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Administrative Review
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May 13, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman *GT*
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Results of 2013/14 Antidumping
Duty Administrative Review: Carbon and Certain Alloy Steel
Wire Rod from Mexico

I. Summary

We analyzed the case briefs and the rebuttal briefs filed by interested parties. As a result of this analysis, we revised margin calculations for Deacero S.A. de C.V. (Deacero) and ArcelorMittal Las Truchas, S.A. de C.V. (AMLT). We recommend that you approve the positions provided below in the “Discussion of Comments” section of this Issues and Decision Memorandum.

II. Background

On November 10, 2015, the Department of Commerce (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, 2015, the Department received case briefs from Deacero, AMLT, Gerdau Ameristeel USA, INC and ArcelorMittal USA LLC (collectively, Petitioners), and Nucor Corporation (Nucor).² On December 11, 2015, Nucor submitted a request for extension of time to submit a rebuttal brief. On December 11, 2015, Nucor, in a separate filing, requested that the Department strike from the record what it claimed was untimely new factual information from submitted by AMLT and require that AMLT resubmit its case brief without this information. On December 15, 2015, AMLT responded to

¹ See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 69641 (November 10, 2015) (*Preliminary Results*), and accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Decision Memorandum for Preliminary Results of 2013/14 Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico,” October 30, 2015 (Preliminary Decision Memorandum).

² Nucor Corporation (Nucor) is a domestic interested party.



Nucor's December 11, 2015 letter and argued that Nucor's allegation was unfounded.³ On December 15, 2015, the Department extended the due date for rebuttal briefs until December 21, 2015. On December 16, 2015, Nucor reiterated its request that the Department strike untimely new factual information in AMLT's case brief.⁴ On December 17, 2015, AMLT submitted a letter in further support of its argument that the Department refrain from striking certain information from its case brief.⁵ On December 21, 2015, we received rebuttal briefs from Deacero, AMLT, Petitioners, and Nucor. On January 11, 2016, the Department rejected the case brief submitted by AMLT on the grounds that it contained untimely filed new factual information.⁶ On January 20, 2016, AMLT submitted the revised case brief, where at the Department's request, AMLT deleted information considered by the Department to be untimely filed new factual information.

On December 10, 2015, AMLT requested that the Department conduct a hearing in this review. On December 10, 2015, Nucor requested to participate in the hearing. On January 4, 2016, AMLT withdrew its request for a hearing. On January 12, 2016, the Department extended the deadline for the final results of this administrative review until May 9, 2016,⁷ which the Department tolled to May 13, 2016.⁸

After analyzing the comments, we made certain modifications to the *Preliminary Results*. We received comments on the following issues with regard to the following respondents:

III. List of Comments

Deacero

Comment 1: Adjustment to the General and Administrative (G&A) Expense Ratio

Comment 2: Whether the Department Erred in the Net Comparison-Market Price (CMNETPRI) Calculation

Comment 3: Whether the Department Erred in Currency Conversion Calculation

Comment 4: Treatment of Inland Insurance Verification Corrections

Comment 5: Nucor's Clerical Error Corrections

Comment 6: Whether to Disallow Certain Post-Sale Price Adjustments

³ See AMLT's Letter to the Department dated December 15, 2015.

⁴ See Nucor's Letter to the Department dated December 16, 2015.

⁵ See AMLT's Letter to the Department dated December 17, 2015.

⁶ See the Department's January 11, 2016, Memo to File "Rejection of Case Brief Submitted by ArcelorMittal Las Truchas, S.A. de C.V, ArcelorMittal International America LLC (AMLT Companies)."

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Erin Begnal, Director, Antidumping and Countervailing Duty Operations, Office III through Eric Greynolds, Program Manager, Antidumping and Countervailing Duty Operations, Office III regarding Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Time Limit for Final Results dated January 12, 2016

⁸ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this administrative review is now May 13, 2016.

Comment 7: Whether Deacero Engaged in “Targeted Dumping”

AMLT

Comment 8: Whether AMLT’s Depreciation Should Be Adjusted to Reflect Mexican Generally Accepted Accounting Principles (GAAP)

Comment 9: Treatment of AMLT’s Fixed Overhead Costs

Comment 10: Treatment of AMLT’s Additional Mexican GAAP Costs

IV. Scope of the Order

The merchandise subject to the order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble

aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified). For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to the order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

On October 1, 2012, the Department found that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced (hereinafter referred to as narrow gauge wire rod) in Mexico and exported to the United States by Deacero was circumventing the Order on wire rod from Mexico.⁹ Specifically, the Department found that it is appropriate to consider that Deacero’s shipments to the United States of narrow gauge wire rod constitute merchandise altered in form or appearance

⁹ See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Final Determination of Circumvention of the Antidumping Order*, 77 FR 59892 (October 1, 2012) (*Final Circumvention Determination*) and accompanying Issues and Decision Memorandum (Final Circumvention Decision Memorandum).

in such minor respects that it should be included within the scope of Order.¹⁰ The Department's affirmative finding in the *Final Circumvention Determination* applied solely to Deacero.

Deacero challenged the Department's ruling in the *Final Circumvention Determination*, and on December 22, 2014, the Court of International Trade (CIT) entered its judgement in *Deacero III*,¹¹ sustaining the Department's negative circumvention determination from the First Remand Redetermination in which the Department, under protest, found that Deacero's shipments of narrow gauge wire rod to the United States were not subject to antidumping duties.¹² The Department appealed the CIT's decision at the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). Consistent with the CIT's holding and *Wire Rod Timken Notice*,¹³ the Department instructed U.S. Customs and Border Protection (CBP) to set the cash deposit rate for narrow gauge wire rod shipped to the United States on or after January 1, 2015 by Deacero to zero, pending a final and conclusive court decision. Additionally, we instructed CBP to refund any estimated antidumping duties that have been deposited for narrow gauge wire rod shipped to the United States by Deacero that entered from January 1, 2015, through the publication date of the *Wire Rod Timken Notice* (July 27, 2015) and, for such entries, to continue to suspend Deacero's narrow gauge wire rod at a zero cash deposit rate.¹⁴

During the 2013-2014 period of review (POR) of the instant review, Deacero shipped narrow gauge wire rod as well as wire rod with actual diameters greater than 5.00 mm. In light of the CIT's holding and the Department's statement in *Wire Rod Timken Notice* that Deacero's narrow gauge wire rod is excluded from antidumping duties,¹⁵ in the *Preliminary Results*, the Department removed narrow gauge wire rod from Deacero's dumping calculations. Additionally, consistent with the *Wire Rod Timken Notice*, the Department indicated that it intended to instruct CBP to continue to suspend such entries at a zero cash deposit rate. Further, in the *Preliminary Results* the Department examined the remaining portion of Deacero's U.S. sales (e.g., wire rod with an actual diameter great than 5.00 mm) using its standard antidumping calculation methodology.¹⁶

Since the publication of the *Preliminary Results*, the Federal Circuit issued its decision.¹⁷ In its decision the Federal Circuit reversed *Deacero III* and reinstated the Department's finding in the *Final Circumvention Determination* that narrow gauge produced in Mexico and exported to the United States by Deacero was circumventing the Order on wire rod from Mexico.¹⁸ As a result, in these final results, we have included Deacero's sales of narrow gauge wire rod in our dumping

¹⁰ *Id.*

¹¹ See *Deacero S.A.P.I. de C.V. and Deacero USA, Inc. v. United States and Arcelormittal USA LLC, Gerdau Ameristeel U.S. Inc., Evraz Rocky Mountain Steel, and Nucor Corporation*, Court No. 12-00345, Slip Op. 14-151 (*Deacero III*).

¹² See Final Results of Redetermination Pursuant to *Deacero S.A. de C.V. and Deacero USA Inc. v. United States and Arcelormittal USA LLC, Gerdau Ameristeel U.S. Inc., Evraz Rocky Mountain Steel, and Nucor Corporation*, Court No. 12-00345; Slip Op. 13-126 (CIT 2013) (January 29, 2014) (First Remand Redetermination).

¹³ See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Determination*, 80 FR 44326, 44327 (July 27, 2015) (*Wire Rod Timken Notice*).

¹⁴ *Id.*

¹⁵ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010).

¹⁶ See Preliminary Decision Memorandum at 4-5.

¹⁷ *Deacero S.A. de C.V. v. United States*, No. 15-1362 (Fed. Cir. Apr. 5, 2016).

¹⁸ *Id.* slip op. at 12.

calculations.

V. Discussion of Comments

Deacero

Comment 1: Adjustment to the G&A Expense Ratio

Nucor's Arguments:

- Mid Continent, a Deacero affiliate, further manufactures steel wire rod into various nail products.
- At the verification, the Department noted that Mid Continent calculated its G&A ratio denominator based on company-wide cost of goods sold (COGS), less the cost of subject merchandise used to produce certain nails, and applied this ratio to the further manufacturing costs field (FURCOM) in the further manufacturing cost database.¹⁹ The FURCOM field in the cost database does not include materials cost, while the G&A ratio calculation includes an amount for materials.²⁰
- Thus, because the FURCOM field is net of all material costs, the denominator of the G&A expense ratio should also be net of all material costs.

Deacero's Arguments:

- Mid Continent has appropriately excluded the consumption cost of steel wire rod used in the further manufacturing of both bulk nails and collated nails (*i.e.*, all products) from the COGS denominator.²¹
- Specifically, the Department's section E questionnaire instructs that G&A be computed on an annual basis as a ratio of the company's total G&A expenses divided by its cost of sales (less the cost of the imported subject merchandise).
- In reporting its G&A ratio, Mid Continent excluded the cost of steel wire rod from the cost of sales denominator of the G&A factor calculation. Further, Mid Continent did not limit the exclusion of steel wire rod costs to the further manufactured items (*i.e.*, bulk nails made with Deacero steel wire rod).
- Rather, Mid Continent excluded steel wire rod costs incurred for all products, including bulk nails made with U.S.-produced steel wire rod and collated nails made with U.S.-produced steel wire rod.
- As a result, Mid Continent has properly excluded the cost of steel wire rod from both the FURCOM field and from the denominator of the G&A factor.
- Verification exhibit CVE-12, at page 2, indicates that Mid Continent excluded an amount for the cost of steel wire rod consumed from its COGS denominator used in its G&A expense ratio calculation, and sites to pages 24 thru 26 of the same CVE which supports this value of

¹⁹ Nucor asserts that the cost of goods sold denominator still includes materials costs related to other products produced by Mid Continent.

²⁰ See Verification for the Further Manufacturing Data Submitted by Deacero S.A.P.I. de C.V. for Mid Continent Steel and Wire, Inc. in the Antidumping Duty Review of Certain Alloy Steel Wire Rod from Mexico Report from Gary Urso to Neal M. Halper, dated October 30, 2015 (Cost Verification Report).

²¹ See Deacero rebuttal brief at 1-5.

steel wire rod consumed during the POR. Accordingly, Mid Continent's G&A expense ratio is correctly reported and therefore any adjustment is unwarranted.

Department's Position: We disagree with Deacero. While the Department's further manufacturing section E questionnaire does instruct respondent to compute G&A rates on an annual basis as a ratio of the company's total G&A expenses divided by its cost of sales (less the cost of the imported subject merchandise), the instructions are premised upon the respondent only further manufacturing subject merchandise.²² In the case of Mid Continent, its production is not limited to subject wire rod. During the POR, Mid Continent produced a variety of nail products (*e.g.*, bulk nails, collated nails). Some of these products used Deacero-sourced steel wire rod, which is subject merchandise, as the primary production input. Other nail products, however, used a variety of other raw material inputs that did not consist of subject wire rod.

By responding to the Department's section E questionnaire as it has, Deacero did not allocate and report its further manufacturing G&A on a consistent basis. When calculating and applying the G&A rate for a further-manufacturing affiliate, which is involved in numerous activities in addition to further manufacturing the subject merchandise, it is important to ensure that the G&A rate is applied consistently, such that a fair allocation is made. In this case, Mid Continent excluded the Deacero-sourced subject merchandise (*i.e.*, the raw material input steel wire rod consumption for bulk nail production) from the denominator of the G&A rate calculation, but continued to include other raw material costs used to produce other products in the denominator. The resulting rate was applied to further manufacturing costs that exclude all raw material costs. The resulting calculation is flawed because the G&A rate denominator is inconsistent with the cost base to which it is applied.

We disagree with Deacero that the G&A rate, as reported by Mid Continent, already excludes all material costs from the denominator of the calculation. As can be seen from Mid Continent's fiscal year 2014 trial balance, costs for various raw materials are still included in the denominator of the G&A rate calculation.²³ In order to ensure the denominator of the G&A rate is calculated on a consistent basis, and that the rate is applied to a base that includes the same cost elements, we have recalculated Mid Continent's G&A rate by dividing the company-wide G&A expenses by the company-wide total costs of goods sold (including all material costs) and then applying the rate to the reported per-unit further processing costs, inclusive of the per-unit cost of the wire rod purchased from Deacero.²⁴

²² See Deacero Response to Questionnaire Sections D and E dated May 19, 2015 at E-3.

²³ See Verification for the Further Manufacturing Data Submitted by Deacero S.A.P.I. de C.V. for Mid Continent Steel and Wire, Inc. in the Antidumping Duty Review of Certain Alloy Steel Wire Rod from Mexico Report from Gary Urso to Neal M. Halper, dated October 30, 2015 (Cost Verification Report), at CVE 4, pages 123-124.

²⁴ See Cost of Production, Constructed Value and Further Manufacturing Cost Calculation for the Final Results – Deacero S.A. de C.V., dated May, 13, 2016.

Comment 2: Whether the Department Erred in the Net Comparison-Market Price (CMNETPRI) Calculation

Deacero's Argument:

- As a result of missing parentheses in the formula for the calculation of CMNETPRI, certain discounts and expenses incurred in Mexican pesos (*i.e.*, early payment discounts, “other” discounts, credit expenses, and warranty expenses) were added to the gross home-market price, when they should have been subtracted.

Petitioners did not comment on this issue.

Department's Position: We agree that we inadvertently erred in our calculations with respect to CMNETPRI, and have corrected this error using the calculation revision proposed by Deacero.

Comment 3: Whether the Department Erred in Currency Conversion Calculation

Deacero's Argument

- The Margin Program includes programming language that converts indirect selling expenses incurred in the country of manufacture (DINDIRSU) into U.S. dollars. However, as indicated in the U.S. sales database summary, these expenses were already reported in U.S. dollars. Consequently, in the final results the Department should revise the calculations with respect to DINDIRSU.

Petitioners did not comment on this issue.

Department's Position: We agree with Deacero and have corrected this error.

Comment 4: Treatment of Inland Insurance Verification Corrections

Deacero's Argument:

- The U.S. inland insurance expenses (USINSURU) for Channel 3 U.S. sales (*i.e.*, sales of further manufactured merchandise by Mid Continent), should be corrected based on findings at verification. At the sales verification, Deacero reported a minor correction, explaining that the insurance rate factor applied to the gross unit price (field GRUSPRU) to derive the per-unit inland insurance expense should be revised; these changes were reviewed, verified, and accepted by the Department.
- The Department did not incorporate the revised USINSURU field in its preliminary calculations. The Department should correct this omission.

Petitioners did not comment on this issue.

Department's Position: We agree and have incorporated the revised USINSURU field, as reviewed at verification, into our final calculations.

Comment 5: Nucor's Clerical Error Corrections

Nucor's Arguments

- The Department made two clerical errors in the *Preliminary Results*: 1) insurance revenue was not added to home market prices, and 2) domestic inland freight was not deducted from U.S. sales.

Deacero did not comment on these allegations.

Department's Position: We agree and have corrected these errors using the calculation revision proposed by Nucor.

Comment 6: Whether to Disallow Certain Post-Sale Price Adjustments

Petitioners' Arguments:

- Deacero reported several post-sale price adjustments in the home market that were not based on existing pre-sale agreements. These adjustments pertain to early payment discounts (*e.g.*, EARLYPY3H and EARLYPY5H) and other discounts (*e.g.*, OTHDISH2H, OTHDISH4H, and OTHDISH5H).
- Deacero has failed to establish that it is entitled to these adjustments because the Department's well-established practice requires that an interested party demonstrate that it is entitled to these adjustments, which Deacero has failed to do.
- Deacero's price adjustments should be rejected because the Department's well-established policy is to deny debates that are not established before sale.
- For EARLYPY3H, EARLYPY5H, Deacero did not indicate whether it specified the terms of these adjustments prior to the sale. For OTHDISH2H, OTHDISH4H, AND OTHDISH5H, Deacero did not provide any pre-sale documentation. Concerning OTHDISH2H, the Department examined this adjustment at verification and found to that there was inadequate documentation to support it.

Deacero's Arguments:

- There is no basis to disregard the price adjustments at issue.
- The Department verified the reported price adjustments.
- The Department's practice is to accept post-sale price adjustments "where the terms and conditions were . . . established and known to the customer at the time of sale{,}"²⁵ or the price adjustments were consistent with the respondent's normal business practice. Here, the price adjustments in question were either established and known to the customer at the time of sale, or provided in a manner that was consistent with Deacero's normal business practice. Therefore, the price adjustments in question should be included in the margin calculation.
- Citing the Department's preliminary calculation memorandum, Deacero identified several specific examples of information demonstrating that these expenses are clearly reflected in its accounting records and business practices²⁶.

²⁵ See Deacero Rebuttal Brief at 2.

²⁶ See Calculation Memorandum for Deacero S.A. de C.V. and Deacero USA, Inc. (collectively, Deacero), October 19, 2015.

Department’s Position: The Department’s well-established practice is to accept post-sale price adjustments where the terms and conditions were established and known to the customer at the time of sale or the price adjustments are consistent with the respondent’s normal business practice.²⁷ As such, we disagree with petitioners that the Department’s practice does not allow for post-sale price adjustments where those adjustments are consistent with the respondent’s normal business practice. We also disagree with petitioners that Deacero has not put forth record evidence that supports allowing these adjustments under this practice and otherwise persuading the Department that these adjustments are legitimate.²⁸ Deacero’s questionnaire response clearly describes its practice regarding discounts and rebates.²⁹ For example, for one sale examined at verification, Deacero provided documentation establishing that the terms and conditions of the adjustments were established and known to the customer prior to sale.³⁰ For the other four sales examined at verification, Deacero provided documentation establishing that the price adjustments were consistent with Deacero’s normal business practice.³¹ In addition, the Department has allowed such adjustments in previous reviews.³² Thus, the Department finds that the adjustments continue to be warranted.

Comment 7: Whether Deacero Engaged in “Targeted Dumping”

Deacero’s Arguments

- Deacero and its further manufacturer Mid Continent did not engage in “targeted dumping” of further manufactured merchandise. Mid Continent produced bulk nail items using both imported Deacero wire rod and U.S.-produced wire rod and set prices for its bulk nail items based on item code and customer, not based on the source of the wire rod input. The fact that Mid Continent charged the same prices for bulk nail items produced using either subject or non-subject merchandise demonstrates that Deacero and Mid Continent did not engage in “targeted dumping.” Because these circumstances are unique, the Department should exercise its discretion to decline to use the alternative margin calculation methodology in this case.

Nucor’s Arguments

- Deacero’s argument that it did not engage in “targeted dumping” of further manufactured merchandise because it charged the same prices for subject and non-subject merchandise is based on the flawed assumption that a finding of “targeted dumping” is a precondition before the Department can apply the A-T Method. The Department has previously rejected this argument in *Steel Nails from the People’s Republic of China*.³³

²⁷ See *Final Results of Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico* and accompanying Issues and Decision Memo at 4. We note that the recent modification of our regulations regarding post-sale price adjustments does not apply to this administrative review. The modified rule applies to all proceedings initiated on or after April 25, 2016. *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641, 15641 (March 24, 2016).

²⁸ See Deacero’s February 5, 2015 Section A1 Questionnaire Response at 17-23.

²⁹ See Deacero’s July 1, 2015 Sections B & C Supplemental Questionnaire Response at 9-12.

³⁰ See Deacero Sales Verification Exhibit VE – 10.

³¹ See Deacero’s February 26, 2015 Section B Response at 34.

³² See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Amended Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 27147 (May 12, 2015) (“*Final Results*”).

³³ See *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying Issues and Decision Memorandum for the

- The statute directs the Department to examine the significance of price differences among purchasers, regions, or time periods. The Department’s differential pricing analysis is consistent with the statute.

Petitioners’ Arguments

- The Department found a pattern of price differences under its differential pricing analysis and determined that the A-to-A method cannot appropriately account for such differences. Deacero does not address this point. Deacero claims it could not have engaged in differential pricing because it prices sales of nails made from subject and non-subject wire rod based on item code and customer, not the source of the wire rod.

Department’s Position: We disagree with Deacero that because their nails were produced from subject and non-subject merchandise that this fact somehow demonstrates that they did not engage in differential pricing. Our differential pricing analysis is based on selling practices with respect to subject merchandise. The fact that Mid Continent also sells bulk nail items produced using non-subject merchandise does not somehow eliminate its differential pricing of bulk nail items produced using subject merchandise. In describing the warehousing expense incurred with respect to its sales of further manufactured merchandise, Deacero states that because the merchandise “was commingled in Mid-continent’s U.S. Inventory, it was not possible to link a specific amount incurred.”³⁴ This comingling provides evidence that Deacero’s pricing for nails that are produced from subject and non-subject merchandise is comparable. Thus, the existence of sales of nails that are produced from non-subject merchandise does not affect our findings from our differential pricing analysis. Deacero provided no evidence that the nails produced from subject and non-subject merchandise are somehow treated differently, or somehow reflected different selling practices. Thus, our analysis of their sales of subject merchandise is not affected by this observation.

We agree with Nucor that our findings in the *Preliminary Results* are consistent with our long-standing practice clearly articulated in *Steel Nails from the People’s Republic of China*. We also agree with Petitioners that the record establishes the existence of differential pricing.

AMLT

Comment 8: Whether AMLT’s Depreciation Should Be Adjusted to Reflect Mexican GAAP

AMLT’s Arguments:

The Department double-counted AMLT’s depreciation expenses by adding the total amount of Mexican GAAP depreciation expenses, but failing to deduct the International Financial Reporting Standards (IFRS) depreciation expenses that were already included in the reported manufacturing costs.

- Although narratively described to the Department as the difference between Mexican GAAP and IFRS, the record data demonstrate that the amount added by the Department actually represents the total Mexican GAAP depreciation expense.

Final Results of the Fourth Antidumping Duty Administrative Review at Comment 7.

³⁴ See Deacero’s February 27, 2015 Section C Response at 30 - 34.

- The Department should merely take the difference between the Mexican GAAP and IFRS depreciation for the final results.³⁵

Nucor's Arguments:

- The Department should reject AMLT's claims since AMLT unambiguously described the excluded costs as the difference between IFRS and Mexican GAAP depreciation.³⁶
- If this were the total amount, not merely the difference between the IFRS and Mexican GAAP methodologies, as AMLT claims, AMLT should have provided its evidence, including statements of fact, documents, and data, in its supplemental response, and not in its case brief.
- A review of AMLT's trial balance demonstrates that the Department appropriately included the entire amount in the preliminary results and should continue to do so for the final results.³⁷

Department's Position: We agree with AMLT. In the *Preliminary Results*, the Department adjusted AMLT's reported costs to reflect the depreciation expenses that were recognized on the company's Mexican GAAP-based audited financial statements, rather than the IFRS-based depreciation expenses that were reported to AMLT's parent company.³⁸ To do so, the Department included an amount that AMLT described as the "difference between IFRS and Mexican GAAP depreciation."³⁹ However, AMLT has been able to demonstrate, using the record evidence, that this is not the case. We find that the amount actually reflects the entire Mexican GAAP depreciation expense for the year, not the difference between the two accounting bases. AMLT maintains its financial accounting records under both Mexican GAAP (the basis for preparing its standalone financial statements) and under IFRS (the basis for reporting to its parent company ArcelorMittal S.A.).⁴⁰ In its cost accounting records, however, AMLT calculates costs on an IFRS basis.⁴¹ Throughout a given month, the production costs, which include depreciation on an IFRS basis, are recorded as debits to the transfer in accounts in AMLT's general ledger.⁴² At the close of the month, the production costs accumulated in the production accounts are then allocated to the products produced (*i.e.*, debit inventory, credit production transfer out).⁴³ Thus, the inventoried products, which are used to value the cost of sales under both IFRS and Mexican GAAP, reflect depreciation expenses on an IFRS basis. To prepare its Mexican GAAP financial statements, AMLT records its Mexican GAAP depreciation

³⁵ See AMLT's revised brief at 1-5.

³⁶ See Nucor's brief at 6.

³⁷ See Nucor's rebuttal brief at 8-9.

³⁸ See Memorandum from Heidi K. Schriefer to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – ArcelorMittal Las Truchas S.A. de C.V.," dated October 30, 2015 (Preliminary Cost Calculation Memo).

³⁹ See AMLT's supplemental section D response dated June 17, 2015 (AMLT June 17 section D) at 5.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See AMLT's section D questionnaire response dated March 12, 2015 (AMLT March 12 section D) at 15 explaining that the accumulated production costs are transferred to inventory at the end of each month; and, *e.g.*, AMLT's Cost Reconciliation Response dated March 16, 2015 (AMLT Cost Reconciliation Response) at pdf-88 through pdf-97 and pdf-102 through pdf-105 showing, for fiscal year 2014, the trial balance accounts where AMLT records its monthly production expenses and the transfer accounts that are used to transfer the accumulated amounts to the respective inventories.

⁴³ *Id.*

expenses to its transfer in accounts and nets out, via transfer out accounts, the IFRS-based expenses.⁴⁴ Thus, the total cost of sales on the Mexican GAAP financial statements incorporates the cost of products sold on an IFRS basis (debit), the transfer out accounts on an IFRS basis (credit), and the transfer in accounts on a Mexican GAAP basis (debit), for a net effect of a Mexican GAAP basis.⁴⁵

AMLT's overall cost reconciliation only included the cost of products sold (*i.e.*, depreciation on IFRS basis) and excluded all other trial balance accounts incorporated under the cost of sales line item on the Mexican GAAP financial statements.⁴⁶ The items excluded were the Mexican GAAP depreciation figures along with the transfer out accounts for the IFRS depreciation figures (*i.e.*, the accounts which transform the financial statements from an IFRS basis to a Mexican GAAP basis). While AMLT's narrative descriptions of these reconciling items were imprecise, we are now able to determine from further scrutiny of the exhibits accompanying that narrative that the accounts excluded consist of both the transfer out accounts with the credit for IFRS depreciation and the transfer in accounts with the debit for Mexican GAAP depreciation. Thus, at the time of the *Preliminary Results*, the effect of the Department's adjustment was to add the full amount of Mexican GAAP depreciation to the product costs which already included depreciation expenses on an IFRS basis. Therefore, for the final results, we have amended our adjustment to reflect the net difference between the Mexican GAAP and IFRS depreciation expenses rather than the entire amount of the Mexican GAAP depreciation expense.

Finally, we note that the depreciation accounts referenced by Petitioners are balance sheet accounts that record accumulated depreciation (*i.e.*, the depreciation that is recognized over the life of an asset). Therefore, Petitioners fail to identify record evidence that the figures in question reflect the difference between Mexican GAAP and IFRS depreciation and not the full Mexican GAAP depreciation for the period.

Comment 9: Treatment of AMLT's Fixed Overhead Costs

AMLT's Arguments:

- The Department's adjustment to include certain non-inventoried fixed overhead costs should be abandoned for the final results as it is inconsistent with Mexican GAAP.
- Because Mexican GAAP forbids companies from allocating excessive fixed overhead costs to products when production is below normal levels, the Department's adjustment to include the amount as a product cost violates the Department's statutory obligation to calculate costs in a manner consistent with GAAP in the country in which the producer is located.
- The CIT has consistently upheld the use of a respondent's normal books and records barring any evidence of distortion. Since there is no evidence of any significant distortion in this case, the Department has no legal basis for altering the product costs from the company's normal books and records.⁴⁷

⁴⁴ See, e.g., AMLT Cost Reconciliation Response at pdf-88 where the Mexican GAAP depreciation expenses are added directly to the cost of goods sold accounts and pdf-96 in conjunction with pdf-102 through pdf-105 where the IFRS accounts are netted out for fiscal year 2014.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See AMLT's revised case brief at 5-7.

Nucor's Arguments:

- The Department should continue to include the fixed costs under question for the final results as their exclusion distorts AMLT's reported costs.
- AMLT actually incurred the fixed production costs during the POR; however, under Mexican GAAP, AMLT merely recognized the costs as period rather than production expenses on its financial statements.
- These POR production costs should not be excluded simply because of their classification on AMLT's financial statements.⁴⁸

Department's Position: We disagree with AMLT. In the *Preliminary Results*, the Department adjusted AMLT's reported costs to include certain fixed overhead costs that AMLT excluded from inventoried product costs in its normal books and records.⁴⁹ The fixed costs in question are production costs, which were incurred by AMLT during the POR.⁵⁰ However, because production levels were considered below normal, AMLT, in accordance with Mexican GAAP, classified the related excess fixed costs as period costs (*i.e.*, the costs were recognized on the income statement of the current period), rather than product costs (*i.e.*, the costs were inventoried and recognized on the income statement of the period when the underlying products were sold).⁵¹ Hence, it is clear that the expenses were incurred and recognized under home country GAAP. AMLT's contention, then, is that because the costs were not applied to the inventoried products produced during the POR, but recorded directly to cost of goods sold on the income statement, they should then be excluded from the reported costs. Yet, the Department clearly instructs respondents to also incorporate period or non-inventoried costs in their reported costs (*e.g.*, G&A and financial expenses).⁵² Thus, AMLT's reported costs, which exclude the fixed overhead costs under discussion, are distortive as they fail to capture the total costs recognized on the company's GAAP-compliant books and records.

We disagree that the excess fixed costs should be wholly excluded from the reported costs. Rather, the record evidence supports that the excess fixed costs were incurred and recognized by AMLT in its Mexican GAAP-compliant records during the POR. Therefore, we find it reasonable to likewise recognize the costs for reporting purposes. Further, as the merits of including the excess fixed costs on a fiscal year versus POR basis were not briefed by the parties, we have continued to include the POR figure. Accordingly, for the final results, we have adjusted AMLT's total cost of manufacturing to include the excess fixed overhead costs.

Comment 10: Treatment of AMLT's Additional Mexican GAAP Costs

Nucor's Arguments:

- The Department failed to account for all differences between AMLT's Mexican GAAP-based costs and AMLT's IFRS-based costs.

⁴⁸ See Nucor's rebuttal brief at 5-8.

⁴⁹ See Preliminary Cost Calculation Memorandum.

⁵⁰ See AMLT's June 17 section D at 4-5.

⁵¹ *Id.*

⁵² See, *e.g.*, the Department's standard section D questionnaire at D-14.

- The CIT has upheld the Department’s use of a respondent’s home country GAAP-financial statements that contained expenses which were not included on the IFRS financial statements forwarded to the parent company for consolidation purposes.⁵³
- AMLT’s additional expense under Mexican GAAP should be accounted for in the final results to ensure that the company’s total reported costs reflect its Mexican GAAP-based financial statements.⁵⁴

AMLT’s Arguments:

- If the Department decides to include the Mexican GAAP-based expense, it must conversely exclude the parallel IFRS-based expense that has already been recognized in the reported costs to ensure that no double-counting of costs has occurred.⁵⁵

Department’s Position: We agree with both Nucor and AMLT, in part. Specifically, we agree with Nucor that AMLT’s reported costs should reflect its Mexican GAAP-based records; however, we also agree with AMLT that any such adjustment should account for the parallel IFRS-based expenses that were already captured in the reported costs. AMLT’s cost accounting records, the basis for the reported costs, are prepared in accordance with IFRS.⁵⁶ Therefore, pursuant to section 773(f)(1)(A) of the Tariff Act of 1930, as amended, we find it appropriate to adjust AMLT’s reported costs for the instances where its IFRS-based costs differ from its Mexican GAAP-based costs. In its responses, AMLT identified four trial balance accounts which represent such differences.⁵⁷ However, as discussed in detail at Comment 8 above, we found that these accounts reflect the entire amount of the Mexican GAAP expense rather than the net difference between the Mexican GAAP and IFRS expenses. Therefore, in order to avoid double-counting costs, we have included the additional Mexican GAAP-based expense in our adjustment and deducted the related IFRS-based expense.

⁵³ See *Solvay Solexis*, 637 F. Supp. 2d at 1306-1307.

⁵⁴ *Id.*

⁵⁵ See AMLT’s rebuttal brief at 2.

⁵⁶ See AMLT’s June 17 section D questionnaire response at 5.

⁵⁷ *Id.*

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
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

 13 MAY 2016
Date