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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of the 2015-2016
Antidumping Duty Administrative Review: Carbon and Certain
Alloy Steel Wire Rod from Mexico

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on carbon and certain alloy steel wire rod (wire rod) from Mexico. This review covers two producers/exporters of the subject merchandise, Deacero S.A.P.I. de C.V. (Deacero) and ArcelorMittal Las Truchas, S.A. de C.V. (AMLT). The period of review (POR) is October 1, 2015, through September 30, 2016. We preliminarily determine that during the POR, Deacero made sales of subject merchandise at less than normal value (NV), and AMLT had no shipments of subject merchandise during the POR.

II. BACKGROUND

On October 29, 2002, the Department published in the *Federal Register* the AD order on wire rod from Mexico.¹ On October 3, 2016, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On October 31, 2016, Deacero requested an administrative review of itself,³ and Nucor Corporation (Nucor or petitioner), requested an administrative review of Deacero, Ternium Mexico S.A. de C.V. (Ternium), and

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 67968 (October 3, 2016).

³ See Deacero's letter to the Department, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Administrative Review for the Period October 1, 2015 - September 30, 2016," dated October 31, 2016.



AMLT.⁴ On December 16, 2016, based on timely requests for administrative reviews, we initiated an administrative review of the AD order on wire rod from Mexico.⁵

We issued questionnaires to Deacero and Ternium on January 6, 2017.⁶ On February 27, 2017, based on Nucor's timely request of withdrawal of review of Ternium, the Department rescinded its review of Ternium.⁷ Between February 2017 and August 2017, Deacero submitted timely responses to the initial and supplemental questionnaires.

On June 30, 2017, we extended the deadline for the preliminary results of this review by 60 days.⁸ On August 9, 2017, we extended the deadline for the preliminary results of this review by an additional 60 days, resulting in a deadline of October 31, 2017.⁹

On July 3, 2017, the petitioner filed comments in this review recommending the Department self-initiate an anti-circumvention proceeding against Deacero.¹⁰ After consideration of comments submitted by interested parties, on August 29, 2017, the Department proposed to the petitioner that if it should seek an anti-circumvention inquiry, it should submit a formal request to the Department.¹¹

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

⁴ See Nucor's letter to the Department, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Administrative Review," dated October 31, 2016.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 91122 (December 16, 2016).

⁶ See letter to Deacero regarding initial questionnaire, dated January 5, 2017; also, see, letter to Ternium regarding the initial questionnaire, dated January 5, 2017.

⁷ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Partial Rescission of the Antidumping Duty Administrative Review; 2015–2016*, 82 FR 11904 (February 27, 2017); see also Nucor's letter to the Department, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Withdrawal of Request for Administrative Review," dated February, 2017.

⁸ See memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 30, 2017.

⁹ See memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Extension of Deadline for Preliminary Results of the 2015-2016 Antidumping Duty Administrative Review," dated August 9, 2017.

¹⁰ See letter from Nucor, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero's Supplemental Section B Response," dated July 3, 2017.

¹¹ See memorandum to file, "Carbon and Certain Alloy Steel Wire Rod from Mexico – Call with Counsel to Nucor Corporation," dated August 29, 2017.

III. PRELIMINARY DETERMINATION OF NO SHIPMENTS

AMLT submitted a certification that it made no shipments of subject merchandise to the United States during the POR.¹² To confirm AMLT's no shipment claim, the Department issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review AMLT's no-shipment claim.¹³ CBP did not report that it had any information to contradict AMLT's claim of no shipments during the POR.

Given that AMLT certified that it made no shipments of subject merchandise to the United States during the POR, the CBP data do not contradict AMLT's claim, and there is no record information calling its claim into question, we preliminarily determine that AMLT did not have any reviewable transactions during the POR. Consistent with the Department's practice, we will not rescind the review with respect to AMLT but, rather, will complete the review and issue instructions to CBP based on the final results.¹⁴

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

¹² See letter from AMLT, "Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Mexico: AMLT No-Shipment Certification," dated January 3, 2017.

¹³ No Shipments Inquiry for Carbon and Certain Alloy Steel Wire Rod from Mexico Produced and/or Exported by AMLT (A-201-830), message number 7009302 (January 9, 2017).

¹⁴ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments*; 2012-2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review*; 2012-2013, 79 FR 51306 (August 28, 2014).

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 determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm (hereinafter referred to as narrow gauge wire rod) produced in Mexico and exported to the United States by Deacero was circumventing the *Order*.¹⁵ Specifically, the Department determined that Deacero's shipments to the United States of narrow gauge wire rod constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.¹⁶ The Department's affirmative finding in the *Final Circumvention Determination* applied solely to Deacero.

The Federal Circuit upheld the Department's finding in the *Final Circumvention Determination* that narrow-gauge wire rod produced in Mexico and exported to the United States by Deacero was circumventing the *Order*.¹⁷ As a result, we have treated Deacero's sales of narrow gauge wire rod to the United States as subject merchandise.

V. DISCUSSION OF METHODOLOGY

A. Universe of Sales

Deacero reported that it had two channels of sales in the home market during the POR. Deacero made direct shipments from the plant to the customer (channel 1 sales), and made shipments from a warehouse, distribution center, or non-wire rod plant to the customer (channel 2 sales).¹⁸ In both cases, the sale was either made directly by Deacero or indirectly through its affiliate, Aceros Nacionales, S.A. d C.V. (ANSA).¹⁹

Deacero reported that it had three channels of sales in the U.S. market during the POR. Deacero shipped wire rod directly from Mexico to the unaffiliated U.S. customer (channel 1 sales). These sales were invoiced by Deacero USA, Inc. (Deacero USA).²⁰ Deacero also sold and shipped wire rod to Deacero USA by truck, which Deacero USA maintained in inventory at distribution warehouses, and resold to unaffiliated U.S. customers (channel 2 sales). Deacero also shipped wire rod either directly to its affiliate Mid Continent Steel & Wire, Inc. (Mid Continent) or to

¹⁵ 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.

¹⁶ *Id.*

¹⁷ See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1339 (Fed. Cir. 2016) (*Deacero*).

¹⁸ See letter from Deacero, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Section A Response," dated February 10, 2017, at A-3 (Deacero's February 10, 2017 AQR).

¹⁹ *Id.*

²⁰ See letter from Deacero, "Response of Deacero S.A.P.I. de C.V. and Deacero USA, Inc. to Section C of the Antidumping Duty Questionnaire," dated February 24, 2017, at C-16 to C-19 (Deacero's February 24, 2017 CQR).

Mid Continent through Deacero USA.²¹ Mid Continent further processed the wire rod into bulk steel nails, which Mid Continent then sold to unaffiliated U.S. customers (channel 3 sales).

B. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Deacero's sales of subject merchandise were made at less than NV, we compared constructed export prices (CEP) to NV, as described in the "U.S. Price," and "Normal Value" sections of this decision memorandum, to determine whether sales of subject merchandise to the United States were made at less than NV.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²²

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

²¹ Mid Continent is Deacero's U.S. affiliate that converts imported wire rod into nails and other products. Deacero USA is a reseller of Deacero's wire rod, who sold primarily to Mid Continent during the POR.

²² See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum, at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

²³ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEPs) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of Differential Pricing Analysis

For Deacero, based on the results of the differential pricing analysis, the Department preliminarily finds that 16.80 percent of the value of U.S. sales pass the Cohen's *d* test, and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Deacero.

C. Product Comparisons

In accordance with section 771(16) of the Act, all products covered by the description in the "Scope of the Order" section, above, and sold in Mexico during the POR are considered to be foreign like products for purposes of determining normal values for comparisons to U.S. sale prices. We relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidization, maximum total residual content, heat treatment, diameter range, and coating. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

D. Date of Sale

Under 19 CFR 351.401(i), the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁴

Deacero reported either commercial invoice date or the shipment date, whichever is earlier, for date of sale, for both its home market and U.S. market sales. We find that the material terms of sale did not change after the dates of sale reported in the company's respective databases. Accordingly, for Deacero, we relied on the company's reported dates, *i.e.*, the earlier of the shipment date or invoice date, as the sale date for both the U.S. and the home market.

E. Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (e) and (d)." As explained below, we based the U.S. price on the CEP for Deacero.

As noted above, Deacero reported three types of CEP sales during the POR: Channel 1 sales, in which Deacero shipped wire rod directly to the unaffiliated U.S. customer which was invoiced by Deacero USA; Channel 2 sales, in which Deacero sold and shipped wire rod to Deacero USA by truck, which Deacero USA maintained in inventory at distribution warehouses, and resold to unaffiliated U.S. customers; and Channel 3 sales, in which Deacero shipped wire rod either directly to its affiliate Mid Continent or to Mid Continent through Deacero USA. Mid-Continent further processed the wire rod into bulk steel nails, which Mid Continent then sold to unaffiliated U.S. customers (channel 3 sales). All three channels involve U.S. sales through Deacero's U.S. affiliated companies. In accordance with section 772(b) of the Act, the Department preliminarily determines that all of Deacero's sales are CEP sales, because Deacero only sold subject merchandise in the United States through its U.S. affiliates. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

²⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, warehousing expense incurred in the country of manufacture, international freight, marine insurance, U.S. and foreign brokerage and handling charges, and other transportation expenses.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include inventory carrying costs incurred by affiliated U.S. distributors. For Channel 3 sales, we also deducted further manufacturing expenses incurred in the United States by its affiliated company Mid Continent, in accordance with section 772(e) of the Act. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

F. Normal Value

1. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Here, we determine that there is a viable home market because the aggregate volume of home market sales of the foreign like product for Deacero was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Deacero, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁶ In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

²⁵ See 19 CFR 351.412(c)(2).

²⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

Pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.²⁷ Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive comparison market selling as part of cost of production (COP), not reported in the home market sales data by LOT, where possible.

When the Department is unable to match U.S. sales with sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales with sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment could be calculated), then the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁸

In this review, to the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. When there were no sales at the same level of trade, we compared U.S. sales to home market sales at a different level of trade. The NV level of trade is that of the starting price sales in the home market. For CEP, the level of trade is that of the constructed sale from the exporter to the affiliated importer. To determine whether home market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

In this administrative review, we obtained information from Deacero regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Deacero for each channel of distribution.

In the home market, Deacero reported two channels of distribution. Within these channels of distribution, Deacero reported a single level of trade for all four customer types (*i.e.*, retailers, distributors, traders, and end-users).²⁹ After analyzing the data on the record with respect to the selling functions performed for each customer type, we preliminarily find that Deacero made all home market sales at a single marketing stage (*i.e.*, one level of trade) in the home market. In the U.S. market, Deacero had only CEP sales through its affiliated resellers and, thus, a single level of trade.³⁰

²⁷ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Federal Circuit 2001).

²⁸ See *Plate from South Africa*, 62 FR at 61732-33.

²⁹ See Deacero's February 10, 2017 AQR, at A-19 to A-25 and Exhibit A-8; also see letter from Deacero, "Response of Deacero S.A.P.I. de C.V. and Deacero USA, Inc. to Section B of the Antidumping Duty Questionnaire," at B-32 to B-33, dated February 24, 2017," (Deacero's February 24, 2017 BQR).

³⁰ See section 772(b) of the Act.

We found that there were significant differences between the selling activities associated with the CEP level of trade and those associated with the home market level of trade. For example, the CEP level of trade involved little or no sales forecasting, technical assistance, and after-sales service, whereas the home market level of trade involved these selling activities.³¹ Therefore, we conclude that CEP sales constitute a different level of trade from the level of trade in the home market and that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade.

We were unable to match CEP sales at the same level of trade in the home market or to make a level-of-trade adjustment because the differences in price between the CEP level of trade and the home market level of trade cannot be quantified due to the lack of an equivalent CEP level of trade in the home market. Also, there are no other data on the record which would allow us to make a LOT adjustment. Because the data available do not provide an appropriate basis on which to determine a LOT adjustment and the home market level of trade is at a more advanced stage of distribution than the CEP, we made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

1. Affiliated Party Transactions and the Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.³² The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade.³³

During the POR, Deacero made less than five percent of its sales of wire rod in the home market to affiliated parties.³⁴ Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While the Department's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with the

³¹ See Deacero's February 10, 2017 AQR, at A-19 to A-23 and Exhibit A-8.

³² See 19 CFR 351.403(c).

³³ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

³⁴ See Deacero's February 10, 2017 AQR, at A-6.

Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.³⁵ In this administrative review, we excluded from our calculations of NV those sales to affiliated parties that were not made at arm's length prices. Because such sales were in insignificant volumes, in accordance with 19 CFR 351.403(d), we did not rely on downstream sales in place of the excluded sales to the affiliate.

G. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law, including amendments to section 773(b)(2)(A) of the Act.³⁶ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission.³⁷ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015, it requires the Department to request constructed value and COP information from respondent companies in all antidumping proceedings.³⁸ Because these amendments apply to this review, the Department requested this information from Deacero.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP by product control number (*i.e.*, CONNUM) based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses. We relied on the COP information provided by Deacero in its most recently submitted cost databases. Therefore, we followed our normal methodology of calculating CONNUM-specific weighted-average COPs for the POR.

2. Test of Comparison Market Prices and COP

As required under section 773(b)(2) of the Act, we compared the weighted-average COP for Deacero to its comparison market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period-of-time (*i.e.*, normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a

³⁵ See section 771(15) of the Act and 19 CFR 351.102(b).

³⁶ See Trade Preferences Extension Act of 2015, Pub. L. 114-27, 129 Stat. 362 (2015) (TPEA).

³⁷ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

³⁸ *Id.*, 80 FR at 46794-95.

reasonable period of time. On a CONNUM-specific basis, we compared the COP to the comparison market prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Section 773(b)(1) of the Act permits us to disregard below-cost sales where: (1) 20 percent or more of the respondent's sales of a given CONNUM during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of prices to weighted-average COPs for the POR, below-cost sales of the CONNUM were at prices that would not permit recovery of all costs within a reasonable time period.³⁹

Our cost test for Deacero indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our analysis as outside of the ordinary course of trade and used the remaining sales to determine NV, as well as to calculate selling expenses and profit for CV.

H. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Deacero on reported packed prices (delivered or ex-works) to unaffiliated customers in the home market.⁴⁰ We adjusted, where appropriate, the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410, we made deductions for direct selling expenses (*i.e.*, imputed credit). We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, as discussed in the "Level of Trade" section above, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

I. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

³⁹ See section 773(b)(2)(D) of the Act (defining "recovery of costs").

⁴⁰ See, Deacero's February 10, 2017 AQR, at A-3.

VI. Recommendation

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

10/31/2017

X

Gary Taverman

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance