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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Carbon and Certain
Alloy Steel Wire Rod; 2010 – 2011

Summary

We have analyzed the case briefs and rebuttal briefs filed by interested parties. As a result of this analysis, we have revised respondent's margin calculation. We recommend that you approve the positions provided below in the "Discussion of Comments" section of this Issues and Decision Memorandum.

Background

On November 8, 2012, the Department published in the *Federal Register* the preliminary results of the antidumping duty (AD) administrative review of carbon and certain alloy steel wire rod (wire rod) from Mexico.¹ We invited interested parties to comment on our *Preliminary Results*. On December 10, 2012, the Department received case briefs from Deacero S.A. de C.V. and Deacero USA, Inc. (collectively, Deacero) and Nucor Corporation (Nucor). On December 17, 2012, we received rebuttal briefs from ArcelorMittal USA LLC and Gerdau Ameristeel US Inc. (collectively, ArcelorMittal), Nucor, and Deacero.

List of Comments

Comment 1: Universe of Sales for Assessment Rate and Cash Deposit Rate
Comment 2: Universe of Sales - Entry Date vs. Sale Date

¹ See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011*, 77 FR 66954 (November 8, 2012) (*Preliminary Results*), and accompanying "Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico - Decision Memorandum for Preliminary Results," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated November 1, 2012 (Prelim Decision Memorandum).



Comment 3: Establishing *De Minimis* Guidelines for “Sufficient Sales” or “Meaningful Difference”

Comment 4: Whether to Automatically Apply the Average-to-Transaction Methodology to the Final Results

Comment 5: Whether Nucor’s Argument in Case Briefs Qualifies as New Information

Comment 6: Whether the Department Erred in Calculating Inventory Carrying Cost

Discussion of Comments

Comment 1: Universe of Sales for Assessment Rate and Cash Deposit Rate

Deacero’s Arguments

- In contrast to the assessment rate, which is the actual dumping rate that applies to entries during the period of review (POR), the deposit rate is an estimate of future dumping behavior. Therefore, the Department should use all U.S. sales to calculate the deposit rate, because a full-year’s worth of sales is more representative than only four months of sales.²
- The general rule that entries predating the suspension of liquidation are non-subject merchandise should not restrict the universe of sales the Department uses to calculate the deposit rate.³ In less than fair value investigations, the Department calculates a deposit rate based on a full year’s worth of U.S. sales, all of which predate the suspension of liquidation.

Nucor’s Rebuttal

- Deacero’s argument of using all reported sales for the POR to establish the deposit rate is unsupported by precedent. The Department’s policy is to employ a single universe of subject merchandise sales in the margin program for purposes of calculating a deposit rate and for establishing per-unit or *ad valorem* assessment instructions. The Department should not make any changes to the universe of sales used for the final results.

² On October 1, 2012, the Department published its final affirmative determination of circumvention of the antidumping duty order. See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892, 59893 (October 1, 2012) (*Circumvention Final Determination*), and accompanying Issues and Decision Memorandum (Circumvention Decision Memorandum). The Department found Deacero’s shipments of actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States to constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico. As a result, we ordered suspension of liquidation effective June 8, 2011, the date the circumvention inquiry was initiated. In our *Preliminary Results*, we calculated the assessment and cash deposit rate based on U.S. sales or entries made on or after June 8, 2011, through September 30, 2011.

³ See *Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 65 FR 75670 (December 4, 2000).

ArcelorMittal's Rebuttal

- The Department properly excluded sales of non-subject merchandise from its calculation of the duty assessment and cash deposit rates. The *Preamble* to the Department's regulations state, "sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department."⁴ The case cited in Deacero's case brief actually reiterates the Department's long-standing practice of excluding sales of merchandise that entered prior to the suspension of liquidation from its analysis and that such sales of non-subject merchandise "are not an appropriate basis" for establishing the cash deposit rate "on future entries of subject merchandise."⁵
- Deacero's argument that the Department relies on sales that pre-date the suspension of liquidation to set the deposit rate in investigations, when no assessments are made and when an order may or may not be entered, is irrelevant to this administrative review. The Department's analysis of Deacero's sales pertains to an administrative review under an existing AD order. The Department has pre-existing deposit rates for merchandise subject to the AD order and liquidation has previously been suspended for all merchandise subject to that order. Deacero made "no duty deposits on its pre-June 8, 2011 entries, and cannot now argue that it should benefit from its own scheme to end-run the AD order."⁶
- Deacero failed to provide any record evidence to support its claim that "a year's worth of sales is more representative than only four months of sales."⁷ Further, the Department often conducts administrative reviews (including new shipper reviews) that involve only a few sales occurring over days or just weeks in the review period, and there is no requirement that the Department adopt a year-long period to demonstrate that its analysis is "representative."
- Respondents often provide additional, unsolicited data in the hopes that the Department might rely on that data. Even where the additional data are requested by the Department, but not used in the final decision, the Department is acting within its discretion.

Department's Position: Section 751(a)(2)(A)(i) of the Tariff Act of 1930, as amended (the Act) states that in an administrative review the administering authority will determine, "the normal value and export price (or constructed export price) of each entry of the subject merchandise." In this particular case, the Department did not definitively find Deacero's shipments of wire rod with actual diameters of 4.75 mm to 5.00 mm to be subject merchandise until the issuance of the *Circumvention Final Determination* in which the Department ordered the suspension of liquidation effective June 8, 2011, the date the circumvention inquiry was initiated.⁸ Therefore,

⁴ See *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27296, 27314 (May 19, 1997) (*Preamble*).

⁵ See *Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, 18611, 18612 (April 10, 2001) (*Stainless Steel Plate in Coils From Taiwan*).

⁶ See ArcelorMittal's December 17, 2012, rebuttal brief at 5.

⁷ See *Id.*

⁸ See *Circumvention Final Determination* and *Circumvention Decision Memorandum*.

sales or entries of Deacero's wire rod with an actual diameter of 4.75 mm to 5.00 mm prior to June 8, 2011, were not subject to the AD order. Because including non-subject merchandise in the Department's calculation is counter to the guidelines laid out by the statute, the Department will continue to base the assessment rate and cash deposit rate for Channel 1 sales on merchandise entered on June 8, 2011, through September 30, 2011; and for Channel 2 sales on sale date from June 8, 2011, through September 30, 2011.⁹

Comment 2: Universe of Sales - Entry Date vs. Sale Date

Deacero's Arguments

- If the Department continues to limit the universe of U.S. sales used in the deposit rate calculation, then it should adhere to its practice of using entry date to establish the universe of sales when sales can be linked to entries. In the *Preliminary Results*, the Department mistakenly asserted that Deacero was unable to link Channel 2 (sold from U.S. inventory) sales back to entries, and based the date of sale for all Channel 2 sales on invoice date.¹⁰ The Department should revise the SAS program and base the date of sale on entry date for those sales which Deacero was able to provide a link back to specific entries. For Channel 2 sales in which Deacero was unable to link to specific entries, the Department should base the date of sale on the invoice date.

Nucor's Rebuttal

- The Department's practice is best explained through an examination of its standard AD questionnaire, which instructs respondents to report an entry- or shipment-based universe for EP sales, an entry-based universe for CEP sales made before importation,¹¹ and a sale date-based universe for CEP sales made after importation. This corresponds to the three bases outlined in 19 CFR 351.213(e)(1)(i). The Department determines the universe of sales based first on the sale type (EP/CEP) and if the sales were CEP, whether the CEP sales are made before or after importation. Under the Department's standard practice, the universe of sales for Deacero's Channel 1 sales are those that entered on or after June 8, 2011, while the universe of sales for Channel 2 sales are those with a date of sale on or after June 8, 2011.
- With regards to the universe of sales, the Department's *Preliminary Results* are correct; however, the Department's citation of *Pipes and Tubes from India* as a basis for filtering

⁹ Deacero reported two types of CEP sales made during the POR. Specifically, direct shipments from Mexico that were invoiced by Deacero USA (Channel 1) and Deacero USA shipments from inventory maintained in the United States (Channel 2).

¹⁰ See Prelim Decision Memorandum at 4.

¹¹ See *Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 30710, 30711 (June 5, 1998) and *Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review*, 67 FR 57570, 57571 (September 11, 2002).

Deacero's Channel 2 sales based on sale date may be confusing.¹² The sales at issue, in that case, were EP sales and the Department was deciding between using shipment date or entry date as the filter. Nucor suggests the Department retain the current filters, but clarify its reasoning for the final results.

ArcelorMittal's Rebuttal

- The Department should reject Deacero's suggested programming changes and should continue to rely on Deacero's reported dates of sale for the Channel 2 sales for several reasons. The dates of sale Deacero reported for its Channel 2 sales are more reliable because they purportedly reflect the actual date Deacero shipped the subject merchandise from its U.S. warehouse. In contrast, the entry dates are based on estimates made by Deacero.
- Deacero's suggested programming formula will result in inconsistent treatment of various Channel 2 sales. In contrast, the Department's decision to rely on the reported date of sale provides a consistent basis for determining whether sales should be included in the Department's analysis.
- The record demonstrates the estimated entry dates and entry numbers reported by Deacero are not reliable. Deacero reported estimated entry dates for all of its Channel 1 sales, but failed to report entry numbers for certain of those sales. These omissions demonstrate that Deacero's alleged tracing of its sales to individual entries is inconsistent and unreliable.

Department's Position: Deacero reported two types of CEP sales made during the POR. Specifically, direct shipments from Mexico that were invoiced by Deacero USA (Channel 1) and Deacero USA shipments from inventory maintained in the United States (Channel 2). When defining the universe of sales in the *Preliminary Results*, we used the entry date for Channel 1 sales and sale date for Channel 2 sales, explaining that for Channel 2 sales Deacero was unable to link the sale back to the actual entry.

The Department continues to use the sale date to define the universe of Deacero's Channel 2 CEP sales. The approach taken in the *Preliminary Results* is consistent with the Department's normal practice for defining the universe of CEP sales that are made after importation.¹³ Specifically, in the Department's standard Antidumping Questionnaire, for CEP sales made after importation (like the Channel 2 sales at issue here), we instruct parties to report each transaction that has a date of sale within the POR.¹⁴ While there are some rare exceptions to the normal practice for defining the universe of CEP sales that are made after importation, any exception to

¹² See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (*Pipes and Tubes from India*).

¹³ See, e.g., *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁴ See p. C-2 of the Department's antidumping duty questionnaire issued to Deacero on December 8, 2012.

that practice, permitting the use of entry date to define the universe of such sales, would require, at the very least, that all CEP sales made after importation be tied to specific entries.¹⁵ We note that in the *Preliminary Results*, the Department was not mistaken in asserting that Deacero was unable to link all Channel 2 sales to actual entry dates. In fact, Deacero concedes that it was unable to provide such information.¹⁶

We also find ArcelorMittal's assertion that Deacero reported estimated entry dates for all Channel 1 sales to be incorrect. We have examined the information and found that Deacero was able to provide actual entry dates for a majority of its Channel 1 sales. For Channel 1 sales with estimated entry dates, Deacero calculated the average number of days between shipment dates from Mexico and U.S. entry dates, using Deacero's actual entry dates as a proxy.¹⁷ Deacero then added the average number of days to the shipment date to report an estimate for entry dates that were missing. We find that the methodology Deacero used to report estimated entry dates for Channel 1 sales in this case reasonably approximates the date the merchandise was shipped from Deacero's factory in Mexico and entered for consumption in the United States.

Comment 3: Establishing *De Minimis* Guidelines for “Sufficient Sales” or “Meaningful Difference”

Nucor's Argument

- In the context of its targeted dumping test, the Department should establish a “bright line” for determining the significance of masking with respect to differences in the absolute margin, as well as the relative margin. The Department should borrow from established thresholds in its evaluation of masking in administrative reviews. Currently, the Department relies upon a *de minimis* margin standard of 0.50 percent for administrative reviews as a threshold of absolute margin levels. In reviews, a more precise measure is needed in order to accurately assess suspended entries. The absolute difference, *i.e.*, 0.62 percent, exceeds the *de minimis* administrative review margin standard, thus the Department would be justified in using the alternative methodology in its final results.
- In the alternative, the Department should adopt a five percent threshold in the relative change of the margin for purposes of determining whether targeted dumping has been masked thereby requiring the use of the alternative methodology. The Department has relied upon the five percent threshold with respect to another aspect of targeted dumping, *i.e.*, the percentage of sales passing the price gap test.¹⁸ Moreover, the Court of International Trade (CIT) has upheld the five percent threshold as an established and

¹⁵ *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

¹⁶ See Deacero's February 7, 2012, initial questionnaire response at C-34 and C-35.

¹⁷ See *Id.*

¹⁸ See *High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum at Comment 4.

general measure of significance in AD proceedings.¹⁹ Further, in *Mid Continent Nail II*, the CIT noted “[i]n other AD contexts, and for a long period of time five percent tests have been used to measure significance for AD purposes.”²⁰

Deacero’s Rebuttal

- Deacero contends that Nucor’s argument is unpersuasive because the A-A method already accounts for the alleged targeted dumping. To comply with section 777A(d)(1)(B)(ii) of the Act, the Department must not simply compare the margins resulting from the A-A method and the A-T method (with zeroing). Such a comparison is inherently distortive, because any margin difference could result from zeroing, a practice that was found to be WTO inconsistent, rather than from a failure to unmask targeted dumping. The Department should compare the extended margin (EMARGIN) for the allegedly targeted sales (*i.e.*, the sales passing the two-step *Nails* test) under the A-A and A-T methods.²¹ The Department could assess how much of the additional EMARGIN generated using the A-T method (with zeroing) can be attributed to the alleged targeted dumping, and avoid falsely attributing the effects of zeroing to targeted dumping.
- Comparing the EMARGIN between the two methodologies indicates that the A-A method already accounts for the EMARGIN generated for the allegedly targeted sales under the A-T method. Deacero argues the same holds true if the Department uses all U.S. sales in the POR to calculate Deacero’s weighted-average dumping margin. In addition, the percentage point increase in the margin attributable to the allegedly targeted sales is less than the 0.50 percentage point threshold requested by Nucor.

Department’s Position: In recent AD investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the *Nails* test²² for each respondent subject to an allegation to determine whether a pattern of export prices

¹⁹ See *Mid Continent Nail Corp. v. United States*, No. 08-00225, Slip Op. 2010-48 (CIT May 4, 2010) (*Mid Continent Nail II*). In *Mid Continent Nail II*, the CIT cited *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Nails from the PRC*), and accompanying Issues and Decision Memorandum at page 22, in reference to the Department’s price gap test analysis. The Department stated it considered a five percent {price gap} difference as significant, when used in combination with the thirty-three percent threshold, under {section 777A(d)(1)(B)(i) of the Act and 19 CFR 351.414(f)(1)(i)}. The CIT upheld the Department’s methodology and stated, “...plaintiff has done nothing to attempt to establish that on this record the five percent requirement is unreasonably high. The various aspects of the nails test do not violate the statutory language of {section 777A(d)(1)(B)(i)} and are applied reasonably based on this record.”

²⁰ *Id.* (citing section 773(a)(1)(B)(ii)(II) of the Act (1994) (using five percent test to determine home market viability); section 773(a)(1)(C) of the Act (1994) (using five percent test to determine third-country market viability); 19 CFR 351.403(d) (1998) (using five percent test to determine whether to “calculate normal value based on the sale by an affiliated party”).

²¹ See *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008); *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*UAE Nails*) (collectively, *Nails*), as modified in more recent investigations, *e.g.*, *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*).

²² See *Nails and Wood Flooring*; see also *Mid Continent Nail Corp. v. United States*, No. 08-224, Slip Op. 2010-47

or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market.²³ The *Nails* test involves a two-step process, as described below, that determines whether the Department should consider whether the A-A method is appropriate in a particular situation. In the first stage of the test, the “standard-deviation test,” we determine the share of the alleged targeted group’s (*i.e.*, purchaser, region or time period) sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculate the standard deviation on a product specific basis (*i.e.*, by CONNUM) using the weighted-average prices for the alleged target groups and the groups not alleged to have been targeted. If that share does not exceed 33 percent, then we do not conduct the second stage of the *Nails* test. If that share exceeds 33 percent, on the other hand, then we proceed to the second stage of the *Nails* test.

In the second stage, we examine all sales of identical merchandise (*i.e.*, by CONNUM) to the alleged targeted group which passes the standard-deviation test. From those sales, we determine the total volume of sales for which the difference between the weighted-average price of sales for the alleged group and the next higher weighted-average price of sales for a non-targeted group exceeds the average price gap (weighted by sales volume) between the non-targeted groups. We weight each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that define the price gap. In doing this analysis, the allegedly targeted group’s sales are not included in the non-targeted groups; the alleged targeted group’s average price is compared only to the weighted-average prices for the non-targeted groups. If the share of the sales that met this test exceeds five percent of the total sales volume of subject merchandise during the alleged targeted group, then we determine that targeting occurred and these sales pass the *Nails* test.

As explained in the *Preliminary Results*, we ran the *Nails* test and determined that a sufficient volume of U.S. sales passed the *Nails* test. The Department then considered whether the A-A method could take into account the observed price differences.²⁴ To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the A-T method. If there had been a meaningful difference between the results of the A-A method and the A-T method, the A-A method would not be able to take into account the observed price differences, and the A-T method would be used to calculate the weighted-average margin of dumping for the respondent in question. Since there was not a meaningful difference in the results, the A-A method is able to take into account the observed price differences and the A-A method has been used to calculate the weighted-average dumping margin for the respondent in question.

(CIT May 4, 2010)(*Mid Continent Nail I*) and *Mid Continent Nail II*.

²³ See, e.g., *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010), and accompanying Issue and Decision Memorandum at Comment 1; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Press From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010), and accompanying Issue and Decision Memorandum at Comment 3; *Ball Bearings and Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012), and accompanying Issue and Decision Memorandum at Comment 1.

²⁴ See Prelim Decision Memorandum at 6.

We disagree with Nucor’s assertion that the Department should apply a *de minimis* threshold, and, therefore, we have not specified a *de minimis* threshold in these final results. In the *Final Modification for Reviews*, the Department stated that it “will determine, on a case-by-case basis, whether it is appropriate to use an alternative comparison methodology by examining the same criteria the Department examines in original investigations pursuant to sections 777A(d)(1)(A) and (B) of the Act, where no *de minimis* standard is applied.”²⁵ As stated in *Wood Flooring*, “the only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision.”²⁶ Further, 19 CFR 351.414(c)(1) states that the Department will use the A-A method in administrative reviews “unless the Secretary determines another method is appropriate in a particular case.” The Department has previously rejected attempts to impose a *de minimis* standard when evaluating the results of the *Nails* test.²⁷ Instead, the Department examines the results of the *Nails* test as described above and determines, on a case-by-case basis, whether the volume of sales found to be targeted are sufficient to justify a finding that the pattern requirement has been satisfied and whether the A-A method can take into account the observed price differences. Accordingly, the Department has not specified a *de minimis* threshold.

Comment 4: Whether to Automatically Apply the Average-to-Transaction Methodology to the Final Results

Nucor’s Arguments

- In the *Preliminary Results*, the Department did not consider the difference between the margins, *i.e.*, masking, utilized by the standard methodology and the alternative methodology, to be significant enough to warrant a change to the alternative methodology. However, whenever the Department finds targeted dumping in a review, the change to the alternative methodology should be automatic without consideration of the difference between the margins of each methodology. An automatic switch to the alternative methodology when the Department finds targeted dumping complies with the Department’s mandate “to determine the dumping margins as accurately as possible.”²⁸
- Without the automatic switch to the alternative methodology, respondents will continually be able to target dumped goods in desired markets, yet avoid the full assessment of duties because the margins resulting from these sales would be essentially

²⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

²⁶ See *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 4.

²⁷ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013)(*Korea CORE Final Results*), and accompanying Issue and Decision Memorandum (Korea CORE Final IDM) at Comment 1; *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 78 FR 9884 (February 12, 2013)(*Netherlands CMC Final Results*), and accompanying Issues and Decision Memorandum (Netherlands CMC Final IDM) at Comment 1.

²⁸ See *Viraj Group Ltd. v. United States*, 25 CIT 1017, 1022, 162 F. Supp. 2d 656, 662-3 (2001); *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1208 (Federal Circuit 1995); *Allied Tube & Conduit Corp. v. United States*, 24 CIT 1357, 1369, 127 F. Supp. 2d 207, 218 (2000).

eliminated by the standard methodology. Therefore, the Department should apply the alternative methodology to the final results of this administrative review.

Deacero's Rebuttal

- The Department modified its standard methodology for calculating weight-average dumping margins and assessment rates in administrative reviews.²⁹ In announcing the new practice, the Department made clear that alternative comparison methodologies are the exception and would be used in reviews only under limited circumstances. The Department announced that it would consider whether it is appropriate to use the A-T method by “examining the same criteria that the Department examines in original investigations pursuant to section 777(d)(1)(A) and (B) of the Act.”³⁰ By itself, a finding of a pattern of significant price differences is insufficient under section 777A(d)(1)(B)(i) of the Act to warrant use of the A-T method. Under section 777A(d)(1)(B)(ii), the Department is required to explain why the pattern of significant price differences cannot be taken into account using either an A-A or a transaction-to-transaction (T-T) method before it can invoke the exception and use an A-T method.³¹ Nucor’s argument of automatically resorting to the A-T method should be rejected because it fails the statutory requirement to confirm that the A-A methodology does not already account for the alleged targeted dumping before invoking the exception and using the A-T method.
- Nucor’s argument that the Department should find the A-A method fails to unmask the alleged targeted dumping if the margin calculated using the A-T method (with zeroing) exceeds the A-A margin by either 0.50 percentage points or five percent is flawed because it is unlawful for the Department to interpret the statute as prohibiting zeroing under the A-A method while permitting zeroing under the A-T method.
- The Department’s interpretation of “dumping margin” under section 771(35)(A) of the Act is inconsistent under the A-A and A-T methodology. When using the A-A method, the Department interprets section 771(35)(A) of the Act to mean that a dumping margin exists whether or not normal value is greater than the export price (or constructed export price), and thus grants offsets for comparisons that generate negative margins (*i.e.*, where the export price exceeds normal value). In contrast, when using the A-T method, the Department interprets section 771(35)(A) of the Act to mean that a dumping margin exists only when normal value exceeds the export price (or constructed export price), and thus “zeros” the negative margins resulting from non-dumped comparisons. There is no reasonable justification for interpreting the statute differently in these two contexts, thus the Department’s use of zeroing under the A-T method is unlawful.³² There is no difference between Deacero’s margin calculated under the A-A method or the A-T method (without zeroing). The Department should continue to use the preferred A-A method to calculate Deacero’s margin for the final results.

²⁹ See *Final Modification for Reviews*.

³⁰ See *Final Modification for Reviews* at 8104.

³¹ 19 U.S.C. § 1677f-1(d)(1)(B)(ii).

³² See *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1371-73 (Federal Circuit 2011); *JTEKT Corp. v. United States*, 642 F.3d 1378, 1384-85 (Federal Circuit 2011).

- The Department should adopt the A-A method to comply with the WTO dispute settlement findings that the use of zeroing in reviews is inconsistent with the U.S.’s WTO obligations.

Department’s Position: Similar to the Department’s position in Comment 3, as described above, the Department will determine on a case-by-case basis, whether it is appropriate to use an alternative comparison methodology. Thus, we reject Nucor’s argument to automatically switch to the A-T method when we find targeted dumping.

Following the guidance provided by section 777A(d)(1)(B)(ii) of the Act, the Department has established a practice to evaluate the difference between the results of the A-A method and A-T method and determines which method can take into account the observed price differences.³³ Since the *Preliminary Results*, parties have not provided evidence on the record, to disprove that the Department’s finding that the pattern of price differences can be taken into account using the A-A methodology. Accordingly, the Department will not automatically apply the A-T method when the Department finds targeted dumping and finds that the A-A method takes into account the observed price differences.

Additionally, we reject Deacero’s assertion that the Department is prohibited from denying offsets in its dumping margin analysis by its international obligations. The *Final Modification for Reviews* was implemented by the Executive Branch, pursuant to section 123 of the Uruguay Round Agreements Act (URAA), to change the Department’s practice related to zeroing in administrative reviews in order to make it consistent with certain WTO panel and appellate body determinations. Neither the *Final Modification for Reviews*, nor the WTO panel and appellate body determinations involved the use of an alternative comparison methodology. Furthermore, no WTO panel or appellate body determination has addressed the use of an alternative comparison methodology pursuant to section 777A(d)(1)(B) or article 2.4.2 of the Antidumping Agreement.

Moreover, with respect to WTO reports finding the denial of offsets by the United States to be inconsistent with the WTO AD Agreement, the Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law, “unless and until such {a report} has been adopted pursuant to the specified statutory scheme” established in the URAA.³⁴ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department’s discretion in applying the statute.³⁵ Furthermore, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.³⁶ Accordingly, the Department continues to find that a pattern of prices for comparable merchandise that differs significantly amongst regions does exist, and has considered whether the A-A method can account for the observed price differences. Further, in this segment of the proceeding the

³³ See Korea CORE Final IDM at Comment 1 and Netherlands CMC Final IDM at Comment 1.

³⁴ See *Corus Staal B V v. Dep ’t of Commerce*, 395 F.3d 1343, 1347- 1349 (CAFC 2005); *Corus Staal B V v. United States*, 502 F.3d 1370, 1375 (CAFC 2007); *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (CAFC 2007).

³⁵ See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).

³⁶ See 19 U.S.C. 3533(g).

Department continues to find that there is not a meaningful difference between the weighted-average dumping margins calculated using the A-A and A-T methods and, thus, the A-A method can account for the observed significant price differences. As a result, the Department has used the A-A method to calculate the weighted-average margin of dumping for Deacero in these final results.

Comment 5: Whether Nucor’s Argument in Case Briefs Qualifies as New Information

Nucor’s Argument

- The Department attempted to conduct an analysis for two targeted dumping allegations – one by customer and the other by region. However, due to errors the targeted dumping program was not able to capture the correct data. The Department should revise the SAS program in order to correct the clerical errors.
- With respect to the targeted dumping allegation by region, the Department preliminarily filtered by region and found one region passes the targeted dumping analysis. Nucor notes that if Department adds an additional filter, it will find that another region passes the targeted dumping analysis. The Department should correct the errors in its SAS program in its final results.

Deacero’s Rebuttal

- The targeted dumping allegation was submitted by Gerdau on May 18, 2012. Gerdau is the only party that made a targeted dumping allegation in this review. It argued that Deacero’s U.S. sales data exhibit a pattern of prices for certain CONNUMs that differ significantly by customer, region, and time period. Gerdau did not submit a case brief contesting the Department’s *Preliminary Results*; therefore it has waived its targeted dumping allegation.
- Nucor’s argument, that the Department’s preliminary analysis of targeted dumping contained an error, is a new targeted dumping allegation filed in its case brief that should be rejected by the Department as untimely and redundant. Although the Department has not established a deadline for submitting targeted dumping allegations in reviews, the regulations do not permit any other sort of allegation in an AD administrative review to be submitted for the first time after the preliminary results have been issued. Nucor’s mischaracterization of its new targeted dumping allegation as a response to a Department’s error makes the lateness of the allegation all the more egregious.
- The Department’s macros program contains the overlapping states mentioned in Nucor’s arguments; therefore, Nucor’s region-based allegation is redundant, and was already addressed by the Department in the *Preliminary Results*.

Department’s position: Pursuant to section 351.309(c)(iii)(2) and (d)(2) of the Department’s regulations, parties may, “present all arguments that continue in the submitter’s view to be relevant to the Secretary’s final determination or final results, including any arguments presented

before the date of publication of the preliminary determination or preliminary results,” and “[t]he rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding.” ArcelorMittal submitted a timely, original targeted dumping allegation and Nucor revised the allegation using information on the record; therefore, arguments raised in case briefs and rebuttals were within the parameters established by the Department for public comment and are not considered new information. Therefore, the Department disagrees with Deacero’s assertion that Nucor’s argument is untimely and should be rejected.

We have reviewed the SAS programming concerning Nucor’s claim that the margin program from the *Preliminary Results* failed to carry forward the correct variable. We determine that Nucor’s claim is without merit. We reviewed the *Preliminary Results*’ comparison market, macros, and margin programs, logs, and outputs. The margin program is properly carrying forward the variable from Deacero’s U.S. sales data.³⁷ With regard to Nucor’s argument regarding the targeted area, we agree with Deacero’s assertion that it is redundant. The Department’s macros program appropriately defines the targeted region.³⁸ Consequently, changes to the margin program are not warranted.

Comment 6: Whether the Department Erred in Calculating Inventory Carrying Cost

Deacero’s Arguments

- Deacero alleges the Department failed to convert its reported U.S. inventory carrying cost from Mexican pesos to U.S. dollars. Deacero reported U.S. inventory carrying cost (INVCARU) in Mexican pesos per kilogram; however the Department’s preliminary margin program denominated the variable in U.S. dollars. The Department should revise the SAS program to denominate the variable in the correct currency to calculate the dumping margin as accurately as possible.³⁹

Nucor’s Rebuttal

- Congress created a mechanism allowing the Department to lessen its administrative burden where refinement of the margin’s accuracy becomes an “insignificant” exercise. The regulations explicitly define “insignificant” as changes that individually represent less than 0.33 percent *ad valorem*. Deacero’s request results in an *ad valorem* margin rate change below 0.33 percent, which is insignificant; therefore, should not be changed for the final results.⁴⁰

³⁷ See “Final Results in the 6th Administrative Review on Carbon and Certain Alloy Steel Wire Rod from Mexico: Calculation Memorandum for Deacero S.A. de C.V. and Deacero USA, Inc. (collectively, Deacero),” from Patricia Tran, International Trade Analyst, AD/CVD Operations, Office 8, to The File, through Eric Greynolds, Program Manager, AD/CVD Operations, Office 8, dated May 7, 2013 (Final Calc Memorandum).

³⁸ See Final Calc Memorandum.

³⁹ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Federal Circuit 1990).

⁴⁰ See 19 CFR 351.413.

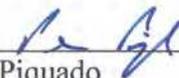
Department's position: The Department agrees with Deacero that the variable for U.S. inventory carrying cost was denominated in the incorrect currency. We have revised the final margin program to correct the variable.⁴¹

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree:

Disagree:



Paul Piquado
Assistant Secretary
for Import Administration

7 MAY 2013
Date

⁴¹ See Final Calc Memorandum.