



A-201-830  
Circumvention Inquiry  
**Public Version**  
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**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.<sup>1</sup> 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.<sup>2</sup> 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.

<sup>1</sup> The Department refers to the Coalition and Nucor collectively as petitioners.

<sup>2</sup> 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, 100<sup>th</sup> Cong., 1<sup>st</sup> 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, 100<sup>th</sup> Cong., 1<sup>st</sup> 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.<sup>7</sup>

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.<sup>3</sup> 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

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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 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 19mm 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.

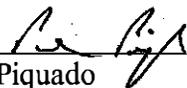
We further find that our affirmative final determination applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

### 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.<sup>5</sup>

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

24 SEPTEMBER 2012  
\_\_\_\_\_  
Date

<sup>5</sup> 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.