficiently large to distinguish it from subject wire rod or persuade the Department to issue a negative final determination. Data from Deacero indicate that the cost to modify its production facilities to produce wire rod with diameters of 4.75 mm to 5.0 mm were [] percent of the value of U.S. sales of such wire rod products. See First QNR Response at Exhibit 9; see also Second QNR Response at 7.

However, even without reference to this ratio, available information on the record dispels the notion that the R&D expenses Deacero incurred to develop 4.75 mm wire rod were significant. For example, as petitioners point out, Deacero's ten-year list of "main investments" in "important assets" fails to include the expenditures Deacero incurred at the Celaya and Saltillo

production during 2008. Id. Further, we find that the absolute amount Deacero spent to develop and produce 4.75 mm wire rod is miniscule compared to the average annual plant and equipment investments made by the firm since 2001. See Deacero's January 23, 2012, Case Brief at 23.

Conclusion

We determine that wire rod with actual diameters of 4.75 mm to 5.0 mm and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, and the channels of marketing. Further, we determine that the costs incurred to produce wire rod with actual diameters of 4.75 mm to 5.0 mm are insignificant relative to the total value of Deacero's U.S. sales of such wire rod products during the same period of time. Accordingly, we determine that shipments, by Deacero, of wire rod with an actual diameter of 4.75 mm to 5.00 mm constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the Order.

We further find that our affirmative final determination applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

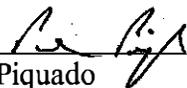
Recommendation

On this basis, we recommend that, pursuant to section 781(c) of the Act and 19 CFR 351.225, the Department issue an affirmative final circumvention determination in which it finds that Deacero's shipments of wire rod with an actual diameter of 4.75 mm to 5.0 mm constitute circumvention of the Order. If this recommendation is accepted, we will continue to instruct U.S. Customs and Border Protection to suspend liquidation and collect cash deposits equal to the all others rate of 20.11 percent ad valorem for all entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm, produced and/or exported by Deacero that are entered or withdraw from warehouse on or after June 8, 2011, the publication date of the Initiation in the Federal Register.⁵

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

24 SEPTEMBER 2012

Date

⁵ Deacero has never been individually examined by the Department during the history of the Order. For this reason Deacero's shipments of subject merchandise are subject to the all others rate.

EXHIBIT 19



A-201-830

Anti-Circumvention Inquiry

Segment Name: 4.4 mm Wire Rod

Public Version ~~Business Proprietary Document~~

AD/CVD Ops Office III: EBG, SMB

DATE: October 15, 2018

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Affirmative Preliminary Decision Memorandum of Circumvention
Concerning Carbon and Certain Alloy Steel Wire Rod from
Mexico Produced and/or Exported by Deacero S.A.P.I. de C.V.

I. Summary

The Department of Commerce (Commerce) preliminarily determines that, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i), imports of carbon and certain alloy steel wire rod (wire rod) with actual diameters less than 4.75 millimeters (mm), produced and/or exported by Deacero S.A.P.I. de C.V. (Deacero) and otherwise meeting the description of in-scope merchandise, constitute merchandise altered in form or appearance in minor respects from in-scope merchandise that should be considered within the class or kind of merchandise subject to the antidumping (AD) *Order* on wire rod from Mexico.¹

II. Background

On February 7, 2018, in response to a request from Nucor Corporation (a domestic interested party) (Nucor),² Commerce initiated an anti-circumvention inquiry pursuant to section 781(c) of the Act to determine whether wire rod with actual diameters that are less than 4.75 mm produced and/or exported to the United States by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the class or kind of

¹ See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).

² See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Circumvention Ruling," dated October 27, 2018 (Circumvention Ruling Request).



merchandise subject to the *Order*.³ On February 21, 2018, Commerce sent an initial questionnaire to Deacero and Deacero USA, Inc. (collectively, the Deacero Companies)⁴ requesting information regarding its production and sales of wire rod with actual diameters less than 4.75 mm.⁵ On April 6 and 11, 2018, the Deacero Companies submitted responses to the initial questionnaire, in which they stated that Deacero produces and sells wire rod with a nominal diameter of 4.4 mm and an actual diameter of [] to [] mm (hereinafter referred to as 4.4 mm wire rod).⁶ On April 20 and 25, 2018, Nucor submitted comments regarding the Deacero Companies' questionnaire response,⁷ and on May 2, 2018, the Deacero Companies submitted sur-rebuttal comments.⁸ On June 13, June 18, and August 20, 2018, Commerce issued supplemental questionnaires to the Deacero Companies.⁹ On June 27, July 5, and August 27, 2018, the Deacero Companies submitted responses to Commerce's supplemental questionnaires.¹⁰ On July 16, 2018, Nucor submitted comments regarding the Deacero Companies' supplemental questionnaire responses.¹¹ On August 14, 2018, Nucor submitted additional comments on the Deacero Companies' June 27 and July 5, 2018 supplemental questionnaire responses.¹² On September 11, 2018, Nucor submitted comments on the Deacero Companies' August 27, 2018 supplemental questionnaire response,¹³ and on September 26, 2018, the Deacero Companies submitted sur-rebuttal comments.¹⁴

³ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*; 83 FR 5405 (February 7, 2018) (*Initiation Notice*) and accompanying memorandum (Initiation Memorandum).

⁴ Deacero is a wire rod producer/exporter in Mexico and Deacero USA, Inc. is an affiliated importer and reseller based in the United States. All of Deacero's sales of wire rod to the United States are made through Deacero USA, Inc. See Deacero's April 6, 2018 Initial Questionnaire Response (Deacero's April 6, 2018 IQR) at 10 and 12.

⁵ See Commerce Letter re: Minor Alteration Questionnaire Issued to Deacero Companies, dated February 21, 2018 (Initial Questionnaire).

⁶ See Deacero's April 6, 2018 IQR; see also Deacero's April 11, 2018 Initial Questionnaire Response (Deacero's April 11, 2018 IQR).

⁷ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero's Circumvention Questionnaire Response," dated April 20, 2018 (Nucor's April 20, 2018 Comments); see also Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero's Circumvention Questionnaire Response," dated April 25, 2018 (Nucor's April 25, 2018 Comments).

⁸ See Deacero's Letter, "Carbon and Certain Wire Rod from Mexico: Response to Nucor's Comments dated April 20, 2018 and April 25, 2018," dated May 2, 2018 (Deacero's May 2, 2018 Comments).

⁹ See Commerce Letter re: Minor Alteration Supplemental Questionnaire Issued to Deacero, dated June 13, 2018; see also Commerce Letter re: Correction to Minor Alteration Supplemental Questionnaire dated June 13, 2018, and Issued to Deacero, dated June 14, 2018; see also Commerce Letter re: Second Minor Alteration Supplemental Questionnaire Issued to Deacero, dated June 18, 2018; see also Commerce Letter re: Supplemental Questionnaire Issued to Deacero, dated August 20, 2018.

¹⁰ See Deacero's June 27, 2018 First Supplemental Questionnaire Response (Deacero's June 27, 2018 SQR); see also Deacero's July 5, 2018 Supplemental Questionnaire Response (Deacero's July 5, 2018 SQR); see also Deacero's August 27, 2018 Supplemental Questionnaire Response (Deacero's August 27, 2018 SQR).

¹¹ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero's Second Supplemental Circumvention Questionnaire Response," dated July 16, 2018 (Nucor's July 16, 2018 Comments).

¹² See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Additional Comments on Deacero's Supplemental Circumvention Questionnaire Responses," dated August 13, 2018 (Nucor's August 14, 2018 Comments) (the letter was submitted to ACCESS on August 13, 2018 but was approved on August 14, 2018).

¹³ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Additional Comments on Deacero's 3rd Supplemental Circumvention Questionnaire Response," dated September 11, 2018 (Nucor's September 11, 2018 Comments).

¹⁴ See Deacero's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Response to Nucor's Comments dated September 11, 2018," dated September 26, 2018 (Deacero's September 26, 2018 Comments).

III. Scope of the Order

The merchandise subject to the *Order* is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same

inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to the order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

IV. Statutory and Regulatory Framework

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an AD and/or countervailing (CVD) order when products that are of the class or kind of merchandise subject to an AD and/or CVD order have been “altered in form or appearance in minor respect...whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}” Section 351.225(i) of Commerce’s regulations states that, under section 781(c) of the Act, Commerce may include within the scope of an AD and/or CVD order articles altered in form or appearance in minor respects.

While the statute is silent as to what factors to consider in determining whether alterations are considered “minor,” the legislative history of this provision indicates that there are certain factors

that should be considered before reaching a circumvention determination.¹⁵ To determine whether merchandise has been altered in form or appearance in minor respects, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce's practice has been to examine such factors as: 1) overall physical characteristics; 2) expectations of ultimate users; 3) use of merchandise; 4) channels of marketing; and 5) cost of any modification relative to the value of the imported products.¹⁶ Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, along with the five factors enumerated above, Commerce has also considered additional factors, such as commercial availability of the product at issue prior to the issuance of the order, the circumstances under which the products at issue entered the United States, the timing and quantity of said entries, and the input of consumers in the design phase of the product at issue.¹⁷

V. Prior Anti-Circumvention Determination

On October 1, 2012, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce published the *4.75 mm Final Circumvention Determination*, wherein it determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced and/or exported to the United States by Deacero constituted merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.¹⁸ The Court of Appeals for the Federal Circuit subsequently upheld Commerce's finding in the *4.75 mm Final Circumvention Determination*.¹⁹ As a result, we have treated Deacero's sales of wire rod with an actual diameter of 4.75 mm to 5.00 mm to the United States as subject merchandise.

VI. Parameters of the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of wire rod with actual diameters less than 4.75 mm, produced and/or exported by Deacero, and otherwise meeting the description of in-scope merchandise.²⁰ In performing our analysis, we reviewed information from the Deacero Companies covering the period 2014 to 2017.

¹⁵ See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).

¹⁶ See, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from the PRC*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*; 74 FR 40565 (August 12, 2009).

¹⁷ See, e.g., *CTL Plate from the PRC*, 74 FR at 33992-93; *Brass Sheet and Strip from West Germany*; *Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655, 32657 (August 10, 1990), unchanged in *Brass Sheet and Strip From Germany*; *Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873, 37875 (June 25, 2012).

¹⁸ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012) (*4.75 mm Final Circumvention Determination*) and accompanying Issues and Decision Memorandum.

¹⁹ See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1339 (Fed. Cir. 2016).

²⁰ See *Initiation Notice*, 83 FR at 5407; *Initiation Memorandum* at 10-14.

In the Circumvention Ruling Request, Nucor alleged that 4.4 mm wire rod produced and/or exported by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*. Further, Nucor argued that Deacero’s previous circumvention of the *Order* by reducing the diameter of the wire rod (*i.e.*, 5.5 mm to 4.75 mm) and its more recent efforts again to circumvent the *Order* through another trivial reduction in the diameter of wire rod demonstrates that Deacero will likely make similar attempts to evade antidumping duties.²¹

Nucor further argues that Deacero was able to develop, test, and sell 4.4 mm wire rod within [].²² Finally, Nucor notes that at least one other producer makes wire rod with a diameter less than 4.4 mm, which according to Nucor demonstrates the likelihood of Deacero’s potential future circumvention of the *Order* with regard to wire rod with a diameter that is less than 4.4 mm.²³ Based on this evidence, Nucor contends Deacero will continue to circumvent the *Order* unless Commerce extends this anti-circumvention finding to all wire rod with a diameter less than 4.75 mm.²⁴

In response to our questions, Deacero stated that it does not currently produce wire rod with a diameter less than 4.4 mm and that it would be “extremely difficult if not impossible” to develop and produce wire rod with such diameters given its existing technology, facilities, and inputs.²⁵ Deacero also stated that it has not conducted any research and development related to producing wire rod with a diameter less than 4.4 mm and it has not solicited any interest in such products from current or potential customers.²⁶

VII. Arguments from Interested Parties

Deacero and Nucor presented the following comments with respect to each of the five minor alteration criteria.

A. Overall Physical Characteristics

Deacero’s Comments

- 4.4 mm wire rod has several advantages over larger diameters of wire rod, such as the ability to []. Drawing wire [] allows for more efficient production and results in a finished wire that has greater ductility (*i.e.*, stronger and more malleable).²⁷
- The proper comparison for Commerce’s analysis is between 4.4 mm wire rod and [] mm wire rod, which represents the [] wire rod produced by Deacero that is

²¹ See Circumvention Ruling Request at 2-3.

²² See Nucor’s September 11, 2018 Comments at 4.

²³ *Id.*

²⁴ *Id.* at 7-8.

²⁵ See Deacero’s April 6, 2018 IQR at 2; see also Deacero’s July 5, 2018 SQR at 1-2; see also Deacero’s August 20, 2018 SQR at 1-2.

²⁶ See also Deacero’s July 5, 2018 SQR at 3; see also Deacero’s August 20, 2018 SQR at 1-2.

²⁷ See Deacero’s April 6, 2018 IQR at 27-28; see also Deacero’s April 11, 2018 IQR at 18-20.

within the scope of the *Order*.²⁸ Commerce’s prior decision that 4.75 mm wire rod was a minor alteration of wire rod covered by the scope does not change the language of the scope itself.²⁹

- 4.4 mm and 4.75 mm wire rod are packed using the same basic method; however, wire rod with a narrower diameter of 4.4 mm requires that it be packed [

], whereas wire rod with a diameter of 4.75 mm is packed []³⁰ As a result, Deacero [

].³¹

Nucor’s Comments

- There are no meaningful differences in the physical characteristics (*i.e.*, the metallurgical qualities, chemical qualities, or tensile strength)³² of 4.4 mm wire rod and subject wire rod,³³ and the production processes are similar.
- Deacero classifies only products with [] as [], which indicates that physical characteristics of wire rod do not vary by diameter.³⁴ Commerce has found in the previous circumvention proceeding involving 4.75 mm wire rod that “the minimum and maximum tensile strength of its wire rod products vary by grade and not by diameter,” and that “chemical content also varies solely by grade and not by diameter.”³⁵
- Deacero claims that “[

].”³⁶ However, record evidence indicates that the [] of 4.4 mm and 4.75 mm wire rod coils []³⁷ and that wire rod [

],³⁸ which suggests that there no reason why the packaging methods for []³⁹

²⁸ See Deacero’s May 2, 2018 Comments at 2.

²⁹ *Id.*

³⁰ See Deacero’s July 5, 2018 SQR at 4-5.

³¹ See Deacero’s April 11, 2018 IQR at Exhibit A-23.

³² See Circumvention Ruling Request at 11 and 19; see also Nucor’s April 20, 2018 Comments at 9-11; see also Nucor’s April 20, 2018 Comments at 12 (citing to *Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961, and 962, USITC Pub. 3546 (October 2002) (ITC Investigation) at 7).

³³ In this memorandum, the term “subject wire rod” refers to wire rod with nominal diameters between 4.75 mm to 5.5 mm wire rod.

³⁴ See Nucor’s April 20, 2018 Comments at 11-12.

³⁵ *Id.* at 11 (citing to *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at comment 4).

³⁶ See Deacero’s April 11, 2018 at 6.

³⁷ See Nucor’s July 16, 2018 Comments at 4 (citing to Deacero’s July 5, 2018 SQR at 4-5).

³⁸ For example, Deacero reported that wire rod in diameters of [] were packaged in coiled bundles [], whereas [] was packaged in coiled bundles []. See Nucor’s July 16, 2018 Comments at 4 (citing to Deacero’s June 27, 2018 SQR at Exhibit S-1).

³⁹ See Nucor’s April 25, 2018 Comments at 15.

B. Expectations of the Ultimate Users

Deacero's Comments

- Deacero made its first U.S. sale of 4.4 mm wire rod in [] to []⁴⁰ Deacero conducted a production analysis and concluded that the customer's desired [] could be achieved with [] 4.4 mm wire rod using []⁴¹
- While Deacero provided similar types of technical assistance to customers of 4.4 mm and 4.75 mm wire rod, []⁴²
- 4.4 mm wire rod is priced at a premium compared to wire rod in larger diameters. 4.4 mm wire rod carries a price premium over larger diameters that ranges from []⁴³

Nucor's Comments

- Nucor disputes Deacero's claim that it developed 4.4 mm wire rod due to a []⁴⁴
- Deacero claims that after analyzing the customer's requirements, it concluded that [] wire rod would best meet the customer's specifications.⁴⁵ However, such a claim is contradicted by record evidence indicating that [], and that []⁴⁶
- Deacero did not justify why it reduced the diameter of its wire rod to provide the same advantages that it had previously claimed could be attained with 4.75 mm wire rod.⁴⁷ As a result, there is no distinct benefit to the end user for using 4.4 mm wire rod other than to achieve a lower price through circumvention of the *Order*.
- Deacero placed the website of Nippon Steel on the record to support its claim that 4.4 mm wire rod provides benefits over subject wire rod; however, the website demonstrates that Nippon Steel advertises the benefits of 5.0 and 4.5 mm wire rod in the same manner as 4.4

⁴⁰ See Deacero's April 6, 2018 IQR at 23-24; see also Deacero's July 5, 2018 SQR at 9.

⁴¹ See Deacero's April 6, 2018 IQR at 23-24; see also Deacero's July 5, 2018 SQR at 9-10.

⁴² See Deacero's July 5, 2018 SQR at 4.

⁴³ See Deacero's April 6, 2018 IQR at 28.

⁴⁴ See Nucor's April 25, 2018 Comments at 5 (citing to Deacero's April 11, 2018 IQR at 4); see also Nucor's July 16, 2018 Comments at 8 (citing to Deacero's July 5, 2018 SQR at 9-10).

⁴⁵ See Nucor's July 16, 2018 Comments at 8 (citing to Deacero's July 5, 2018 SQR at 9-10).

⁴⁶ *Id.* at 8-9 (citing to Deacero's June 27, 2018 SQR at Exhibit S-1 and S-3).

⁴⁷ See Nucor's April 25, 2018 Comments at 6-7 (citing to Deacero's April 11, 2018 IQR at Exhibit A-23).

mm wire rod and other narrow-gauge diameters.⁴⁸

- While Deacero argues that its 4.4 mm wire rod commanded a price premium of [], Deacero’s sales data included sales to [], which is [].⁴⁹ When sales data for [] are removed from the data, the alleged price premium of 4.4 mm wire rod disappears.⁵⁰
- Further, the invoices submitted by Deacero, which were dated several months apart and show [] unit prices for 4.4 mm wire rod compared to subject wire rod, do not demonstrate that 4.4 mm wire rod is [] than subject wire rod as the price difference is within the fluctuation of [] prices, which is a major input. Also, the [] differ between the invoices, which suggests that [].⁵¹
- The cost data Deacero submitted in the 2016-2017 antidumping administrative review of wire rod from Mexico demonstrates that the cost of producing 4.4 mm wire rod is similar to the cost of producing subject wire rod.⁵²

C. Use of Merchandise

Deacero’s Comments

- Certain customers of Deacero use 4.4 mm wire rod to more efficiently produce wire products that they previously made using subject wire rod, such as [], while other customers use 4.4 mm wire rod to produce products that they were not able to produce using subject wire rod.⁵³
- For example, [] uses Deacero’s 4.4 mm wire rod to more efficiently produce [], which it previously produced using other wire rod.⁵⁴ It also uses 4.4 mm wire rod to produce [], which it was not able to produce previously in commercial volumes.⁵⁵
- Similarly, Deacero’s customer [] uses 4.4 mm wire rod to produce [].⁵⁶
- 4.4 mm wire rod allows [].⁵⁷ To produce wire, wire rod must be cold-drawn by running it through drawing machines multiple times to narrow down the wire. Each pass through a drawing machine increases the [].⁵⁸

⁴⁸ *Id.* at 11 (citing to Deacero’s April 11, 2018 IQR at Exhibit 25).

⁴⁹ *See* Nucor’s April 20, 2018 Comments at 25 and 31-32.

⁵⁰ *Id.* at 23-25 (citing to Deacero’s April 6, 2018 IQR at Exhibit 14).

⁵¹ *Id.* at 30-31 (citing to Deacero’s April 6, 2018 IQR at Exhibit 27).

⁵² *Id.* at 25-30.

⁵³ *See* Deacero’s April 11, 2018 IQR at 18-20; *see also* Deacero’s July 5, 2018 SQR at 9.

⁵⁴ *See* Deacero’s July 5, 2018 SQR at 9.

⁵⁵ *Id.* at 9.

⁵⁶ *Id.*

⁵⁷ *See* Deacero’s April 6, 2018 IQR at 27.

⁵⁸ *Id.*

- 4.4 mm wire rod allows an end user to produce wire [], which results in both cost and time savings.⁵⁹

Nucor's Comments

- End users of 4.4 mm wire rod redraw and finish the wire rod to produce carbon and certain alloy wire, such as aluminum-coated wire, barbed wire, spring wire, and industrial wire, which may be further processed into products such as springs, nails, fasteners, clothes hangers, fencing material, and construction mesh.⁶⁰
- 4.4 mm wire rod is interchangeable with wire rod that is 4.75 mm in diameter or larger, and 4.4 mm wire rod can be substituted for any larger diameter of wire rod where the wire rod is being drawn into wire with diameters that are less than 4.4 mm.⁶¹
- This is evident in the fact that Deacero's customers who purchase 4.4 mm wire rod also purchase subject wire rod.⁶² The marginal reduction in diameter does not affect the quality or intended use of the wire.
- Deacero's customers have switched to purchasing 4.4 mm wire rod for uses in which they previously used wire rod with a diameter of 4.75 mm or larger.⁶³ Deacero has []⁶⁴
- Deacero USA's price list in 2013-14 [], whereas by 2015-2016, Deacero USA's price list [] two years earlier.⁶⁵
- [] testified at the U.S. International Trade Commission (ITC) that they []⁶⁶
- Deacero's sales data confirms that these [], which indicates that Deacero's []⁶⁷
- While Deacero admits that some of its customers used 4.4 mm wire rod to manufacture products that they already produce more efficiently, the company claims that there are customers who use 4.4 mm wire rod to produce products that they were not able to produce with their existing equipment.⁶⁸ For example, Deacero claims that its customer [], who produces [] using 4.4 mm wire rod, could not produce it

⁵⁹ *Id.* at 27-28; *see also* Deacero's April 11, 2018 IQR at 4.

⁶⁰ *See* Circumvention Ruling Request at 23.

⁶¹ *Id.* at 20.

⁶² *Id.* at 11-12 (citing to ITC Investigation at 7).

⁶³ *Id.* at 23-24.

⁶⁴ *See* Nucor's April 20, 2018 Comments at 11.

⁶⁵ *See* Circumvention Ruling Request at 25-27 and Exhibit 8.

⁶⁶ *See* Nucor's April 20, 2018 Comments at 24 and Exhibit 7.

⁶⁷ *Id.* at 24-25.

⁶⁸ *See* Nucor's July 16, 2018 Comments at 7 (citing to Deacero's July 5, 2018 SQR at 9).

using subject wire rod.

- Nucor disputes this claim concerning [redacted]. The ITC investigated [redacted] and found that U.S. producers had been producing [redacted], several years before Deacero began offering 4.4 mm wire rod, which indicates that [redacted] is not a [redacted].⁶⁹
- Similarly, Nucor disputes Deacero's claim that its customer [redacted], because those products are also standard wire products (*i.e.*, [redacted]).⁷⁰
- While Deacero claims that its customers are producing products with 4.4 mm wire rod that they could not produce with 4.75 to 19.00 mm wire rod, [redacted] the 11 categories of wire rod identified by the ITC during the investigation.⁷¹

D. Channels of Marketing

Deacero's Comments

- Deacero does not actively advertise or market wire rod, including 4.4 mm wire rod.⁷² The company includes several larger diameter in-scope wire rod products, ranging from 5.5 mm to 18.00 mm, in its product brochures and website, but it does not advertise 4.4 mm wire rod in these mediums.⁷³
- The English versions of its product brochures and website are intended to promote the Deacero brand as a global company and [redacted].⁷⁴
- Deacero's [redacted] the benefits of 4.4 mm wire rod compared to wire rod of larger diameters by promoting 4.4 mm wire rod as [redacted].⁷⁵
- While Deacero sells 4.75 mm to 19.0 mm wire rod [redacted], the company made [redacted].⁷⁶
- Deacero did sell [redacted] of 4.4 mm wire rod to [redacted].

⁶⁹ See Nucor's April 25, 2018 Comments at 21-22 and Exhibit 7 (citing to Deacero's April 11, 2018 IQR at 17-24 and Exhibit 24).

⁷⁰ See Nucor's July 16, 2018 Comments at 8.

⁷¹ See Nucor's April 25, 2018 Comments at 19-20 (citing to ITC Investigation at I-7 and Table I-1 and *Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad & Tobago, and Ukraine*, Inv. Nos. 701-TA-417 and 731-TA-953, 957-959, and 962, USITC Pub. 4472 (June 2014) (ITC Second Review) at I-27 and Table I-10).

⁷² See Deacero's April 6, 2018 IQR at 26.

⁷³ *Id.* at 26 and Exhibit 26.

⁷⁴ See Deacero's June 27, 2018 SQR at 4 and Deacero's April 6, 2018 IQR at Exhibit 26.

⁷⁵ See Deacero's April 6, 2018 IQR at 25-26.

⁷⁶ *Id.* at 27.

].⁷⁷

Nucor's Comments

- Deacero does not advertise its 4.4 mm wire rod products, despite claiming that it is a new and niche product that could open additional markets for Deacero.⁷⁸ Deacero does not consider 4.4 mm wire rod to be a [] as the [] that the company produces in 4.4 mm diameter wire rod, it already produces in larger diameters.⁷⁹
- Such facts indicate that 4.4 mm wire rod is not intended to fulfill a particular industry demand but rather to circumvent antidumping duties that apply to 4.75 mm and larger diameter wire rod.⁸⁰

E. Cost of Modification Relative to the Value of the Imported Products

Deacero's Comments

- The production of 4.4 mm wire rod is a [] reduction in the diameter from the smallest in-scope wire rod product and required a substantial reordering of production equipment and different inputs (*i.e.* a [] billet).⁸¹
- Deacero had to develop a smaller [] billet because the company found that it was not possible to produce 4.4 mm wire rod with the [] billets used to produce larger diameters.⁸²
- Developing the [] billets required approximately \$[] for [] and [], and \$[] in salaries for engineers to design, test, and evaluate the new billets.⁸³
- Deacero invested a total of [] at its Celaya and Saltillo mills to develop and produce 4.4 mm wire rod.⁸⁴ Deacero also invested approximately \$[] in new equipment and \$[] in installation costs to overhaul the Saltillo plant in order to allow for the [].⁸⁵
- The company eventually []⁸⁶
- In comparison, to develop and produce 4.75 mm wire rod, Deacero invested a total \$[] at its Celaya and Saltillo mills.⁸⁷ The costs alone do not reflect the fact that the development of 4.4 mm wire rod was much more difficult than the development of 4.75 mm wire rod; the development of 4.4 mm wire rod required [] billets and the re-configuring of the

⁷⁷ *Id.*

⁷⁸ See Circumvention Ruling Request at 24; *see also* Nucor's April 20, 2018 Comments at 7-8.

⁷⁹ See Nucor's April 20, 2018 Comments at 11-12.

⁸⁰ See Circumvention Ruling Request at 24.

⁸¹ See Deacero's May 2, 2018 Comments at 2-3.

⁸² See Deacero's April 6, 2018 IQR at 7, *see also* Deacero's June 27, 2018 SQR at 5.

⁸³ See Deacero's April 11, 2018 IQR at 2-3.

⁸⁴ *Id.* at 5-7.

⁸⁵ *Id.* at 8.

⁸⁶ *Id.* at 6-8.

⁸⁷ See Deacero's July 5, 2018 SQR at 7.

rolling mill to use the [] billets, whereas the development of 4.75 mm wire rod only required adjustments to the rolling mill.⁸⁸

Nucor's Comments

- The costs Deacero incurred to modify its production process to produce 4.4 mm wire rod were minimal because the production process is generally the same as subject wire rod.
- Deacero claimed that producing new diameters of wire rod, such as [] wire rod, was not difficult because “[]”⁸⁹
- Deacero describes three important differences in the production of 4.4 mm wire rod that sets it apart from subject wire rod: the different billet size used, the [], and the calibration of the production line. However, producing a new diameter such as 4.4 mm wire rod requires only small adjustments to the [] used in production, and the differences in the [] are no greater than that between any two similar diameters of subject wire rod.⁹⁰
- While Deacero emphasizes that the testing process for 4.4 mm wire rod was labor intensive and involved [], these activities would be required to develop any new diameter of wire rod [].⁹¹
- Deacero claims that it was unable to produce 4.4 mm wire rod using the [] billets that it uses as an input to produce subject wire rod. As a result, the company invested approximately [] to develop [] billets, which it describes as “an important technological breakthrough” for the production of 4.4 mm wire rod.⁹² Deacero further argues that it developed the [] billet in [] for the purpose of producing products other than 4.4 mm wire rod (*e.g.*, merchant bars, rebar, and profiles) and, therefore, the research and development costs related to the production of [] should not be attributed to 4.4 mm wire rod.⁹³ However, [] billets are a standard-sized billet that are widely available and commonly used to produce steel products, including the production of subject merchandise.⁹⁴
- A list Deacero provided of “major investments” regarding its wire rod production reveals that none of the company’s investments are [].⁹⁵ In addition, Deacero’s financial statements [].⁹⁶
- Setting aside the “major investments” that do not directly relate to 4.4 mm wire rod and [] billets, the capital and labor costs that Deacero incurred to [] and

⁸⁸ *Id.*

⁸⁹ See Nucor’s April 25, 2018 Comments at 16-17 (citing to Deacero’s April 11, 2018 IQR at 9).

⁹⁰ See Nucor’s April 20, 2018 Comments at 12-16.

⁹¹ See Nucor’s April 25, 2018 Comments at 17 (citing to Deacero’s April 11, 2018 IQR at 4-5).

⁹² *Id.* at 4-5.

⁹³ See Nucor’s April 25, 2018 Comments at 4-5.

⁹⁴ See Nucor’s July 16, 2018 Comments at 6.

⁹⁵ See Nucor’s April 25, 2018 Comments at 2-3.

⁹⁶ See Nucor’s April 20, 2018 Comments at 7-8.

recalibrate its facility to produce 4.4 mm wire rod amounted to [], which is less than the [] the company invested to develop and produce 4.75 mm wire rod.⁹⁷

VIII. Analysis

A. Wire Rod with Diameters Between 4.4 mm and 4.75 mm Produced and/or Exported by Deacero

i. Overall Physical Characteristics

The scope of the *Order* identifies the diameter and the chemical or metallurgical content of wire rod as the key physical parameters of the subject merchandise. Similarly, the ITC found that the important physical characteristics of wire rod are diameter and quality, which is denoted by the “grade” of the steel used and is based on the composition of carbon, nonferrous metals, and nonmetallic elements.⁹⁸

The ITC found that steel ductility, hardness, and tensile strength are positively correlated with carbon content; therefore various diameters of the same grade with the same carbon content have similar physical characteristics in terms of ductility, hardness, and tensile strength.⁹⁹ Deacero’s product catalogue indicates that it produces []¹⁰⁰ Within

each of those grades, []¹⁰¹ For example, Deacero’s 4.4 mm wire rod in grade [] and 16 mm wire rod in grade [] have the same []¹⁰² Based

on Deacero’s product data, we preliminarily determine that the tensile strength and chemical content of wire rod varies by grade and not by diameter; therefore, aside from diameter, there are no meaningful physical or chemical differences between 4.4 mm wire rod and wire rod between 4.75 mm and 19.0 mm.¹⁰³

⁹⁷ See Circumvention Ruling Request at 25 (citing to *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at Comment 8); see also Nucor’s July 16, 2018 Comments at 5-6 (citing to Deacero’s July 5, 2018 SQR at 6-7).

⁹⁸ See ITC Second Review at I-26.

⁹⁹ *Id.*

¹⁰⁰ See Deacero’s April 6, 2018 IQR at Exhibit 4, see also Deacero’s June 27, 2018 SQR at Exhibit S-1.

¹⁰¹ *Id.*

¹⁰² *Id.* Deacero produced 16 mm wire rod in grade [] and it produced 4.4 mm wire rod in grade []¹⁰³

¹⁰³ Our findings in this preliminary determination concerning the physical similarities of wire rod at various narrow diameters are consistent with other wire rod proceedings and with the *4.75 mm Final Circumvention Determination*. For example, as noted in the antidumping duty orders on wire rod from Italy, Spain, the Republic of Korea, the Republic of Turkey, and the United Kingdom, wire rod is a single class or kind of merchandise regardless of minimum diameter. See *Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters (4.75 mm Preliminary Circumvention Determination)* and accompanying Issues and Decision Memorandum at 4-7, unchanged in the Final Determination; see also *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417, 23420 (May 21, 2018) (“The products covered

Deacero argues that recalibrating its production facilities to reduce the diameter of wire rod produced by [] percent, *i.e.* from [] mm, required significant changes to the manufacturing process and the inputs used, and goes beyond a minor alteration. However, we find that there is significant overlap in the manufacturing process required to produce subject wire rod and 4.4 mm wire rod. For example, when comparing 4.4 mm, 4.75 mm, and 5.5 mm wire rod, all three diameters are produced by drawing billets through [] stands. Furthermore, 4.4 mm wire rod shares [] 4.75 mm wire rod and [] 5.5 mm wire rod.¹⁰⁴ In comparison, producing wire rod with diameters of [] mm and [] mm wire rod requires [] total stands with [] of the stand designs in common, and producing [] mm and [] mm wire rod requires [] and [] stands, respectively, with [] of the stand designs in common.¹⁰⁵

In addition, when producing 4.4 mm and 5.5 mm wire rod, Deacero uses the []

[].¹⁰⁶ We find the record evidence indicates that the adjustments Deacero makes to its production line to produce 4.4 mm wire rod are no greater than the adjustments it makes to produce various diameters of subject wire rod. We preliminarily determine that the differences in the production process, in terms of the []

[], when producing two similar diameters of subject wire rod are no greater than the differences between producing 4.4 mm wire rod and similar diameters of subject wire rod.

Regarding the different packaging method that Deacero uses to transport 4.4 mm wire rod and minimize damage in transit, we find record evidence indicates that the interior and exterior diameters of 4.4 mm and 4.75 mm wire rod coils [] and that the coil length and weight differ by approximately [] percent.¹⁰⁷ In addition, the basic packaging method of 4.4 mm and 4.75 mm wire rod is similar (*i.e.*, both are coiled, compressed and secured with wire bands).¹⁰⁸ Based on this evidence, we preliminarily determine that any minor differences in packaging between wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod do not lead us to determine that the two diameter ranges are meaningfully different in terms of physical characteristics.

Finally, while [] billets are used to produce 4.4 mm wire rod and [] billets are used to produce subject wire rod with diameters between 4.75mm and 19.00 mm, both billet sizes are commonly consumed by steel manufacturers, including other wire rod producers.¹⁰⁹ Based on this evidence, we preliminarily determine that the differences in the inputs to produce wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningful.

by these orders are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter.”).

¹⁰⁴ See Deacero’s June 27, 2018 SQR at 7; Deacero’s April 11, 2018 IQR at Exhibit 17.

¹⁰⁵ See Deacero’s April 11, 2018 IQR at Exhibit 17; *see also* Deacero’s June 27, 2018 SQR at 7 and Exhibit S-13.

¹⁰⁶ See Deacero’s April 11, 2018 IQR at Exhibit 17.

¹⁰⁷ See Deacero’s July 5, 2018 SQR at 4-5.

¹⁰⁸ *Id.* at 4.

¹⁰⁹ See Nucor’s April 20, 2018 Comments at 13 (citing to Exhibits 1, 2, and 3).

Deacero additionally claims that 4.4 mm wire rod carries a price premium over subject wire rod, which indicates that customer expectations differ with respect to 4.4 mm. We examined Deacero's sales by customer to the United States. As part of our analysis we removed sales to [] given that it is an affiliated company. We found that the price of 4.75 mm to 19 mm wire rod is []¹¹⁸ Subject wire rod was []

[], respectively.¹¹⁹ Deacero's data does not support its claim that 4.4 mm wire rod had a price premium over subject wire rod. Thus, we find the lack of a price premium between 4.4 mm wire rod and subject wire rod belies Deacero's claim that customer expectations differ with regard to the aforementioned wire rod diameters.

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of customer expectations.

iii. Use of Merchandise

As stated above, wire rod covered by the scope of the *Order* is generally used for nails, coat hangers, mesh, fencing, tire bead, mechanical springs, strand and rope, as well as high-end specialty products such as cold-heading quality wire rod, welding quality wire rod, and tire cord quality wire rod, and it is generally sold to end users.¹²⁰

In 2017, Deacero sold wire rod products with a diameter of 19 mm or less in Mexico and [], including the United States.¹²¹ The United States was Deacero's [] foreign market, consuming [] percent of Deacero's exports of wire rod products with a diameter of 19 mm or less.¹²² The United States consumed [] of Deacero's sales of wire rod with a diameter less than 4.75 mm.¹²³

Deacero describes its 4.4 mm wire rod product as a "[]".¹²⁴ As discussed above in the "Overall Physical Characteristics" section of this memorandum, we do not find that wire rod with diameters between 4.4 mm and 4.75 mm have different chemical or mechanical properties from subject wire rod of the same grade. The record demonstrates that Deacero's customers in the United States purchase []

¹¹⁸ To determine the price premium of 4.4 mm wire rod, we calculated the average prices of 4.4 mm wire and 4.75 to 19 mm wire rod for each year from 2014 through 2017 (excluding sales to Deacero's affiliate, []) using the U.S. export data in Deacero's June 27, 2018 SQR at Exhibit S-3. See Attachment 1.

¹¹⁹ See Attachment 1.

¹²⁰ See ITC Investigation at 11 and 24-25.

¹²¹ See Deacero's April 6, 2018 IQR at 22 and Exhibit 21.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Deacero's April 6, 2018 IQR at 26.

], and provides no basis, other than the existence of the *Order*, for [].¹²⁵ Further, as discussed in “Expectations of the Ultimate Users” section above, based on Deacero’s sales data, we find evidence that [] substituted 4.4 mm wire rod for 4.75 mm wire rod within three years after Deacero began producing 4.4 mm wire rod, which indicates that Deacero’s U.S. customers find that there are no meaningful differences between 4.4 mm and 4.75 mm wire rod.¹²⁶

We find that Deacero has provided evidence that certain [] wire end products can be produced more efficiently using 4.4 mm wire rod because fewer passes and less heat is required to draw the wire rod down to a [].¹²⁷ However, the same types of wire end products can be produced using subject wire rod, albeit with varying degrees of efficiency. For example, the ITC found that [] can draw [] [].¹²⁸ Thus, we do not agree with Deacero’s claim that [] could only draw [] using 4.4 mm wire rod, and we preliminarily conclude that 4.4 mm wire rod and subject wire rod are used to produce the same end products.¹²⁹

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of use of merchandise.

iv. Channels of Marketing

The ITC found that wire rod in the United States is “overwhelmingly sold directly to the end users” and “is often tailored to customers’ needs for specific applications and quality requirements.”¹³⁰

Deacero stated that it sells subject wire rod through [].¹³¹ Deacero sells [],¹³² which is the most common channel for sales of subject merchandise, according to the ITC.¹³³ Deacero made [] of 4.4 mm wire rod to a [].¹³⁴ Deacero advertises some, but not all, of the grades and diameters of wire rod it produces in its product brochures and website.¹³⁵ Even though Deacero claims 4.4 mm wire

¹²⁵ *Id.* at Exhibits 21 and 24; *see also* Deacero’s April 11, 2018 IQR at 18-20.

¹²⁶ *See* Deacero’s June 27, 2018 SQR at Exhibit S-7.

¹²⁷ *See* Deacero’s April 11, 2018 IQR at Exhibit 24.

¹²⁸ *See* ITC Second Review at I-30.

¹²⁹ *Id.* at I-28 and I-30; *see also* Nucor’s April 25, 2018 Comments at 6-7.

¹³⁰ *See* ITC Investigation at 11.

¹³¹ *See* Deacero’s April 6, 2018 IQR at 27.

¹³² *Id.*

¹³³ *See* ITC Investigation at 11.

¹³⁴ *Id.*

¹³⁵ *See* Deacero’s April 6, 2018 IQR at Exhibit 26.

rod is a “new product” that will help the company “develop new markets, increase Deacero’s customer base, and increase profits by selling a niche product,” Deacero does not advertise 4.4 mm wire rod in product brochures or its website.¹³⁶ Instead, Deacero’s [redacted], which is the same method in which Deacero markets its subject wire rod products.¹³⁷

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of channels of marketing.

v. Cost of Modification Relative to the Value of the Imported Products

Deacero stated that it invested [redacted] at both of its mills to develop and produce 4.4 mm wire rod.¹³⁸ This amount is equal to [redacted] percent of the value of all 4.4 mm wire rod sold by Deacero from 2014 to 2017.¹³⁹ In comparison, when Deacero first developed 4.75 mm wire rod, it invested a total of [redacted], which amounted to [redacted] percent of the values of U.S. sales of that wire product over a four-year period.¹⁴⁰

Although the manufacturing process for production of the different types of wire rod differ based on quality requirements, all wire rod shares a basic manufacturing process consisting of steelmaking, casting, hot-rolling, and coiling and cooling.¹⁴¹ The ITC found that the hot-rolling process determines the diameter of the wire rod produced and that wire rod manufacturers produce billets in the desired cross-sectional dimension based on the dimensions of the wire rod and the design of the rolling mill.¹⁴² The ITC further found that a larger billet will produce a heavier coil.¹⁴³

As discussed in the “Overall Physical Characteristics” section above, we find that the differences in the production process for 4.4 mm and subject wire rod are not any greater than the differences in the production process between other diameters of in-scope wire rod. For example, producing wire rod with a diameter of [redacted] requires [redacted] stands for the rolling process, which is the [redacted] required to produce subject wire rod with a diameter of [redacted] mm.¹⁴⁴ In comparison, [redacted] wire rod requires [redacted] stands, [redacted] wire rod requires [redacted] stands, and [redacted] wire rod requires [redacted] stands.¹⁴⁵ Deacero’s Celaya mill and Saltillo mill both have [redacted] stands each; therefore,

¹³⁶ See Deacero’s April 11, 2018 IQR at 17; see also Deacero’s April 6, 2018 IQR at 25-26 and Exhibit 26; Deacero’s July 5, 2018 IQR at 3.

¹³⁷ See Deacero’s April 6, 2018 IQR at 25-26 and Exhibit 26.

¹³⁸ See Deacero’s April 11, 2018 IQR at 5-7.

¹³⁹ See Deacero’s April 6, 2018 IQR at Exhibits 14 and 15; see also Deacero’s April 11, 2018 IQR at 2-8.

¹⁴⁰ See *Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters* and accompanying Issues and Decision Memorandum at 8.

¹⁴¹ *Id.* at 11.

¹⁴² See ITC Second Review at I-33.

¹⁴³ *Id.*

¹⁴⁴ See Deacero’s June 27, 2018 SQR at 6-7.

¹⁴⁵ *Id.*

producing any diameter of wire rod in the [] range requires recalibrating some, but not all, of the existing stands and does not require entirely different production equipment.¹⁴⁶

Regarding the costs Deacero incurred to develop and produce 4.4 mm wire rod relative to the value of the exported product, we included in our analysis the \$[] in labor and equipment costs that were directly related to testing and producing 4.4 mm wire rod. We did not include in our analysis the \$[] investment in new equipment and \$[] in installation costs to overhaul the Saltillo mill as this amount went towards improving the efficiency of all stands and was not primarily directed towards the production of 4.4 mm wire rod.¹⁴⁷ Deacero emphasizes the fact that 4.4 mm wire rod cannot be produced efficiently using [] billets and thus the company found it necessary to develop a [] mm billet.¹⁴⁸ However, Deacero admits that the [] mm billet size already existed and is used to produce a variety of products.¹⁴⁹ The company also used [] mm billets to produce [] tons of wire rod in diameters from [] mm in diameter, so the [] mm billet size is not exclusive to 4.4 mm wire rod. Thus, we are excluding the costs Deacero reported for producing [] mm billet when analyzing the cost of modification relative to total value.

As such, we preliminarily find that the additional capital expenditures Deacero incurred to produce 4.4 mm diameter wire rod are insignificant relative to the value of exports of 4.4 mm wire rod.

vi. Other Case-Specific Criteria (Circumstances Under Which the Products Enter the United States, Timing of Entries, and Quantity of Merchandise Entered)

We examined Deacero's sales of 4.4 mm wire rod and subject wire rod to the United States from 2014, when Deacero began producing 4.4 mm wire rod, through 2017. We note that the company's U.S. exports of 4.4 mm wire rod to the United States [

].¹⁵⁰ This [] in the share of 4.4 mm wire rod among Deacero's exports of wire rod 19 mm or smaller as a share of Deacero's total U.S. exports of wire rod 19 mm or smaller is due to the fact that U.S. exports of 4.4 mm wire rod [] kgs in 2017, while U.S. exports of subject wire rod [] kgs in 2017.¹⁵¹ We find the data indicate that end users' demand for 4.4 mm wire rod was []].

We also examined Deacero's U.S. sales data for 4.4 mm wire rod and 4.75 mm wire rod from 2009 to 2017 to determine how consumption patterns changed after 4.75 mm wire rod became subject to the antidumping duties in December 2011 and as Deacero began producing and

¹⁴⁶ See Deacero's April 6, 2018 IQR at 7.

¹⁴⁷ *Id.* at 8.

¹⁴⁸ *Id.* at 2-3.

¹⁴⁹ *Id.*

¹⁵⁰ See Deacero's June 27, 2018 SQR at Exhibit S-2.

¹⁵¹ *Id.*

exporting 4.4 mm wire rod in 2014. The data indicate that Deacero's U.S. sales of 4.75 mm wire rod [

].¹⁵² The data further indicate that [] of Deacero's U.S. customers purchased [].¹⁵³ [

Deacero [].¹⁵⁴ Over this same period, Deacero [].¹⁵⁵

Based on the record evidence described above, we preliminarily find that certain customers of Deacero switched their purchases of 4.75 mm wire rod for 4.4 mm wire rod shortly after Commerce's decision that 4.75 mm wire rod was circumventing the *Order*.¹⁵⁶ Accordingly, we preliminarily find the information detailed above supports the finding that end users consider 4.4 mm wire rod to be a substitute for subject wire rod.

vii. Preliminary Finding

We preliminarily determine that wire rod with diameters greater than or equal to 4.4 mm and less than 4.75 mm are indistinguishable from wire rod covered by the literal terms of the *Order* in any meaningful sense in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, and the channels of marketing. We also preliminarily determine that the costs incurred to produce wire rod with diameters greater than or equal to 4.4 mm and less than 4.75 mm are insignificant relative to the total value of Deacero's U.S. sales of such wire rod products during the same period of time. Further, we also preliminarily find that certain customers have replaced their purchases of 4.75 mm wire rod with 4.4 mm wire rod and that end users consider 4.4 mm wire rod to be a substitute for 4.75 mm wire rod. Therefore, in light of these findings, we preliminarily determine that wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm produced and/or exported by Deacero constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.

B. Wire Rod with Diameters Less Than 4.4 mm Produced and/or Exported by Deacero

For purposes of this preliminary determination, and to prevent future circumvention of the *Order*, we will apply our affirmative circumvention finding to wire rod with diameters less than 4.4 mm that are produced and/or exported by Deacero.

¹⁵² See Deacero's June 27, 2018 SQR at Exhibit S-7.

¹⁵³ See Deacero's April 6, 2018 QR at Exhibit 14.

¹⁵⁴ *Id.*

¹⁵⁵ From 2014 to 2015, Deacero [

Deacero's June 27, 2018 SQR at Exhibit S-1.

¹⁵⁶ See *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum.

]. See

Congress enacted section 781 of the Act to combat certain forms of circumvention of antidumping and countervailing duty orders. When Congress passed the Omnibus and Trade Competitiveness Act in 1988, it explained that “{a}n order on an article presumptively includes articles altered in minor respects in form or appearance....”¹⁵⁷ The legislative history explains that the purpose of the circumvention statute “is to authorize the Commerce Department to apply antidumping and countervailing duty orders in such a way as to prevent circumvention and diversion of U.S. law.”¹⁵⁸ Further, it indicates that Congress was concerned with the existence of “loopholes,” *i.e.*, foreign companies evading orders by making slight changes in their method of production, because such scenarios “seriously undermine the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purposes for which these laws were enacted.”¹⁵⁹ Congress also recognized that “aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.”¹⁶⁰ When implementing the Uruguay Round Agreements Act in 1994, Congress expressed similar concerns with scenarios limiting the effectiveness of the antidumping duty law (*i.e.*, completion or assembly in a country other than the subject country).¹⁶¹ Accordingly, Commerce “has been vested with authority to administer the antidumping laws in accordance with the legislative intent” and, thus, “has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.”¹⁶²

As noted above, Nucor contends that Deacero will continue to circumvent the *Order* unless Commerce makes an affirmative circumvention finding with respect to all wire rod with diameters less than 4.75 mm.¹⁶³ Based on the physical characteristics of inquiry and subject merchandise, as well as the history of this proceeding, we find this determination to be a reasonable exercise of our authority to administer the Act and consistent with our duty to ensure that the *Order* provides effective relief to the domestic industry. With respect to the physical characteristics, our analysis in this anti-circumvention inquiry demonstrates that the tensile strength and chemical content of wire rod varies by grade and not by diameter.¹⁶⁴ For this reason, we have found that all wire rod less than 4.75 mm is indistinguishable from wire rod covered by the literal terms of the *Order* in any meaningful sense in terms of overall physical characteristics of the merchandise.

Additionally, the history of this proceeding demonstrates that Deacero has repeatedly sought to evade the *Order* by making slight changes to its production methods. The record demonstrates

¹⁵⁷ See H.R. Rep. No. 100-576 at 600 (1988) (Conference Report accompanying the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)).

¹⁵⁸ See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316 (1994), at 892-95.

¹⁶² See *Tung Mung Dev. Co. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002) (quoting *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988)), *aff'd* 354 F.3d 1371 (Fed. Cir. 2004).

¹⁶³ See Circumvention Ruling Request at 2-3; Nucor’s September 11, 2018 Comments at 7-8.

¹⁶⁴ See *supra* at the “Overall Physical Characteristics” section of this memorandum; see also *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at comment 4.

that since the publication of the *Order*, Deacero has produced wire rod with diameters less than 5.00 mm, and that in the *4.75 mm Final Circumvention Determination* we determined that wire rod with actual diameters between 4.75 mm and 5.00 mm produced and/or exported by Deacero was circumventing the *Order*. In this inquiry, Deacero’s sales data reveals that within [] following the company’s initial production of 4.4 mm wire, Deacero [],¹⁶⁵ and that by 2017 the company had [] of 4.75 mm wire rod and [] of 4.4 mm wire rod.¹⁶⁶ The record evidence demonstrates that Deacero required only [] to reconfigure its facilities to produce 4.4 mm wire rod following the prior anti-circumvention determination regarding wire rod with an actual diameter of 4.75 mm to 5.00 mm.¹⁶⁷ Further, as explained above, in this anti-circumvention inquiry, we are preliminarily determining that wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm produced and/or exported by Deacero is circumventing the *Order*. The history of this proceeding, therefore, indicates that limiting our affirmative circumvention finding in this inquiry to wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm could allow for further circumvention of the *Order* if Deacero were to again make another marginal change to the diameter of its wire rod.

In enacting the circumvention provisions, Congress did not intend to allow foreign companies to avoid antidumping duties by advantageously modifying their manufacturing process to produce merchandise altered in minor respects in form or appearance from that which is covered by the order. In similar circumstances, Commerce has found it appropriate to implement measures necessary to prevent future circumvention.¹⁶⁸ The circumstances of this proceeding require Commerce to exercise its discretionary authority under the antidumping duty law in a manner that is tailored to prevent future evasion or circumvention of the *Order* by Deacero. Therefore, consistent with the legislative intent of the statutory circumvention provisions, and to prevent future circumvention, we find it necessary to apply this preliminary affirmative circumvention finding to wire rod with diameters that are less than 4.4 mm that are produced and/or exported by Deacero.¹⁶⁹ Accordingly, for the reasons discussed above, we further preliminarily determine that any wire rod manufactured by Deacero with a diameter less than 4.4 mm also constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.

¹⁶⁵ See Deacero’s June 27, 2018 SQR at Exhibit S-7.

¹⁶⁶ *Id.* at Exhibit S-1.

¹⁶⁷ See Deacero’s August 27, 2018 SQR at 3.

¹⁶⁸ See *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 76 Fed. Reg. 50996, 50997 (August 17, 2011) (applying an affirmative circumvention finding to all producers in the subject country where circumvention occurred repeatedly by multiple parties producing and importing different specifications of cut-to-length plate that used boron).

¹⁶⁹ See *Appleton Papers, Inc. v. United States*, 929 F. Supp. 2d 1329, 1337 (CIT 2013) (“Commerce has a certain amount of discretion to act in order to ‘prevent {} the intentional evasion or circumvention’ of the Act. To that end, Commerce may impose measures . . . where it believes they will be effective in preventing future circumvention of its orders.”) (internal citations omitted).

IX. Recommendation

We recommend that, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce issue an affirmative preliminary determination that wire rod with a diameter less than 4.75 mm produced and/or exported by Deacero is circumventing the *Order*. If this recommendation is accepted, we will instruct U.S. Customs and Border Protection to suspend liquidation and to collect cash deposits equal to 12.56 percent *ad valorem* for all unliquidated entries of wire rod with a diameter less than 4.75 mm, produced and/or exported by Deacero that are entered or withdrawn from warehouse on or after February 7, 2018, the publication date of the *Initiation Notice* in the *Federal Register*.¹⁷⁰

Agree

Disagree

/S/ Christian Marsh

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

¹⁷⁰ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 16832 (April 17, 2018) and accompanying Decision Memorandum.

Attachment 1

Business Proprietary Information in Entirety

Not Susceptible to Public Summary



A-201-830

Anti-Circumvention Inquiry
Segment Name: 4.4 mm Wire Rod

Public Version

AD/CVD Ops Office III: EBG, SMB

DATE: March 5, 2019

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of Circumvention Concerning Carbon and Certain
Alloy Steel Wire Rod from Mexico Produced and/or Exported by
Deacero S.A.P.I. de C.V.

I. Summary

We have analyzed the case and rebuttal briefs of interested parties in the anti-circumvention inquiry of imports of carbon and certain alloy steel wire rod (wire rod) with actual diameters less than 4.75 millimeters (mm), produced and/or exported by Deacero S.A.P.I. de C.V. (Deacero) and otherwise meeting the description of in-scope merchandise. Based on our analysis of the comments received, we continue to find, consistent with the *Preliminary Determination*,¹ that imports of wire rod with actual diameters less than 4.75 mm, produced and/or exported by Deacero and otherwise meeting the description of in-scope merchandise, constitute merchandise altered in form or appearance in minor respects from in-scope merchandise that should be considered within the class or kind of merchandise subject to the antidumping duty (AD) *Order* on wire rod from Mexico.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

¹ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 53030 (October 19, 2018) (*Preliminary Determination*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

² See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).



Comment 1: Whether Commerce is Improperly Expanding the Scope of the *Order* to Cover Products Which Were Not Expressly Included in the Scope or the U.S. International Trade Commission’s (ITC) Injury Determination

Comment 2: First Prong of the Minor Alteration Analysis – Overall Physical Characteristics

Comment 3: Second Prong of the Minor Alteration Analysis – Expectations of Ultimate Users

Comment 4: Third Prong of the Minor Alteration Analysis – Use of Merchandise

Comment 5: Fourth Prong of the Minor Alteration Analysis – Channels of Marketing

Comment 6: Fifth Prong of the Minor Alteration Analysis – Cost of Modification

Comment 7: Whether Commerce is Improperly Expanding the Scope of the Order to Cover Wire Rod with a Diameter Less Than 4.4 mm to Prevent Future Circumvention of the Order

II. Background

On February 7, 2018, the Department of Commerce (Commerce) initiated this anti-circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act).³ On October 19, 2018, Commerce published the *Preliminary Determination* in the *Federal Register*.⁴ In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination*. On November 14, 2018, we received a timely filed case brief from Deacero.⁵ On November 21, 2018, we received a timely filed rebuttal brief from Nucor Corporation (a domestic interested party) (Nucor).⁶ On December 20, 2018, we held a meeting with Deacero in which they discussed the arguments raised in their case brief.⁷

On November 9, 2018, Commerce extended the time period for issuing the final determination in this anti-circumvention inquiry by 59 days.⁸ Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁹ If the new deadline falls on a non-business

³ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) and accompanying memorandum.

⁴ See *Preliminary Determination*.

⁵ See Letter from Deacero, “Carbon and Certain Alloy Steel Wire Rod from Mexico – *Case Brief*,” dated November 14, 2018 (Deacero Case Brief).

⁶ See Letter from Nucor, “*Carbon and Certain Alloy Steel Wire Rod from Mexico: Rebuttal Brief Nucor Corporation*,” dated November 21, 2018 (Nucor Rebuttal Brief).

⁷ See Memorandum, “Meeting with Interested Party,” dated December 20, 2018.

⁸ See Memorandum, “Extension of Time Limit for the Final Determination of Anti-Circumvention Inquiry,” dated November 9, 2018.

⁹ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated

day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for this final determination is now March 6, 2019.

III. Scope of the Order

The merchandise subject to the *Order* is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to the order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

IV. Prior Anti-Circumvention Determination

On October 1, 2012, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce published the *4.75 mm Final Circumvention Determination*, wherein it determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced and/or exported to the United States by Deacero constituted merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.¹⁰ The Court of Appeals for the Federal Circuit (CAFC) subsequently upheld Commerce’s finding in the *4.75 mm Final Circumvention*

¹⁰ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012) (*4.75 mm Final Circumvention Determination*) and accompanying Issues and Decision Memorandum (*4.75 mm Final Circumvention Determination IDM*).

*Determination.*¹¹ As a result, we have treated Deacero's sales of wire rod with an actual diameter of 4.75 mm to 5.00 mm to the United States as included within the class or kind of merchandise subject the *Order*.

V. Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of wire rod with actual diameters less than 4.75 mm, produced and/or exported by Deacero, and otherwise meeting the description of in-scope merchandise.¹² In performing our analysis, we reviewed information from Deacero and Deacero USA, Inc.¹³ covering the period 2014 to 2017.

VI. Discussion of the Issues

Comment 1: Whether Commerce is Improperly Expanding the Scope of the *Order* to Cover Products Which Were Not Expressly Included in the Scope of the U.S. International Trade Commission's (ITC) Injury Determination

Deacero's Arguments

- Deacero asserts that scope of the *Order* may not be expanded to cover wire rod with a diameter of 4.4 mm because the petitioners deliberately decided to exclude such products from the scope in the original petition,¹⁴ even though wire rod with diameters as narrow as 4.0 mm was commercially available in the United States at the time the petition was filed.¹⁵ In contrast, other petitions involving wire rod have included wire rod of all diameters less than 19.00 mm in the scope.¹⁶
- Deacero notes that because the petitioners deliberately excluded wire rod with diameters less than 5.00 mm from the scope of the *Order*, the ITC did not consider any domestic industry information related to the production and sale of 4.4 mm wire rod in its injury analysis.¹⁷
- Deacero argues that Commerce's preliminary finding that 4.4 mm wire rod is a minor

¹¹ See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1339 (Fed. Cir. 2016) (*Deacero*).

¹² See *Initiation Notice*, 83 FR at 5407; *Initiation Memorandum* at 10-14.

¹³ Deacero is a wire rod producer/exporter in Mexico and Deacero USA, Inc. is an affiliated importer and reseller based in the United States. All of Deacero's sales of wire rod to the United States are made through Deacero USA, Inc. See *Preliminary Decision Memorandum* at 2 n.4.

¹⁴ The petitioners who filed the original petition were Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated, Industries, Inc., and North Star Steel Texas, Inc. See *Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001).

¹⁵ According to Deacero, Charter Rolling, a U.S. company, produced wire rod as narrow as 4.0 mm in the 1990s. See *Deacero Case Brief* at 3 (citing to *Certain Steel Wire Rod from Brazil and Japan*, Inv. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 (March 1994) at 162-163).

¹⁶ *Id.* (citing to e.g., *Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair Value Investigations*, 82 FR 19207 (April 26, 2017)).

¹⁷ *Id.* at 4. Deacero produces and sells wire rod with a nominal diameter of 4.4 mm and an actual diameter of [] to [] mm (hereinafter referred to as 4.4 mm wire rod). See, e.g., Deacero's April 6, 2018 Initial Questionnaire Response (Deacero's April 6, 2018 IQR) and Deacero's April 11, 2018 Initial Questionnaire Response (Deacero's

alteration of subject merchandise improperly imposes antidumping (AD) duties and violates Articles 3.5 and 9.2 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which requires a finding of injury prior to imposing AD duties.¹⁸

- Deacero cites to the Court of International Trade’s (CIT) ruling in *Wheatland* that “{a} fundamental requirement of both U.S. and international law is that an AD duty order must be supported by an ITC determination of material injury covering the merchandise in question... {and that} any expansion of the scope by Commerce would extend the AD duty order beyond the limits of the ITC injury determination and would therefore violate both U.S. and international law.”¹⁹
- Deacero asserts that the written scope must retain some meaning and provide guidance to the trading public, and that Commerce should not permit Nucor to “re-write” the scope of the *Order* to expand it and include a larger range of products.²⁰
- Deacero warns that parties could manipulate the proceedings of an AD or countervailing duty investigation by deliberately filing a petition with a scope that is written specifically to exclude data and companies that may not support a finding of injury or dumping, only to later expand the scope through allegations of minor alteration.²¹

Nucor’s Rebuttal Arguments

- While Deacero asserts that Commerce is precluded from conducting an anti-circumvention inquiry on 4.4 mm wire rod because that product was excluded from the scope and from the data that the ITC considered in making its injury determination, Nucor argues that the CAFC rejected a similar argument when it upheld Commerce’s *4.75 mm Final Circumvention Determination*.²²
- Nucor notes that the CAFC distinguished *Wheatland*, which considered whether Commerce had the authority to conduct a scope inquiry on a pipe product that was expressly excluded from the scope of an order, from minor alteration anti-circumvention inquiries, in which the purpose is “to determine whether articles not expressly within the literal scope of a duty order may nonetheless be found within its scope as a result of a minor alteration.”²³
- In *Deacero*, the CAFC concluded that the scope of the *Order* on wire rod from Mexico, which provides a cross-sectional range of 5.00 mm to 19.00 mm, “contains no explicit exclusion of small-diameter steel wire rod” and “cannot be read to expressly exclude for purposes of anti-circumvention inquiries all products outside that range”; therefore, Nucor argues that Commerce has the authority to pursue an anti-circumvention inquiry regarding 4.4 mm wire rod.²⁴
- Nucor further argues that Congress specifically excluded minor alteration circumvention

April 11, 2018 IQR).

¹⁸ *Id.* at 2-4.

¹⁹ *Id.* at 4 (citing to *Wheatland Tube Co. v. United States*, 973 F. Supp. 149, 158 (CIT 1997) (*Wheatland*)).

²⁰ *Id.* at 4-5.

²¹ *Id.* at 5.

²² See Nucor Rebuttal Brief at 2-3 (citing to *Deacero*, 817 F.3d at 1339 and *Deacero S.A. de C.V. v. United States*, Ct. No. 12-00345, Slip Op. 14-99 (CIT November 28, 2014) at 19).

²³ *Id.* at 4 (citing to *Deacero*, 817 F.3d at 1338).

²⁴ *Id.* (citing to *Deacero*, 817 F.3d at 1338-1339).

findings from the types of circumvention findings for which Commerce is required to notify the ITC, which indicates that there is no concern regarding the potential for petitioners “gaming” the injury determination.²⁵

- Finally, Nucor argues that the ITC’s injury finding and subsequent sunset determination covered all known types and grades of wire rod, including some types of wire rod that were specifically excluded from the scope of the *Order*; therefore it is clear that Commerce’s minor alteration determination does not implicate any concerns over the ITC’s injury determination.²⁶

Commerce’s Position: We find that including 4.4 mm wire rod, which falls outside the diameter range stated in the scope, within the class or kind of merchandise subject to the *Order* as merchandise altered in form or appearance in minor respects is permitted under our statute and case law.

First, by enacting the statutory circumvention provisions, “Congress has provided that Commerce’s consideration of certain types of articles within the scope of an {antidumping duty} order will be a proper clarification or interpretation of the order instead of improper expansion or change even where these products do not fall within the order’s literal scope.”²⁷ Section 781(c) of the Act permits the imposition of AD duties to merchandise not technically within the scope of the *Order*, but which is determined to be altered in minor respects.

Second, as explained by the CAFC in *Deacero, Wheatland* held that minor alteration anti-circumvention inquiries are inappropriate when the AD duty order expressly excludes the allegedly altered product.²⁸ The CAFC noted that the scope of the *Order* explicitly excludes certain metallic compositions of wire rod and that while it states a diameter range, “it does not provide that steel wire rod less than 5.00 mm in diameter should necessarily be excluded from its scope.”²⁹ The CAFC further stated that “{t}he purpose of minor alteration anti-circumvention inquiries is to determine whether articles not expressly within the literal scope of a duty order may nonetheless be found within its scope as a result of a minor alteration to merchandise covered in the investigation.”³⁰

Third, according to section 781(e) of the Act, before making an affirmative determination in an anti-circumvention inquiry, Commerce is required to notify the ITC when the proposed inclusion of merchandise involves merchandise completed or assembled in the United States, merchandise completed or assembled in other foreign countries, or any later-developed merchandise.

²⁵ *Id.* at 5 (citing to section 781(e) of the Act).

²⁶ Data on grade 1080 tire cord and grade 1080 tire bead wire rod were included in the ITC’s 2014 Sunset Review. See *Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad & Tobago, and Ukraine*, Inv. Nos. 701-TA-417 and 731-TA-953, 957-959, 961, and 962 (Second Review), ITC Pub. 4472 (June 2014) at 6-9 (ITC’s 2014 Sunset Review); see also *Certain Steel Wire Rod From Brazil and Japan*, Inv. Nos. 731-TA-646 and 648 (Final), ITC Pub. 2761 (March 1994) at 162-163; see also Nucor Rebuttal Brief at 5.

²⁷ See *Target Corp. v. United States*, 609 F.3d 1352, 1355 (CAFC 2010) (quoting *Wheatland*, 161 F.3d at 1370). See also *Bell Supply Co. v. United States*, 179 F. Supp. 3d 1082, 1093 n.9 (“...Commerce conducts a formal circumvention inquiry pursuant to 19 C.F.R. § 351.225(g)-(h) to lawfully expand the reach of an antidumping or countervailing duty order to include otherwise non-subject merchandise within the scope of an order.”).

²⁸ See *Deacero*, 817 F.3d at 1339.

²⁹ *Id.*

³⁰ *Id.*

However, notably absent from this list is merchandise altered in form or appearance in minor respects. Thus, according to the statute, Commerce is not required to notify or consult with the ITC before making an affirmative determination in a minor alterations anti-circumvention inquiry conducted under section 781(c) of the Act. This distinction in the statute indicates that Congress did not have concerns that injury issues would arise in the context of a minor alterations inquiry.

Fourth, to determine whether merchandise has been altered in form or appearance in minor respects, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce's practice has been to examine such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.³¹ Commerce also considers factors such as commercial availability of the product at issue prior to the issuance of the order, the circumstances under which the products at issue entered the United States, the time and quantity of said entries, and the input of consumers in the design phase of the product at issue.³² Commerce is not required by law to determine, as a precondition to an affirmative finding of circumvention, whether the ITC considered the inquiry merchandise in its injury determination.

In any event, for purposes of its injury determination, the ITC found a single domestic like product comprised of *all* carbon and certain alloy steel wire rod and that there is no clear demarcation between the various types of wire rod products.³³ Rather, wire rod consists of a broad continuum of similar products with at least 11 major categories, ranging from low carbon wire rod, such as industrial wire rod used for nails and coat hangers (*i.e.*, the smaller diameter wire rod at issue in this circumvention inquiry), to medium to high carbon wire rod, such as that used for tire bead and prestressed concrete strand, to the highest-end products, such as tire cord wire rod.³⁴ All categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils.³⁵ As a result, the ITC's injury determination encompassed a broad range of wire rod products, even products that were expressly excluded from the scope (*e.g.*, grade 1080 tire cord and grade 1080 tire bead wire rod).³⁶ Additionally, much of the data that the ITC considered in subsequent sunset reviews included data regarding wire rod with diameters less than 5.00 mm.³⁷ Thus, in finding a single domestic like product consisting of a broad

³¹ See, *e.g.*, *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from China*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 74 FR 40565 (August 12, 2009).

³² See, *e.g.*, *CTL Plate from China*, 74 FR at 33992-93; *Brass Sheet and Strip from West Germany: Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655, 32657 (August 10, 1990), unchanged in *Brass Sheet and Strip from Germany: Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873, 37875 (June 25, 2012).

³³ *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961, and 962, USITC Pub. 3546 (October 2002) (ITC Investigation) at 4-13.

³⁴ *Id.* at 8.

³⁵ *Id.* at 10.

³⁶ *Id.* at 13.

³⁷ See *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and*

continuum of wire rod products, the ITC implicitly found that differences between the categories of wire rod, such as diameter and grade, were not significant enough to alter its injury analysis.

We find that, in light of the record evidence and the absence of an express exclusion for wire rod with an actual diameter less than 4.75 mm in the scope of the *Order*, Commerce’s affirmative determination to include such merchandise in the scope pursuant to section 781(c) of the Act is in accordance with the statute and a reasonable exercise of its authority. We further find that Commerce’s determination to include wire rod produced by Deacero with an actual diameter less than 4.75 mm in the scope does not contravene the ITC’s injury finding, given that the ITC found all wire rod to be a single domestic like product.

Comment 2: First Prong of the Minor Alteration Analysis – Overall Physical Characteristics

*Deacero’s Arguments*³⁸

- Deacero argues that Commerce failed to address the most obvious physical characteristic that distinguishes 4.4 mm wire rod from subject wire rod,³⁹ which is the difference in cross-sectional diameter.⁴⁰
- Deacero argues that the difference in diameter between 4.4 mm wire rod and subject wire rod is significant and translates to differences in cost, price, and use of the product such that the products are not interchangeable.⁴¹
- Deacero argues that it is unreasonable to focus the analysis of physical characteristics on the tensile strength and chemical content of wire rod, which is determined by the raw material used (*i.e.*, steel), because that approach would lead to the absurd conclusion that any two products, such as steel billets and wire, are similar in physical characteristics and could be deemed minor alterations of subject wire rod.⁴²
- Moreover, Deacero argues that Commerce’s *Preliminary Determination* overlooks the fact that [] of end products made from 4.4 mm wire rod is different from that of wire made from subject wire rod because using narrower gauge wire rod requires less drawing (*i.e.*, fewer passes through the rolling mill), which

Tobago, and Ukraine, Inv. Nos. 701-TA-417 and 731-TA-953, 954, 957-959, 961, and 962, USITC Pub. 4014 (June 2008) (ITC’s First Sunset Review) at 6-8; *see also Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad & Tobago, and Ukraine*, Inv. Nos. 701-TA-417 and 731-TA-953, 957-959, and 962, USITC Pub. 4472 (June 2014) (ITC’s 2014 Sunset Review) at 41, 58 to 64, I-8, and Appendix F.

³⁸ In the *Preliminary Determination* Commerce found that wire rod with actual diameters less than 4.75 mm produced and/or exported by Deacero and otherwise meeting the description of in-scope merchandise constitutes merchandise altered in form or appearance in minor respects from in-scope merchandise that should be considered within the class or kind of merchandise subject to the *Order*. In Comments 2 through 6, Deacero’s arguments relate specifically to wire rod with a nominal diameter of 4.4 mm.

³⁹ The term “subject wire rod” refers to diameters of wire rod listed in the scope of the *Order*, *e.g.*, wire rod with diameters ranging from 5.00 mm to 19.00 mm, and wire rod with actual diameters between 4.75 mm and 5.00 mm produced and/or exported by Deacero, which Commerce previously found to be a circumventing minor alteration.

⁴⁰ *See* Deacero Case Brief at 6.

⁴¹ *Id.* at 6-7.

⁴² *Id.* at 7.

produces end products that are less brittle.⁴³

- Deacero argues that a critical difference between 4.4 mm wire rod and subject wire rod is the fact that 4.4 mm wire rod is produced using only [] billets while subject wire rod is generally produced using [] billets, and Nucor has failed to provide evidence of other producers that consume [] billets to produce either 4.4 mm wire rod or subject wire rod.⁴⁴
- Deacero argues that Commerce improperly focused on the fact that 4.4 mm wire rod and subject wire rod [] certain production settings but did not address the extensive differences in other production settings and processes.⁴⁵ While all wire rod is produced by drawing billets through stands and, therefore, most wire rod will have some production settings in common, Deacero argues that 4.4 mm wire rod requires different production settings for the [] of the stands, [] than subject wire rod.⁴⁶

Further, Commerce ignored the unique dimensions of the rolls used to produce 4.4 mm wire rod, which [].⁴⁷

- Deacero also argues that Commerce ignored the significant differences in the calibration of production lines for 4.4 mm wire rod and subject wire rod, specifically the [] and the [], which must be adjusted to different settings than that used to produce subject wire rod. Deacero notes that the process to determine how to configure these variables on the production line was long and expensive.⁴⁸
- Finally, Deacero argues that Commerce failed to consider that the company has been unable to produce 4.4 mm wire rod successfully at the Saltillo plant despite investing significant time and money.⁴⁹

Nucor's Rebuttal Arguments

- Nucor notes that while Deacero claims that the smaller diameter of 4.4 mm wire rod results in significant differences in the cost, price, and use of the product, Deacero fails to explain how the smaller diameter, itself, is a significant overall physical characteristic of 4.4 mm wire rod.⁵⁰
- Nucor argues that Commerce correctly focused its analysis on the physical characteristics of wire rod and that it properly examined the cost, price, and use of 4.4 mm as separate factors in its minor alterations analysis and determined that there were no meaningful differences with respect to those characteristics.⁵¹
- Nucor also argues that Commerce should dismiss Deacero's arguments that 4.4 mm wire rod differs from subject wire rod due to differences in the wire it produces (*i.e.* 4.4 mm wire rod allows a wire producer to produce narrower gauge wire with less drawing)

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* 8-9.

⁴⁹ *Id.* at 9.

⁵⁰ See Nucor Rebuttal Brief at 7-8 (citing to Deacero Case Brief at 6-7).

⁵¹ *Id.* at 7.

because, as Commerce found in the 4.75 mm wire rod anti-circumvention inquiry, “the first prong of the minor alterations analysis contains no requirement to examine the overall physical characteristics of the downstream product.”⁵²

- Regarding the overall physical characteristics of 4.4 mm wire rod, Nucor argues that Commerce properly relied upon the ITC’s conclusion that various diameters of wire rod made from the same grade of steel with the same carbon content have similar characteristics in terms of ductility, hardness, and tensile strength; therefore, physical characteristics of wire rod vary by grade and not by diameter.⁵³
- Nucor further argues that [

],⁵⁴

- When Deacero argues that focusing solely on the [] of wire rod would lead to the absurd conclusion that steel wire and steel billets made of the same grade are minor alterations of subject wire rod, Deacero is conceding that the [] determined by the grade of raw material and not the diameter.⁵⁵ In addition, Deacero overlooks the fact that the production processes and equipment used to produce billets, wire rod, and wire differ such that they are distinct products.⁵⁶
- The [] billets that Deacero claims are a key difference between 4.4 mm wire rod and subject wire rod are not unique but rather are a [] billet used by Nucor and other U.S. producers to produce subject wire rod and other long steel products.⁵⁷
- Nucor argues that Commerce correctly recognized that wire rod exists on a continuum and that the production settings and equipment used to produce 4.4 mm wire rod reflect a series of adjustments that are necessary to produce each of the various diameters of wire rod.⁵⁸
- Finally, Nucor argues that Deacero’s [] is irrelevant to the fact that Deacero [] as it uses to produce subject merchandise.⁵⁹

Commerce’s Position: We continue to find that wire rod with a diameter of 4.4 mm wire rod and subject wire rod are not meaningfully different in terms of overall physical characteristics based on the [] of the inputs and the production process used to produce 4.4 mm and subject wire rod products.⁶⁰

Specifically, we find that record evidence indicates that the steel grade and carbon content of

⁵² *Id.* at 9 (citing to *4.75 mm Final Circumvention Determination* IDM at 10).

⁵³ *Id.* at 8 (citing to Preliminary Decision Memorandum at 14).

⁵⁴ *Id.*

⁵⁵ *Id.* (citing to Deacero Case Brief at 7).

⁵⁶ *Id.*

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 11 (citing to Deacero’s April 6, 2018 Initial Questionnaire Response (Deacero’s April 6, 2018 IQR) at 17).

⁶⁰ *See* Preliminary Decision Memorandum at 14-16.

wire rod imparts the important physical characteristics of ductility, hardness, and tensile strength.⁶¹ We examined Deacero's product data, which documents the physical characteristics of the company's wire rod products across [] variables related to diameter, steel grade, [], and find that the [] of wire rod varies by grade and not diameter.⁶² As a result, apart from diameter, we find that there are no meaningful differences in the physical characteristics between 4.4 mm wire rod and subject wire rod produced using the same grade of steel.⁶³

This conclusion that the physical similarities of wire rod vary by grade and not diameter is consistent with other wire rod AD proceedings, in which Commerce found that wire rod is a single class or kind of merchandise regardless of minimum diameter,⁶⁴ and in the *4.75 mm Final Circumvention Determination*, in which we found that diameter, by itself, is not a meaningful difference for purposes of a minor alteration inquiry.⁶⁵

We disagree with Deacero that Commerce ignored the difference in diameter between 4.4 mm wire rod and subject wire rod and placed too much emphasis on [] of wire rod in our analysis of the physical characteristics of 4.4 mm wire rod in the *Preliminary Determination*. Deacero claims that the smaller diameter of 4.4 mm wire rod has a significant impact on the cost, price, and use of the product such that it is not interchangeable with subject wire rod. We acknowledge that it may be less costly to draw 4.4 mm wire rod down to narrower gauges such that certain end products may be produced more efficiently using 4.4 mm wire rod, but the impact on the end use of 4.4 mm wire rod and the competitive advantages of using 4.4 mm wire rod to produce certain downstream products is properly evaluated under the second and third criteria of the minor alteration analysis and not under the overall physical characteristics criterion.

We disagree with Deacero that by ignoring the difference in diameter and focusing only how chemical content and tensile strength vary by grade and not diameter leads to an absurd result where products such as steel billet and steel wire are considered minor alterations of subject merchandise. The examples cited by Deacero represent products produced by different industries (*i.e.*, billet producers, wire rod producers, and wire producers), and relates to only one

⁶¹ The ITC found that steel ductility, hardness, and tensile strength are positively correlated with carbon content; therefore, various diameters of the same grade with the same carbon content have similar physical characteristics in terms of ductility, hardness, and tensile strength. See ITC's 2014 Sunset Review at I-26; see also Deacero's April 6, 2018 IQR at Exhibit 4, see also Deacero's June 27, 2018 First Supplemental Questionnaire Response (Deacero's June 27, 2018 SQR) at Exhibit S-1.

⁶² See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 14-16.

⁶³ See Deacero's April 6, 2018 IQR at Exhibit 4, see also Deacero's June 27, 2018 SQR at Exhibit S-1.

⁶⁴ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417, 23420 (May 21, 2018) ("The products covered by these orders are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter.").

⁶⁵ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order* 76 FR 78882, 78884 (December 20, 2011) (*4.75 mm Preliminary Circumvention Determination*) and accompanying Preliminary Decision Memorandum (*4.75 mm Preliminary Circumvention Determination* IDM) at 4-5, unchanged in final determination.

of the five factors (*i.e.*, physical characteristics) that Commerce examines in a minor alteration circumvention inquiry.

We also disagree with Deacero that 4.4 mm wire rod is distinct from subject wire rod because it is produced using different production settings (*i.e.*, different designs for the rolls and stands, different rolling speeds, lower temperatures, and fewer cooling conveyor fans) and is produced with [] instead of [] steel billets. The ITC found that “{a}ll categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils” with “no clear demarcation between the various types of wire rod products, but rather {a} continuum of at least 11 major categories of products...”⁶⁶ Record evidence indicates that Deacero produces and packages 4.4 mm wire rod and subject wire rod products using a similar process in the same facility with the same employees and the same general equipment.⁶⁷ For example, we found that 4.4 mm, 4.75 mm, and 5.5 mm wire rod are all produced by drawing billets through [] stands, and that 4.4 mm wire rod shares [] 4.75 mm wire rod and [] 5.5 mm wire rod.⁶⁸ Thus, according to the record, there is significant overlap in the manufacturing process required to produce subject wire rod and 4.4 mm wire rod.

Finally, regarding Deacero’s unsuccessful attempts to produce 4.4 mm wire rod at the Saltillo plant, the extent to which the plant is unable to produce 4.4 mm wire rod on a commercial basis does not alter the fact that there are no meaningful differences in the physical characteristics of 4.4 mm wire rod and subject wire rod.

Comment 3: Second Prong of the Minor Alteration Analysis – Expectations of Ultimate Users

Deacero’s Arguments

- Deacero argues that the ITC’s findings in the 2002 original investigation and the 2014 second sunset review (*e.g.*, that subject wire rod is highly interchangeable and requires limited calibration of production facilities) relate only to subject wire rod and not to 4.4 mm wire rod.⁶⁹
- Deacero argues that the testimony or purchase patterns regarding its customers who switched between [] are not relevant as they do not relate to the expectations of users towards 4.4 mm wire rod.⁷⁰
- Deacero argues that Commerce failed to address the sworn statements by customers of 4.4 mm wire rod in which they claim that they have different expectations for 4.4 mm wire rod and do not consider it to be interchangeable with subject wire rod (*e.g.*, 4.4 mm wire rod allows users to reduce processing steps, save costs, and achieve certain physical

⁶⁶ See ITC Investigation at 8 and 10.

⁶⁷ See Deacero’s June 27, 2018 SQR at 7; *see also* Deacero’s April 6, 2018 IQR; *see also* Deacero’s April 11, 2018 IQR at Exhibit 17, *see also* Deacero’s July 5, 2018 Supplemental Questionnaire Response (Deacero’s July 5, 2018 SQR) at 4.

⁶⁸ See Deacero’s June 27, 2018 SQR at 7; Deacero’s April 11, 2018 IQR at Exhibit 17.

⁶⁹ See Deacero Case Brief at 9-10.

⁷⁰ *Id.* at 10.

characteristics in finished end products that they are not able to achieve using subject wire rod).⁷¹

Nucor’s Rebuttal Arguments

- Nucor disputes Deacero’s claim that the ITC’s findings in the original investigation and in the second sunset review refer only to 4.75 mm wire rod and above and thus are “irrelevant” to this proceeding by noting that the []⁷²
- Nucor further argues that the sworn testimony of Deacero’s customers before the ITC contradict the customer affidavits that Deacero placed on the record; however, Commerce has properly found that Deacero’s customers’ actions and statements against interest were more probative than the self-serving affidavits prepared in this proceeding.
- Nucor disputes Deacero’s claim that 4.4 mm wire rod offers its customers cost savings since it requires fewer passes to draw down to narrower gauge end products. One of Deacero’s customers [], but record evidence indicates that []⁷³
- Nucor argues that Deacero’s customers switched from purchasing subject merchandise to 4.4 mm wire rod because it was priced lower than subject merchandise and not because customers held different expectations regarding 4.4 mm wire rod.⁷⁴

Commerce’s Position: We continue to find that record evidence from Deacero and its customers indicates that the expectations of ultimate users of 4.4 mm wire rod do not differ substantially from those of subject wire rod.⁷⁵ First, we find that 4.4 mm wire rod and subject wire rod, such as 4.75 mm and 5.5 mm wire rod, are used to produce the same types of end products (*e.g.*, aluminum-coated wire, barbed wire, spring wire, and industrial wire, which may be further processed into products such as springs, nails, fasteners, clothes hangers, fencing material, and construction mesh).⁷⁶ Second, while Deacero initially claimed that 4.4 mm wire rod can be used to produce downstream products that cannot be made using subject wire rod (*e.g.*, []), we find that those are standard products that were widely produced before Deacero began selling 4.4 mm wire rod.⁷⁷

⁷¹ *Id.* (citing to Deacero’s April 11, 2018 IQR at Exhibit 24).

⁷² *See* Nucor Rebuttal Brief at 11 (citing to Deacero’s Case Brief at 9-10 and Preliminary Decision Memorandum at 16).

⁷³ *Id.* at 12.

⁷⁴ *Id.*

⁷⁵ *See* Preliminary Decision Memorandum at 16-17.

⁷⁶ *See* Nucor’s Letter, “Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Circumvention Ruling,” dated October 27, 2018 (Circumvention Ruling Request) at 23; *see also* Deacero’s April 6, 2018 IQR at Exhibits 21 and 24; *see also* Deacero April 11, 2018 IQR at 18-20 and Exhibit 24; *see also* Deacero’s July 5, 2018 SQR at 9.

⁷⁷ *See* Nucor’s Letter, “Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero’s Second Supplemental Circumvention Questionnaire Response,” dated July 16, 2018 (Nucor’s July 16, 2018 Comments) at 8.

The process of drawing wire rod down to produce end products is essentially the same for all diameters of wire rod, although the drawing process using certain diameters of wire rod may be more efficient than using other diameters of wire rod.⁷⁸ We find that record evidence indicates that from [] Deacero sold 4.4 mm wire rod []; therefore, any purported cost savings from the fewer processing steps required when using 4.4 mm wire rod are [].⁷⁹ Due to the fact that 4.4 mm wire rod and certain diameters of subject wire rod are used to produce the same types of end products, we find that both 4.4 mm wire rod and subject wire rod creates similar expectations among ultimate users.

Further evidence of how the expectations of ultimate users towards 4.4 mm wire rod and subject wire rod are similar is found in Deacero's sales data. From [

[]⁸⁰ In the *Preliminary Determination*, we also noted that [] to illustrate the point that end users find [

[]⁸¹ Record evidence submitted by Deacero indicates that, in response to this shift in demand, Deacero [

[]⁸² This indicates that Deacero's customers find 4.4 mm and subject wire rod to be interchangeable and that their wire rod purchases are driven by price and not by any purported difference in end use; therefore, we find that there is no evidence of any significant difference in the expectations of ultimate users.

Finally, record evidence indicates that while Deacero sold subject wire rod products in [

[], which indicates that only U.S.-based end users who faced AD duties on subject wire rod []⁸³ We also find no record evidence that [

].

Comment 4: Third Prong of the Minor Alteration Analysis – Use of Merchandise

Deacero's Arguments

- Deacero argues that in prior anti-circumvention inquiries, Commerce has analyzed the use of merchandise factor by considering whether a product is substitutable for the same

⁷⁸ See Deacero's April 6, 2018 IQR at 27-28; see also Deacero's April 11, 2018 IQR at 18-20; see also Deacero's July 5, 2018 SQR at 9.

⁷⁹ See Deacero's June 27, 2018 SQR at Exhibit S-3; see also Preliminary Decision Memorandum at Attachment 1.

⁸⁰ See Deacero's June 27, 2018 SQR at Exhibit S-7 and Exhibit S-8.

⁸¹ See Preliminary Decision Memorandum at 16.

⁸² See Deacero's June 27, 2018 SQR at Exhibit S-1.

⁸³ *Id.* at Exhibit S-6.

uses as subject merchandise.⁸⁴

- While Commerce concluded that customers find no meaningful differences between 4.4 mm wire rod and subject wire rod based on sales data showing that certain customers [],⁸⁵ Deacero argues that Commerce did not address sworn statements from customers attesting that they use 4.4 mm wire rod to produce certain products in commercial quantities that they were unable to using subject wire rod (e.g., []).⁸⁶
- Deacero argues that while 4.4 mm wire rod and subject wire rod are also used to produce some of the same end products, there are meaningful differences. For example, 4.4 mm wire rod allows producers to use [] wire rod to produce wire that is less tensile (i.e., it is less brittle) than subject wire rod.⁸⁷

Nucor's Rebuttal Arguments

- Nucor argues that contrary to Deacero's claims, there is no requirement that Commerce must consider substitution for specific products under this prong of the minor circumvention analysis.⁸⁸
- Nucor argues that both 4.4 mm wire rod and subject wire rod are sold to customers [] for use in products such as springs, nails, fasteners, clothes hangers, fencing materials, and construction mesh.⁸⁹
- Nucor notes that Commerce found that [] substituted 4.4 mm wire rod for [] mm wire rod within [] after Deacero began producing 4.4 mm wire rod, which indicates that customers find no meaningful difference between 4.4 mm wire rod and subject wire rod.⁹⁰
- Nucor argues that [] did not suddenly start producing all new products but rather switched from consuming one type of circumventing wire rod sold by Deacero for another.⁹¹
- Nucor argues that Commerce did not ignore customer affidavits on the record but in fact relied on such record evidence to conclude that Deacero's customers [].⁹²
- For example, Commerce cited a statement by [] indicating that []

⁸⁴ See Deacero Case Brief at 11 (citing to *Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990) (*Brass Sheet and Strip*)).

⁸⁵ *Id.* at 10-11 (citing to Preliminary Decision Memorandum at 17-18).

⁸⁶ *Id.* 11 (citing to Deacero's April 11, 2018 IQR at Exhibit 24).

⁸⁷ *Id.* (citing to Deacero's April 11, 2018 IQR at Exhibits 23 and 24).

⁸⁸ See Nucor Rebuttal Brief at 13.

⁸⁹ *Id.* at 12-13 (citing to Circumvention Ruling Request at Exhibit 2).

⁹⁰ *Id.* at 13.

⁹¹ *Id.*

⁹² *Id.*

].⁹³

- In fact, Deacero has not identified a product that can only be produced using 4.4 mm wire rod.⁹⁴

Commerce’s Position: We continue to find that, according to the record evidence, 4.4 mm wire rod and subject wire rod are not meaningfully different in terms of the use of the merchandise.⁹⁵ Subject wire rod is generally used for nails, coat hangers, mesh, fencing, tire bead, mechanical springs, strand and rope, as well as high-end specialty products such as cold-heading quality wire rod, welding quality wire rod, and tire cord quality wire rod.⁹⁶ The record demonstrates that Deacero’s customers in the United States purchase [

].⁹⁷

Additionally, there is evidence that [] substituted 4.4 mm wire rod for 4.75 mm wire rod within three years after Deacero began producing 4.4 mm wire rod, which indicates that consumers find that there are no meaningful differences between 4.4 mm and 4.75 mm wire rod.⁹⁸

In *Brass Sheet and Strip*, we found 667 series brass to not be a minor alteration of subject merchandise because it was used to manufacture products that are distinct from the types of products made with subject merchandise.⁹⁹ We also consulted with an impartial third party, the Copper Development Association, and found that it was “very unlikely” that 667 series brass would be substituted for subject merchandise.¹⁰⁰ As such, we find *Brass Sheet and Strip* to be inapposite to the facts of this case.

We disagree with Deacero that we did not consider the sworn statements of its customers when evaluating whether 4.4 mm is substitutable for subject wire rod, as is Commerce’s practice when evaluating the use of merchandise factor, and that we relied solely on assumptions based on the purchase patterns of Deacero’s customers to assess substitutability.¹⁰¹ We specifically analyzed and cited the sworn statements by Deacero’s customers in our *Preliminary Determination*, which we found to indicate that certain wire end products can be produced more efficiently or with superior physical characteristics, but did not indicate that certain products can only be produced using 4.4 mm wire rod and not subject wire rod.¹⁰² We find that the sworn statements of Deacero’s customers, [], do not indicate that use of 4.4 mm wire rod produces distinct products that cannot be produced using subject wire rod;

⁹³ *Id.* at 13-14 (citing to Deacero’s April 11, 2018 Initial Questionnaire Response at Exhibit 24).

⁹⁴ *Id.* at 14.

⁹⁵ See Preliminary Decision Memorandum at 17-18.

⁹⁶ See ITC Investigation at 11 and 24-25.

⁹⁷ See Preliminary Decision Memorandum at 17-18.

⁹⁸ *Id.* at 18.

⁹⁹ See *Brass Sheet and Strip*, 55 FR at 32657-58.

¹⁰⁰ *Id.*

¹⁰¹ See Deacero Case Brief at 10-11 (citing to *Brass Sheet and Strip*).

¹⁰² We concluded from the sworn statements of Deacero’s customers that “certain [] wire end products can be produced more efficiently using 4.4 mm wire rod because fewer passes and less heat is required to draw the wire rod down to a []. However, the same types of wire end products can be produced using subject wire rod, albeit with varying degrees of efficiency.” See Preliminary Decision Memorandum at 17-18 (internal footnote omitted).

rather, they use 4.4 mm wire rod instead of subject wire rod to achieve [

].¹⁰³ One of

Deacero's customers also stated that it can produce [] compared to using subject wire rod.¹⁰⁴ Therefore, based on record evidence, including the sworn statements from Deacero's customers, we find that Deacero and its customers have not provided evidence that end users in the United States manufacture products using 4.4 mm wire rod that they cannot otherwise produce using subject wire rod.

In addition to the evidence Deacero submitted regarding the substitutability of 4.4 mm wire rod and subject wire rod, we also considered Deacero's sales data, which we found to indicate that Deacero's customers [], and evidence from the ITC's 2014 Sunset Review indicating that 1.57 mm wire can be drawn using subject wire rod, which contradicts Deacero's claim that its customer [] can only produce 1.57 mm wire rod using 4.4 mm wire rod.¹⁰⁵ As a result, we find that the evidence on the record does not support the conclusion that there is limited or no substitutability between 4.4 mm wire rod and subject wire rod or that the end uses of 4.4 mm wire rod differ substantially from subject wire rod.

Comment 5: Fourth Prong of the Minor Alteration Analysis – Channels of Marketing

Deacero's Arguments

- Deacero argues that Commerce disregarded the fact that sales of 4.4 mm wire rod are made almost exclusively to [], whereas subject wire rod is sold to [].¹⁰⁶
- Deacero also argues that the channels of marketing have not been a dispositive factor in prior anti-circumvention inquiries; therefore, if Commerce continues to find the same channels of marketing, this factor alone should not lead to an affirmative finding.¹⁰⁷

Nucor's Rebuttal Arguments

- Commerce addressed Deacero's claim regarding the differences in channels of marketing between 4.4 mm wire rod and subject wire rod by noting that the ITC found that wire rod in the United States is "overwhelmingly sold direct to the end users," which is [].¹⁰⁸
- Record evidence indicates that Deacero also sells [] and that the company's [], which are the same methods Deacero uses to market subject wire rod.¹⁰⁹

¹⁰³ See Deacero's April 11, 2018 IQR at Exhibit 24 at 1-2 and 4.

¹⁰⁴ *Id.* at Exhibit 24 at 2.

¹⁰⁵ *Id.* (citing to Deacero's April 11, 2018 IQR at Exhibit 24 and ITC's 2014 Sunset Review at I-30).

¹⁰⁶ See Deacero Case Brief at 11-12 (citing to Deacero's April 6, 2018 IQR at 27).

¹⁰⁷ *Id.* (citing to *Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Steel Flat Products from Japan*, 68 FR 19499 (April 21, 2003) (*CRS from Japan*)).

¹⁰⁸ See Nucor Rebuttal Brief at 14.

¹⁰⁹ *Id.*

Commerce’s Position: We continue to find that record evidence indicates that Deacero sells subject wire rod through [] while Deacero sells [].¹¹⁰ Sales to end users is the most common sales channel for subject merchandise, according to the ITC, which found that wire rod in the United States is “overwhelmingly sold directly to the end users.”¹¹¹ In addition, Deacero made [] of 4.4 mm wire rod to a [].¹¹²

Information submitted by Deacero demonstrates that the company’s [], which is the same method in which Deacero markets its subject wire rod products.¹¹³ As a result, we continue to determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of channels of marketing. Contrary to Deacero’s argument, we have not treated channels of marketing as a dispositive factor. Rather, this affirmative final determination of circumvention is supported by our findings with respect to each prong of the anti-circumvention analysis for minor alterations.

Comment 6: Fifth Prong of the Minor Alteration Analysis – Cost of Modification

Deacero’s Arguments

- Deacero argues that Commerce’s comparison of the costs related to 4.4 mm wire rod to the total sales of 4.4 mm wire rod over a four-year period is inappropriate because the ratio would become lower the longer the period of sales.¹¹⁴
- Instead, Commerce should consider the absolute value of the cost of modification and research and development costs as it has done in other anti-circumvention cases.¹¹⁵ As such, even if the overhaul costs of the Saltillo mill are not included, the costs related to the development and production of 4.4 mm wire rod total \$[], which is a significant sum by any measure.¹¹⁶
- Deacero further argues that Commerce erred in declining to include the costs related to the development of [] billets because the fact that this size of billet may be used for other products does not change the fact that the input was critical to the development and production of 4.4 mm wire rod. When all such costs are included, the total costs related to 4.4 mm wire rod total \$[], which is a more significant sum.¹¹⁷

Nucor’s Rebuttal Arguments

- Nucor argues that Commerce’s practice, which has been upheld by the CAFC and is supported by the legislative history of the Act is to consider the cost of any modification relative to the total value of the imported products; therefore, Commerce appropriately

¹¹⁰ See Preliminary Decision Memorandum at 18-19; see also Deacero’s April 6, 2018 IQR at 27.

¹¹¹ See ITC Investigation at 11.

¹¹² See Deacero’s April 6, 2018 IQR at 27.

¹¹³ *Id.* at 25-26 and Exhibit 26.

¹¹⁴ *Id.* at 12.

¹¹⁵ *Id.* (citing to *CRS from Japan*).

¹¹⁶ *Id.* (citing to Deacero’s April 11, 2018 IQR at 15).

¹¹⁷ *Id.*

compared Deacero's cost to develop 4.4 mm wire rod to the value of exports of 4.4 mm wire rod to the U.S. over the four-year period during which that product entered the United States duty-free.¹¹⁸

- Nucor further argues that the cost of producing [] billets should not be included in the analysis because Deacero began producing this billet size several years before it began producing 4.4 mm wire rod, and the company has produced wire rod in diameters from [] mm using [] billets.¹¹⁹ However, if Commerce were to add the costs of developing [] billets to its analysis, Nucor notes that the cost of modification relative to the value of the imported product would still be less than [] percent.¹²⁰

Commerce's Position: To assess the cost of modification criterion, we compared all of Deacero's costs that were directly related to the development and production of 4.4 mm wire rod relative to the total sales of 4.4 mm wire rod.¹²¹ This methodology is consistent with the legislative history of the Act, in which Congress advised Commerce to consider "the cost of any modification relative to the *total value* of the imported product."¹²² Assessing the cost of modification relative to the total value of sales places the total cost into context and factors in the value and nature of the product. Deacero relies on a prior anti-circumvention determination in *CRS from Japan* to argue that Commerce should instead "consider the absolute value of cost of modification and research and development costs."¹²³ In considering the cost of modification criterion in *CRS from Japan*, Commerce stated the following: "Although the cost of adding boron was not 'in and of itself' significant, when taken into consideration with the research and development costs these companies expended to determine the benefits of adding boron to the {Continuous Annealing Process}, the overall cost was significant."¹²⁴ We disagree with Deacero that this language indicates Commerce determined the cost of modification was significant without considering the costs of modification relative to the total value of the imported product. Commerce simply stated that it considered research and development costs in addition to the cost of adding boron.

We disagree with Deacero that the costs related to the development of [] billets should be included in the cost of modification analysis. Record evidence indicates that Deacero first produced the [] size billet [] years before it began developing 4.4 mm wire rod.¹²⁵ Furthermore, [] billet is not used exclusively for producing 4.4 mm wire

¹¹⁸ See Nucor Rebuttal Brief at 14-15 (citing to Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987); *Brass Sheet and Strip from Germany*, 55 FR 32655, at 32665; and *Deacero S.A. de C. v. United States*, 817 F.3d at 1334).

¹¹⁹ *Id.* at 15.

¹²⁰ *Id.*

¹²¹ See Preliminary Decision Memorandum at 19-20.

¹²² See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) at 100.

¹²³ Deacero Case Brief at 12 (citing *Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Steel Flat Products from Japan*, 68 FR 19499, 19503 (Apr. 21, 2003), unchanged in *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan*, 68 FR 33676 (June 5, 2003) (*CRS from Japan*)).

¹²⁴ See *CRS from Japan*, 68 FR at 19503.

¹²⁵ Deacero developed the [] billet in []. See Deacero's April 6, 2018 IQR at 23; see also Deacero's

rod since Deacero produced [] metric tons of wire rod with diameters larger than 4.4 mm using [] size billet in 2017.¹²⁶ Accordingly, we find that the costs related to the development of [] billets are not directly related to the development and production of 4.4 mm wire rod and should not be included in our analysis under this criterion.

Comment 7: Whether Commerce is Improperly Expanding the Scope of the *Order* to Cover Wire Rod with a Diameter Less Than 4.4 mm to Prevent Future Circumvention of the *Order*

Deacero's Arguments

- Deacero argues that Commerce's decision to extend the minor alteration decision to wire rod less than 4.4 mm in diameter violates the language of section 781(c)(1)(D) of the Act, which refers to articles "altered in form or appearance" and thus applies only to merchandise that is currently in existence.¹²⁷
- Deacero claims that it does not produce or sell wire rod less than 4.4 mm in diameter, and that it knows of no other company in Mexico that produces such a product. Accordingly, Deacero argues that Commerce has no authority to conduct a minor alterations inquiry where no product exists, and that Commerce's statute and practice does not apply to hypothetical products.¹²⁸
- Deacero argues that Commerce's conclusion that the physical characteristics of wire rod with diameters less than 4.4 mm would be the same as subject wire rod is purely speculative since Commerce did not apply its five-factor analysis on an actual product.¹²⁹
- Deacero argues that Commerce's conclusion that there could be future circumvention of the *Order* is also speculative and is based on no actual analysis.¹³⁰
- Deacero further argues that it is not aware of any affirmative circumvention finding on a non-existent product and notes that Commerce has previously refused to issue any scope or circumvention analysis on a non-existent product.¹³¹
- Finally, Deacero asserts that *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (CTL Plate)*, which Commerce relied on in the *Preliminary Determination*, is not applicable because Commerce based its circumvention finding on analysis of an actual product and applied its finding to other producers in the exporting country.¹³²

Nucor's Rebuttal Arguments

- Nucor argues that record evidence indicates that [

April 11, 2018 IQR at 33. Deacero developed 4.4 mm wire rod in []. See Deacero's April 6, 2018 IQR at 10.

¹²⁶ See Deacero's June 27, 2018 SQR at 6 and Exhibit S-12.

¹²⁷ See Deacero Case Brief at 13.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 13-14 (citing to Commerce's Letter, "Glycine from the People's Republic of China: Rejection of Scope Ruling Request," dated January 12, 2018 ("Commerce's practice with respect to scope rulings is that, while the products need not have been imported, Commerce does not conduct hypothetical scope rulings.")).

¹³² *Id.* (citing to *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 76 Fed. Reg. 50996, 50997 (August 17, 2011))

] and that several wire rod orders cover wire rod under 4.4 mm in diameter, therefore it is not a “hypothetical” product.¹³³

- Nucor argues that the language in section 781(c) of the Act does not preclude Commerce from applying a circumvention ruling to wire rod less than 4.4 mm in diameter since the statute makes no reference to whether a product subject to a circumvention inquiry must be currently produced by the respondent, rather it states that “{i}n general, the class or kind of merchandise... shall include articles altered in form or appearance in minor respects....”¹³⁴
- The language of section 781(c) of the Act reflects Congress’ intent that Commerce “apply practical measures regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article” and that “aggressive implementation of {the circumvention statute} by {Commerce} can foreclose these practices.”¹³⁵
- Nucor argues that Commerce has determined that the act of “reducing the diameter of wire rod” is a minor alteration of subject merchandise given that it is the grade, not the diameter, that imparts the significant characteristics of wire rod; therefore, wire rod under 4.4 mm in diameter is within the same class or kind of merchandise subject to the *Order*.¹³⁶
- Nucor notes that the Courts have recognized that Commerce “has a certain amount of discretion to act in order to ‘prevent{ } the intentional evasion or circumvention’” of the Act, and accordingly, Commerce has generally applied its anti-circumvention rulings broadly when producers circumvent orders in the same general manner.¹³⁷
- For example, in *CTL Plate*, Commerce extended its affirmative circumvention determination to all producers/exporters of Chinese plate regardless if the company was currently producing boron-added plate; and Commerce’s circumvention ruling here is narrower because it applies only to one producer.¹³⁸
- Nucor argues that Commerce’s decision to apply its circumvention ruling to all of Deacero’s wire rod products less than 4.75 mm in diameter is based on past experience with Deacero in a prior anti-circumvention proceeding.¹³⁹
- Deacero failed to demonstrate that it is not capable of producing wire rod with a diameter less than 4.4 mm in diameter, and the company has not made any affirmative statements that it will not produce such wire rod in the future.¹⁴⁰

(*CTL Plate*)).

¹³³ See Nucor Rebuttal Brief at 3 and 16-17 (citing to Deacero Case Brief at 3; Deacero’s April 6, 2018 IQR at Exhibit 14 and Exhibit 28; and Deacero’s April 11, 2018 IQR at Exhibit 25).

¹³⁴ *Id.* at 17 (citing to section 781(c)(1) of the Act).

¹³⁵ *Id.* at 18 (citing to Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) at 101).

¹³⁶ *Id.* at 17 (citing to Preliminary Decision Memorandum at 14-16 and 21).

¹³⁷ *Id.* at 18 (citing to *Tung Mung Dev. Co. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff’d* 354 F.3d 1371 (Fed. Cir. 2004)).

¹³⁸ *Id.* at 18-19 (citing to *CTL Plate*).

¹³⁹ *Id.* at 19 (citing to Preliminary Decision Memorandum at 22-23).

¹⁴⁰ *Id.* (citing to Nucor’s Letter, “Carbon and Certain Alloy Steel Wire Rod from Mexico: Additional Comments on Deacero’s 3rd Supplemental Circumvention Questionnaire Response,” dated September 11, 2018 (Nucor’s September 11, 2018 Comments) at 1-4; Deacero’s August 27, 2018 Supplemental Questionnaire Response (Deacero’s August 27, 2018 SQR) at Exhibit 1.

- Finally, record evidence demonstrates that Deacero already [

].¹⁴¹

Commerce’s Position: We continue to find that extending the minor alteration circumvention finding to wire rod with diameters less than 4.4 mm produced and/or exported by Deacero is permitted by the statute, supported by the legislative history of the statute, and is necessary to prevent future circumvention of the *Order*.¹⁴²

As we explained in the *Preliminary Determination*, Congress enacted section 781 of the Act to combat certain forms of circumvention of antidumping and countervailing duty orders. When Congress passed the Omnibus and Trade Competitiveness Act of 1988, it explained that “{a}n order on an article presumptively includes articles altered in minor respects in form or appearance....”¹⁴³ The legislative history explains that the purpose of the circumvention statute “is to authorize the Commerce Department to apply antidumping and countervailing duty orders in such a way as to prevent circumvention and diversion of U.S. law.”¹⁴⁴ Further, it indicates that Congress was concerned with the existence of “loopholes,” *i.e.*, foreign companies evading orders by making slight changes in their method of production, because such scenarios “seriously undermine the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purposes for which these laws were enacted.”¹⁴⁵ Congress also recognized that “aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.”¹⁴⁶ When implementing the Uruguay Round Agreements Act in 1994, Congress expressed similar concerns with scenarios limiting the effectiveness of the antidumping duty law (*i.e.*, completion or assembly in a country other than the subject country).¹⁴⁷ Accordingly, Commerce “has been vested with authority to administer the antidumping laws in accordance with the legislative intent” and, thus, “has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.”¹⁴⁸

In the instant minor alteration circumvention proceeding and in the *4.75 mm Final Circumvention Determination*, we found that the physical characteristics of wire rod (*e.g.*, tensile strength and ductility) are determined by the grade of steel rather than the diameter. As such, we find that *all* wire rod with diameters less than 4.75 mm is indistinguishable from wire rod covered by the scope of the *Order* in any meaningful sense in terms of overall physical

¹⁴¹ *Id.* at 19-20 (citing to Deacero’s August 27, 2018 SQR at Exhibit 1 and Nucor’s September 11, 2018 Comments at 1-4).

¹⁴² See Preliminary Decision Memorandum at 21-23.

¹⁴³ See H.R. Rep. No. 100-576 at 600 (1988) (Conference Report accompanying the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)).

¹⁴⁴ See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316 (1994), at 892-95.

¹⁴⁸ See *Tung Mung Dev. Co. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002) (quoting *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988)), *aff’d* 354 F.3d 1371 (Fed. Cir. 2004).

characteristics. The history of this proceeding demonstrates that Deacero has repeatedly sought to circumvent the *Order* by making marginal changes to the diameter of its wire rod. In the *4.75 mm Final Circumvention Determination*, we determined that wire rod with actual diameters between 4.75 mm and 5.00 mm produced and/or exported by Deacero was circumventing the *Order*. Record information indicates that following the 4.75 mm minor alteration circumvention inquiry, Deacero required only three months and minimal investment to reconfigure its rolling mill and begin producing 4.4 mm wire rod. In this inquiry, we determine that wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm produced and/or exported by Deacero is circumventing the *Order*. Additionally, the company has not provided conclusive evidence that it is incapable of producing wire rod with a diameter less than 4.4 mm in the future. Congress intended for section 781 of the Act to allow Commerce to “apply practical measurements regarding minor alterations... even where such alterations to an article technically transform it into a differently designated article.”¹⁴⁹ Based on the record of this inquiry and our previous circumvention determination, we have reason to believe that Deacero could again circumvent the *Order* through minor alterations to the diameter of the wire rod it produces. Thus, based on the physical characteristics of wire rod and the history of this proceeding, we find it necessary to exercise our discretion under the circumvention statute and extend our affirmative circumvention finding to wire rod with diameters less than 4.4 mm produced and/or exported by Deacero to ensure that the *Order* provides effective relief to the domestic industry.

Congress enacted section 781(c) of the Act to provide Commerce with the authority to foreclose a company’s ability to avoid antidumping duties by advantageously modifying their manufacturing process to produce merchandise altered in minor respects in form or appearance from that which is covered by the literal terms of the order. U.S. courts have determined that Commerce has discretion under the circumvention statute to act with the purpose of preventing evasion or circumvention of orders. We have exercised this discretion in past cases. For instance, in *CTL Plate*, we determined that an individual producer was circumventing the order by producing plate with minor alterations to boron content and applied this determination to all imports from China, regardless of the exporter or importer, because circumvention through use of boron involved multiple parties. Additionally, in recent circumvention inquiries we have implemented certification programs that require exporters and importers to maintain certifications of the country of origin for the merchandise. Our actions in each case were tailored to prevent the evasion or circumvention occurring in those proceedings. In this case, we find it necessary to exercise our discretion under the circumvention statute to prevent repeated circumvention by Deacero in the same manner by finding all wire rod under 4.75 mm in diameter, including wire rod with a diameter less than 4.4 mm, produced and/or exported by Deacero to be merchandise altered in minor respects and within the class or kind of merchandise subject to the *Order*.

¹⁴⁹ See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) at 100.

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of this anti-circumvention inquiry in the *Federal Register*.

Agree

Disagree

3/6/2019

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

EXHIBIT 20

DECLARATION OF MICHAEL SKOWRONEK

I, Michael Skowronek, declare and state:

1. My name is Michael Skowronek, and I am the Vice President Sales and Marketing at Charter Steel.
2. Charter Steel produces wire rod at our plants in Saukville, Wisconsin, Cuyahoga Heights, Ohio, and Fostoria, Ohio. The smallest diameter rod offered to the market by Charter Steel is 5.5563 mm. Charter Steel does not offer or produce wire rod with a diameter below 5.0 mm. Charter experimented with smaller diameter wire rod in the early 1990s but did not produce it at the time of the original investigation and has not produced it since the mid-1990s.
3. The U.S. wire rod industry has been battered by imports of unfairly-traded wire rod from various countries for years. The United States is one of the largest, most open, and most attractive markets in the world. At the same time, the domestic wire rod industry is particularly vulnerable to imports because wire rod customers are very price sensitive, and the market pricing is quite transparent. Because wire rod is a fungible product, our customers make their purchasing decisions based on price. It only takes one import source to offer lower prices to start prices moving downward, or to keep us from being able to increase prices.
4. Time and time again, opportunistic foreign producers and importers have taken advantage of this price-sensitive U.S. market by flooding it with low-priced wire rod imports, eating away at our market share and driving down prices to unsustainable levels. First, there was a surge of unfairly-traded imports from the five subject countries. Then, a surge in low-priced wire rod imports from China.
5. After China dropped out of the U.S. market in 2015 due to the trade orders, Charter believed there was cause for optimism. With the promise of a level playing field within the domestic market, Charter began making investments in its facilities to expand its wire rod capacity. Specifically, we expanded processing capacity at our Fostoria, Ohio plant through the addition of four new annealing furnaces and a pickling line. We also added melting capacity at our Cuyahoga Heights, Ohio plant by adding a tundish crane and mold shop. We believed these investments would help us become more efficient and competitive in the global market.
6. Unfortunately, we were never able to take advantage of these investments. As soon as imports from China began to decline, unfairly-traded imports from ten new countries – Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom – began to surge into the United States at volumes that exceeded the Chinese imports. The result of these back-to-back import surges has been that our expanded plant capacity in Ohio has been sitting idle since the time it was completed.

PUBLIC CERTIFICATE OF SERVICE

**CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM BRAZIL, INDONESIA,
MEXICO, MOLDOVA, AND TRINIDAD AND TOBAGO**

USITC Investigation Nos. 701-TA-417 and 731-TA-953, 957-959, and 961 (Third Review)

I hereby certify that on June 26, 2020, copies of the foregoing public submission were served upon the following by email:

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