A-201-830
Anti-Circumvention Inquiry
Segment Name: 4.4 mm Wire Rod
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AD/CVD Ops Office III: EBG, SMB

DATE: October 15, 2018

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

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

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

I. Summary

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

II. Background

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

[1] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).
[2] *See* Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Circumvention Ruling," dated October 27, 2018 (Circumvention Ruling Request).

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

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

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

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

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

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

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

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

[10] *See* Deacero's June 27, 2018 First Supplemental Questionnaire Response (Deacero's June 27, 2018 SQR); *see also* Deacero's July 5, 2018 Supplemental Questionnaire Response (Deacero's July 5, 2018 SQR); *see also* Deacero's August 27, 2018 Supplemental Questionnaire Response (Deacero's August 27, 2018 SQR).

[11] *See* Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Comments on Deacero's Second Supplemental Circumvention Questionnaire Response," dated July 16, 2018 (Nucor's July 16, 2018 Comments).

[12] *See* Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Additional Comments on Deacero's Supplemental Circumvention Questionnaire Responses," dated August 13, 2018 (Nucor's August 14, 2018 Comments) (the letter was submitted to ACCESS on August 13, 2018 but was approved on August 14, 2018).

[13] *See* Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Additional Comments on Deacero's 3rd Supplemental Circumvention Questionnaire Response," dated September 11, 2018 (Nucor's September 11, 2018 Comments).

[14] *See* Deacero's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Response to Nucor's Comments dated September 11, 2018," dated September 26, 2018 (Deacero's September 26, 2018 Comments).

III. Scope of the Order

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

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

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

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis–that is, the direction of rolling–of the rod) over thickness (measured on the same

inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

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

The products subject to the order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

IV. Statutory and Regulatory Framework

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an AD and/or countervailing (CVD) order when products that are of the class or kind of merchandise subject to an AD and/or CVD order have been "altered in form or appearance in minor respect…whether or not included in the same tariff classification." Section 781(c)(2) of the Act provides an exception that "{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}" Section 351.225(i) of Commerce's regulations states that, under section 781(c) of the Act, Commerce may include within the scope of an AD and/or CVD order articles altered in form or appearance in minor respects.

While the statute is silent as to what factors to consider in determining whether alterations are considered "minor," the legislative history of this provision indicates that there are certain factors

that should be considered before reaching a circumvention determination.[15] To determine whether merchandise has been altered in form or appearance in minor respects, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce's practice has been to examine such factors as: 1) overall physical characteristics; 2) expectations of ultimate users; 3) use of merchandise; 4) channels of marketing; and 5) cost of any modification relative to the value of the imported products.[16] Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, along with the five factors enumerated above, Commerce has also considered additional factors, such as commercial availability of the product at issue prior to the issuance of the order, the circumstances under which the products at issue entered the United States, the timing and quantity of said entries, and the input of consumers in the design phase of the product at issue.[17]

V. Prior Anti-Circumvention Determination

On October 1, 2012, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce published the *4.75 mm Final Circumvention Determination*, wherein it determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced and/or exported to the United States by Deacero constituted merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.[18] The Court of Appeals for the Federal Circuit subsequently upheld Commerce's finding in the *4.75 mm Final Circumvention Determination*.[19] As a result, we have treated Deacero's sales of wire rod with an actual diameter of 4.75 mm to 5.00 mm to the United States as subject merchandise.

VI. Parameters of the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of wire rod with actual diameters less than 4.75 mm, produced and/or exported by Deacero, and otherwise meeting the description of in-scope merchandise.[20] In performing our analysis, we reviewed information from the Deacero Companies covering the period 2014 to 2017.

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[15] *See* Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).
[16] *See*, *e.g.*, *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from the PRC*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*; 74 FR 40565 (August 12, 2009).
[17] *See*, *e.g.*, *CTL Plate from the PRC*, 74 FR at 33992-93; *Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655, 32657 (August 10, 1990), unchanged in *Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873, 37875 (June 25, 2012).
[18] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012) (*4.75 mm Final Circumvention Determination*) and accompanying Issues and Decision Memorandum.
[19] *See Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1339 (Fed. Cir. 2016).
[20] *See Initiation Notice*, 83 FR at 5407; Initiation Memorandum at 10-14.

In the Circumvention Ruling Request, Nucor alleged that 4.4 mm wire rod produced and/or exported by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*. Further, Nucor argued that Deacero's previous circumvention of the *Order* by reducing the diameter of the wire rod (*i.e.*, 5.5 mm to 4.75 mm) and its more recent efforts again to circumvent the *Order* through another trivial reduction in the diameter of wire rod demonstrates that Deacero will likely make similar attempts to evade antidumping duties.[21]

Nucor further argues that Deacero was able to develop, test, and sell 4.4 mm wire rod within [ ].[22] Finally, Nucor notes that at least one other producer makes wire rod with a diameter less than 4.4 mm, which according to Nucor demonstrates the likelihood of Deacero's potential future circumvention of the *Order* with regard to wire rod with a diameter that is less than 4.4 mm.[23] Based on this evidence, Nucor contends Deacero will continue to circumvent the *Order* unless Commerce extends this anti-circumvention finding to all wire rod with a diameter less than 4.75 mm.[24]

In response to our questions, Deacero stated that it does not currently produce wire rod with a diameter less than 4.4 mm and that it would be "extremely difficult if not impossible" to develop and produce wire rod with such diameters given its existing technology, facilities, and inputs.[25] Deacero also stated that it has not conducted any research and development related to producing wire rod with a diameter less than 4.4 mm and it has not solicited any interest in such products from current or potential customers.[26]

VII. Arguments from Interested Parties

Deacero and Nucor presented the following comments with respect to each of the five minor alteration criteria.

A. Overall Physical Characteristics

Deacero's Comments

- 4.4 mm wire rod has several advantages over larger diameters of wire rod, such as the ability to [ ]. Drawing wire [ ] allows for more efficient production and results in a finished wire that has greater ductility (*i.e.*, stronger and more malleable).[27]
- The proper comparison for Commerce's analysis is between 4.4 mm wire rod and [ ] mm wire rod, which represents the [ ] wire rod produced by Deacero that is

[21] *See* Circumvention Ruling Request at 2-3.
[22] *See* Nucor's September 11, 2018 Comments at 4.
[23] *Id*.
[24] *Id*. at 7-8.
[25] *See* Deacero's April 6, 2018 IQR at 2; *see also* Deacero's July 5, 2018 SQR at 1-2; *see also* Deacero's August 20, 2018 SQR at 1-2.
[26] *See also* Deacero's July 5, 2018 SQR at 3; *see also* Deacero's August 20, 2018 SQR at 1-2.
[27] *See* Deacero's April 6, 2018 IQR at 27-28; *see also* Deacero's April 11, 2018 IQR at 18-20.

within the scope of the *Order*.[28] Commerce's prior decision that 4.75 mm wire rod was a minor alteration of wire rod covered by the scope does not change the language of the scope itself.[29]

- 4.4 mm and 4.75 mm wire rod are packed using the same basic method; however, wire rod with a narrower diameter of 4.4 mm requires that it be packed [

], whereas wire rod with a diameter of 4.75 mm is packed [
].[30] As a result, Deacero [

].[31]

Nucor's Comments

- There are no meaningful differences in the physical characteristics (*i.e.*, the metallurgical qualities, chemical qualities, or tensile strength)[32] of 4.4 mm wire rod and subject wire rod,[33] and the production processes are similar.
- Deacero classifies only products with [ ] as [ ], which indicates that physical characteristics of wire rod do not vary by diameter.[34] Commerce has found in the previous circumvention proceeding involving 4.75 mm wire rod that "the minimum and maximum tensile strength of its wire rod products vary by grade and not by diameter," and that "chemical content also varies solely by grade and not by diameter."[35]
- Deacero claims that "[

]."[36] However, record evidence indicates that the [
] of 4.4 mm and 4.75 mm wire rod coils [ ][37] and that wire rod [

],[38] which suggests that there no reason why the packaging methods for [ ].[39]

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[28] *See* Deacero's May 2, 2018 Comments at 2.
[29] *Id.*
[30] *See* Deacero's July 5, 2018 SQR at 4-5.
[31] *See* Deacero's April 11, 2018 IQR at Exhibit A-23.
[32] *See* Circumvention Ruling Request at 11 and 19; *see also* Nucor's April 20, 2018 Comments at 9-11; *see also* Nucor's April 20, 2018 Comments at 12 (citing to *Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961, and 962, USITC Pub. 3546 (October 2002) (ITC Investigation) at 7).
[33] In this memorandum, the term "subject wire rod" refers to wire rod with nominal diameters between 4.75 mm to 5.5 mm wire rod.
[34] *See* Nucor's April 20, 2018 Comments at 11-12.
[35] *Id*. at 11 (citing to *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at comment 4).
[36] *See* Deacero's April 11, 2018 at 6.
[37] *See* Nucor's July 16, 2018 Comments at 4 (citing to Deacero's July 5, 2018 SQR at 4-5).
[38] For example, Deacero reported that wire rod in diameters of [ ] were packaged in coiled bundles [ ], whereas [ ] was packaged in coiled bundles [ ]. *See* Nucor's July 16, 2018 Comments at 4 (citing to Deacero's June 27, 2018 SQR at Exhibit S-1).
[39] *See* Nucor's April 25, 2018 Comments at 15.

B. Expectations of the Ultimate Users

Deacero's Comments

- Deacero made its first U.S. sale of 4.4 mm wire rod in [ ] to [ ].[40] Deacero conducted a production analysis and concluded that the customer's desired [ ] could be achieved with [ ] 4.4 mm wire rod using [ ].[41]
- While Deacero provided similar types of technical assistance to customers of 4.4 mm and 4.75 mm wire rod, [ ].[42]
- 4.4 mm wire rod is priced at a premium compared to wire rod in larger diameters. 4.4 mm wire rod carries a price premium over larger diameters that ranges from [ ].[43]

Nucor's Comments

- Nucor disputes Deacero's claim that it developed 4.4 mm wire rod due to a [ ].[44]
- Deacero claims that after analyzing the customer's requirements, it concluded that [ ] wire rod would best meet the customer's specifications.[45] However, such a claim is contradicted by record evidence indicating that [ ], and that [ ].[46]
- Deacero did not justify why it reduced the diameter of its wire rod to provide the same advantages that it had previously claimed could be attained with 4.75 mm wire rod.[47] As a result, there is no distinct benefit to the end user for using 4.4 mm wire rod other than to achieve a lower price through circumvention of the *Order*.
- Deacero placed the website of Nippon Steel on the record to support its claim that 4.4 mm wire rod provides benefits over subject wire rod; however, the website demonstrates that Nippon Steel advertises the benefits of 5.0 and 4.5 mm wire rod in the same manner as 4.4

[40] *See* Deacero's April 6, 2018 IQR at 23-24; *see also* Deacero's July 5, 2018 SQR at 9.
[41] *See* Deacero's April 6, 2018 IQR at 23-24; *see also* Deacero's July 5, 2018 SQR at 9-10.
[42] *See* Deacero's July 5, 2018 SQR at 4.
[43] *See* Deacero's April 6, 2018 IQR at 28.
[44] *See* Nucor's April 25, 2018 Comments at 5 (citing to Deacero's April 11, 2018 IQR at 4); *see also* Nucor's July 16, 2018 Comments at 8 (citing to Deacero's July 5, 2018 SQR at 9-10).
[45] *See* Nucor's July 16, 2018 Comments at 8 (citing to Deacero's July 5, 2018 SQR at 9-10).
[46] *Id*. at 8-9 (citing to Deacero's June 27, 2018 SQR at Exhibit S-1 and S-3).
[47] *See* Nucor's April 25, 2018 Comments at 6-7 (citing to Deacero's April 11, 2018 IQR at Exhibit A-23).

mm wire rod and other narrow-gauge diameters.[48]

- While Deacero argues that its 4.4 mm wire rod commanded a price premium of [ ], Deacero's sales data included sales to [ ], which is [ ].[49] When sales data for [ ] are removed from the data, the alleged price premium of 4.4 mm wire rod disappears.[50]
- Further, the invoices submitted by Deacero, which were dated several months apart and show [ ] unit prices for 4.4 mm wire rod compared to subject wire rod, do not demonstrate that 4.4 mm wire rod is [ ] than subject wire rod as the price difference is within the fluctuation of [ ] prices, which is a major input. Also, the [ ] differ between the invoices, which suggests that [ ].[51]
- The cost data Deacero submitted in the 2016-2017 antidumping administrative review of wire rod from Mexico demonstrates that the cost of producing 4.4 mm wire rod is similar to the cost of producing subject wire rod.[52]

C. Use of Merchandise

Deacero's Comments

- Certain customers of Deacero use 4.4 mm wire rod to more efficiently produce wire products that they previously made using subject wire rod, such as [ ], while other customers use 4.4 mm wire rod to produce products that they were not able to produce using subject wire rod.[53]
- For example, [ ] uses Deacero's 4.4 mm wire rod to more efficiently produce [ ], which it previously produced using other wire rod.[54] It also uses 4.4 mm wire rod to produce [ ], which it was not able to produce previously in commercial volumes.[55]
- Similarly, Deacero's customer [ ] uses 4.4 mm wire rod to produce [ ].[56]
- 4.4 mm wire rod allows [ ].[57] To produce wire, wire rod must be cold-drawn by running it through drawing machines multiple times to narrow down the wire. Each pass through a drawing machine increases the [ ].[58]

[48] *Id*. at 11 (citing to Deacero's April 11, 2018 IQR at Exhibit 25).
[49] *See* Nucor's April 20, 2018 Comments at 25 and 31-32.
[50] *Id*. at 23-25 (citing to Deacero's April 6, 2018 IQR at Exhibit 14).
[51] *Id*. at 30-31 (citing to Deacero's April 6, 2018 IQR at Exhibit 27).
[52] *Id*. at 25-30.
[53] *See* Deacero's April 11, 2018 IQR at 18-20; *see also* Deacero's July 5, 2018 SQR at 9.
[54] *See* Deacero's July 5, 2018 SQR at 9.
[55] *Id*. at 9.
[56] *Id*.
[57] *See* Deacero's April 6, 2018 IQR at 27.
[58] *Id*.

- 4.4 mm wire rod allows an end user to produce wire [

], which results in both cost and time savings.[59]

Nucor's Comments

- End users of 4.4 mm wire rod redraw and finish the wire rod to produce carbon and certain alloy wire, such as aluminum-coated wire, barbed wire, spring wire, and industrial wire, which may be further processed into products such as springs, nails, fasteners, clothes hangers, fencing material, and construction mesh.[60]
- 4.4 mm wire rod is interchangeable with wire rod that is 4.75 mm in diameter or larger, and 4.4 mm wire rod can be substituted for any larger diameter of wire rod where the wire rod is being drawn into wire with diameters that are less than 4.4 mm.[61]
- This is evident in the fact that Deacero's customers who purchase 4.4 mm wire rod also purchase subject wire rod.[62] The marginal reduction in diameter does not affect the quality or intended use of the wire.
- Deacero's customers have switched to purchasing 4.4 mm wire rod for uses in which they previously used wire rod with a diameter of 4.75 mm or larger.[63] Deacero has [

].[64]
- Deacero USA's price list in 2013-14 [

], whereas by 2015-2016, Deacero USA's price list [

] two years earlier.[65]
- [ ] testified at the U.S. International Trade Commission (ITC) that they [

].[66]
- Deacero's sales data confirms that these [

], which indicates that Deacero's [

].[67]
- While Deacero admits that some of its customers used 4.4 mm wire rod to manufacture products that they already produce more efficiently, the company claims that there are customers who use 4.4 mm wire rod to produce products that they were not able to produce with their existing equipment.[68] For example, Deacero claims that its customer [ ], who produces [ ] using 4.4 mm wire rod, could not produce it

[59] *Id*. at 27-28; *see also* Deacero's April 11, 2018 IQR at 4.
[60] *See* Circumvention Ruling Request at 23.
[61] *Id*. at 20.
[62] *Id*. at 11-12 (citing to ITC Investigation at 7).
[63] *Id*. at 23-24.
[64] *See* Nucor's April 20, 2018 Comments at 11.
[65] *See* Circumvention Ruling Request at 25-27 and Exhibit 8.
[66] *See* Nucor's April 20, 2018 Comments at 24 and Exhibit 7.
[67] *Id*. at 24-25.
[68] *See* Nucor's July 16, 2018 Comments at 7 (citing to Deacero's July 5, 2018 SQR at 9).

using subject wire rod.

- Nucor disputes this claim concerning [ ]. The ITC investigated [ ] and found that U.S. producers had been producing [ ], several years before Deacero began offering 4.4 mm wire rod, which indicates that [ ] is not a [ ].[69]
- Similarly, Nucor disputes Deacero's claim that its customer [ ], because those products are also standard wire products (*i.e.*, [ ]).[70]
- While Deacero claims that its customers are producing products with 4.4 mm wire rod that they could not produce with 4.75 to 19.00 mm wire rod, [ ] the 11 categories of wire rod identified by the ITC during the investigation.[71]

D. Channels of Marketing

Deacero's Comments

- Deacero does not actively advertise or market wire rod, including 4.4 mm wire rod.[72] The company includes several larger diameter in-scope wire rod products, ranging from 5.5 mm to 18.00 mm, in its product brochures and website, but it does not advertise 4.4 mm wire rod in these mediums.[73]
- The English versions of its product brochures and website are intended to promote the Deacero brand as a global company and [ ].[74]
- Deacero's [ ] the benefits of 4.4 mm wire rod compared to wire rod of larger diameters by promoting 4.4 mm wire rod as [ ].[75]
- While Deacero sells 4.75 mm to 19.0 mm wire rod [ ], the company made [ ].[76]
- Deacero did sell [ ] of 4.4 mm wire rod to [

[69] *See* Nucor's April 25, 2018 Comments at 21-22 and Exhibit 7 (citing to Deacero's April 11, 2018 IQR at 17-24 and Exhibit 24).
[70] *See* Nucor's July 16, 2018 Comments at 8.
[71] *See* Nucor's April 25, 2018 Comments at 19-20 (citing to ITC Investigation at I-7 and Table I-1 and *Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad & Tobago, and Ukraine*, Inv. Nos. 701-TA-417 and 731-TA-953, 957-959, and 962, USITC Pub. 4472 (June 2014) (ITC Second Review) at I-27 and Table I-10).
[72] *See* Deacero's April 6, 2018 IQR at 26.
[73] *Id*. at 26 and Exhibit 26.
[74] *See* Deacero's June 27, 2018 SQR at 4 and Deacero's April 6, 2018 IQR at Exhibit 26.
[75] *See* Deacero's April 6, 2018 IQR at 25-26.
[76] *Id*. at 27.

].[77]

Nucor's Comments

- Deacero does not advertise its 4.4 mm wire rod products, despite claiming that it is a new and niche product that could open additional markets for Deacero.[78] Deacero does not consider 4.4 mm wire rod to be a [ ] as the [ ] that the company produces in 4.4 mm diameter wire rod, it already produces in larger diameters.[79]
- Such facts indicate that 4.4 mm wire rod is not intended to fulfill a particular industry demand but rather to circumvent antidumping duties that apply to 4.75 mm and larger diameter wire rod.[80]

E. Cost of Modification Relative to the Value of the Imported Products

Deacero's Comments

- The production of 4.4 mm wire rod is a [ ] reduction in the diameter from the smallest in-scope wire rod product and required a substantial reordering of production equipment and different inputs (*i.e.* a [ ] billet).[81]
- Deacero had to develop a smaller [ ] billet because the company found that it was not possible to produce 4.4 mm wire rod with the [ ] billets used to produce larger diameters.[82]
- Developing the [ ] billets required approximately $[ ] for [ ] and [ ], and $[ ] in salaries for engineers to design, test, and evaluate the new billets.[83]
- Deacero invested a total of [ ] at its Celaya and Saltillo mills to develop and produce 4.4 mm wire rod.[84] Deacero also invested approximately $[ ] in new equipment and $[ ] in installation costs to overhaul the Saltillo plant in order to allow for the [ ].[85]
- The company eventually [

  ].[86]
- In comparison, to develop and produce 4.75 mm wire rod, Deacero invested a total $[ ] at its Celaya and Saltillo mills.[87] The costs alone do not reflect the fact that the development of 4.4 mm wire rod was much more difficult than the development of 4.75 mm wire rod; the development of 4.4 mm wire rod required [ ] billets and the re-configuring of the

[77] *Id*.
[78] *See* Circumvention Ruling Request at 24; *see also* Nucor's April 20, 2018 Comments at 7-8.
[79] *See* Nucor's April 20, 2018 Comments at 11-12.
[80] *See* Circumvention Ruling Request at 24.
[81] *See* Deacero's May 2, 2018 Comments at 2-3.
[82] *See* Deacero's April 6, 2018 IQR at 7, *see also* Deacero's June 27, 2018 SQR at 5.
[83] *See* Deacero's April 11, 2018 IQR at 2-3.
[84] *Id*. at 5-7.
[85] *Id*. at 8.
[86] *Id*. at 6-8.
[87] *See* Deacero's July 5, 2018 SQR at 7.

rolling mill to use the [ ] billets, whereas the development of 4.75 mm wire rod only required adjustments to the rolling mill.[88]

Nucor's Comments

- The costs Deacero incurred to modify its production process to produce 4.4 mm wire rod were minimal because the production process is generally the same as subject wire rod.
- Deacero claimed that producing new diameters of wire rod, such as [ ] wire rod, was not difficult because "[ ]."[89]
- Deacero describes three important differences in the production of 4.4 mm wire rod that sets it apart from subject wire rod: the different billet size used, the [ ], and the calibration of the production line. However, producing a new diameter such as 4.4 mm wire rod requires only small adjustments to the [ ] used in production, and the differences in the [ ] are no greater than that between any two similar diameters of subject wire rod.[90]
- While Deacero emphasizes that the testing process for 4.4 mm wire rod was labor intensive and involved [ ], these activities would be required to develop any new diameter of wire rod [ ].[91]
- Deacero claims that it was unable to produce 4.4 mm wire rod using the [ ] billets that it uses as an input to produce subject wire rod. As a result, the company invested approximately [ ] to develop [ ] billets, which it describes as "an important technological breakthrough" for the production of 4.4 mm wire rod.[92] Deacero further argues that it developed the [ ] billet in [ ] for the purpose of producing products other than 4.4 mm wire rod (*e.g.*, merchant bars, rebar, and profiles) and, therefore, the research and development costs related to the production of [ ] should not be attributed to 4.4 mm wire rod.[93] However, [ ] billets are a standard-sized billet that are widely available and commonly used to produce steel products, including the production of subject merchandise.[94]
- A list Deacero provided of "major investments" regarding its wire rod production reveals that none of the company's investments are [ ].[95] In addition, Deacero's financial statements [ ].[96]
- Setting aside the "major investments" that do not directly relate to 4.4 mm wire rod and [ ] billets, the capital and labor costs that Deacero incurred to [ ] and

[88] *Id*.
[89] *See* Nucor's April 25, 2018 Comments at 16-17 (citing to Deacero's April 11, 2018 IQR at 9).
[90] *See* Nucor's April 20, 2018 Comments at 12-16.
[91] *See* Nucor's April 25, 2018 Comments at 17 (citing to Deacero's April 11, 2018 IQR at 4-5).
[92] *Id*. at 4-5.
[93] *See* Nucor's April 25, 2018 Comments at 4-5.
[94] *See* Nucor's July 16, 2018 Comments at 6.
[95] *See* Nucor's April 25, 2018 Comments at 2-3.
[96] *See* Nucor's April 20, 2018 Comments at 7-8.

recalibrate its facility to produce 4.4 mm wire rod amounted to [ ], which is less than the [ ] the company invested to develop and produce 4.75 mm wire rod.[97]

VIII. Analysis

A. Wire Rod with Diameters Between 4.4 mm and 4.75 mm Produced and/or Exported by Deacero

i. Overall Physical Characteristics

The scope of the *Order* identifies the diameter and the chemical or metallurgical content of wire rod as the key physical parameters of the subject merchandise. Similarly, the ITC found that the important physical characteristics of wire rod are diameter and quality, which is denoted by the "grade" of the steel used and is based on the composition of carbon, nonferrous metals, and nonmetallic elements.[98]

The ITC found that steel ductility, hardness, and tensile strength are positively correlated with carbon content; therefore various diameters of the same grade with the same carbon content have similar physical characteristics in terms of ductility, hardness, and tensile strength.[99] Deacero's product catalogue indicates that it produces [ ].[100] Within each of those grades, [ ].[101] For example, Deacero's 4.4 mm wire rod in grade [ ] and 16 mm wire rod in grade [ ] have the same [ ].[102] Based on Deacero's product data, we preliminarily determine that the tensile strength and chemical content of wire rod varies by grade and not by diameter; therefore, aside from diameter, there are no meaningful physical or chemical differences between 4.4 mm wire rod and wire rod between 4.75 mm and 19.0 mm.[103]

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[97] *See* Circumvention Ruling Request at 25 (citing to *4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at Comment 8); *see also* Nucor's July 16, 2018 Comments at 5-6 (citing to Deacero's July 5, 2018 SQR at 6-7).

[98] *See* ITC Second Review at I-26.

[99] *Id*.

[100] *See* Deacero's April 6, 2018 IQR at Exhibit 4, *see also* Deacero's June 27, 2018 SQR at Exhibit S-1.

[101] *Id*.

[102] *Id.* Deacero produced 16 mm wire rod in grade [ ] and it produced 4.4 mm wire rod in grade [ ].

[103] Our findings in this preliminary determination concerning the physical similarities of wire rod at various narrow diameters are consistent with other wire rod proceedings and with the *4.75 mm Final Circumvention Determination*. For example, as noted in the antidumping duty orders on wire rod from Italy, Spain, the Republic of Korea, the Republic of Turkey, and the United Kingdom, wire rod is a single class or kind of merchandise regardless of minimum diameter. *See Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters (4.75 mm Preliminary Circumvention Determination*) and accompanying Issues and Decision Memorandum at 4-7, unchanged in the Final Determination; *see also Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417, 23420 (May 21, 2018) ("The products covered

Deacero argues that recalibrating its production facilities to reduce the diameter of wire rod produced by [ ] percent, *i.e.* from [ ] mm, required significant changes to the manufacturing process and the inputs used, and goes beyond a minor alteration. However, we find that there is significant overlap in the manufacturing process required to produce subject wire rod and 4.4 mm wire rod. For example, when comparing 4.4 mm, 4.75 mm, and 5.5 mm wire rod, all three diameters are produced by drawing billets through [ ] stands. Furthermore, 4.4 mm wire rod shares [ ] 4.75 mm wire rod and [ ] 5.5 mm wire rod.[104] In comparison, producing wire rod with diameters of [ ] mm and [ ] mm wire rod requires [ ] total stands with [ ] of the stand designs in common, and producing [ ] mm and [ ] mm wire rod requires [ ] and [ ] stands, respectively, with [ ] of the stand designs in common.[105]

In addition, when producing 4.4 mm and 5.5 mm wire rod, Deacero uses the [

].[106] We find the record evidence indicates that the adjustments Deacero makes to its production line to produce 4.4 mm wire rod are no greater than the adjustments it makes to produce various diameters of subject wire rod. We preliminarily determine that the differences in the production process, in terms of the [
], when producing two similar diameters of subject wire rod are no greater than the differences between producing 4.4 mm wire rod and similar diameters of subject wire rod.

Regarding the different packaging method that Deacero uses to transport 4.4 mm wire rod and minimize damage in transit, we find record evidence indicates that the interior and exterior diameters of 4.4 mm and 4.75 mm wire rod coils [ ] and that the coil length and weight differ by approximately [ ] percent.[107] In addition, the basic packaging method of 4.4 mm and 4.75 mm wire rod is similar (*i.e.*, both are coiled, compressed and secured with wire bands).[108] Based on this evidence, we preliminarily determine that any minor differences in packaging between wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod do not lead us to determine that the two diameter ranges are meaningfully different in terms of physical characteristics.

Finally, while [ ] billets are used to produce 4.4 mm wire rod and [ ] billets are used to produce subject wire rod with diameters between 4.75mm and 19.00 mm, both billet sizes are commonly consumed by steel manufacturers, including other wire rod producers.[109] Based on this evidence, we preliminarily determine that the differences in the inputs to produce wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningful.

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by these orders are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter.").

[104] *See* Deacero's June 27, 2018 SQR at 7; Deacero's April 11, 2018 IQR at Exhibit 17.

[105] *See* Deacero's April 11, 2018 IQR at Exhibit 17; *see also* Deacero's June 27, 2018 SQR at 7 and Exhibit S-13.

[106] *See* Deacero's April 11, 2018 IQR at Exhibit 17.

[107] *See* Deacero's July 5, 2018 SQR at 4-5.

[108] *Id*. at 4.

[109] *See* Nucor's April 20, 2018 Comments at 13 (citing to Exhibits 1, 2, and 3).

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of overall physical characteristics.

ii. Expectations of the Ultimate Users

According to the ITC, wire rod covered by the scope of the *Order* is generally used to produce nails, coat hangers, mesh, fencing, tire bead, mechanical springs, strand and rope, as well as high-end specialty products such as cold-heading quality wire rod, welding quality wire rod, and tire cord quality wire rod.[110] The ITC found that wire rod is typically produced to order and tailored to customers' needs for specific applications and quality requirements.[111] Specifically, the ITC found that 97 percent of U.S. produced wire rod is produced-to-order according to the end user's precise specifications and processing specialty wire rod requires fine calibration of the rolling mill; therefore, it is not unusual for a wire rod end user to work with a supplier to adjust and refine the production process to accommodate a specific wire rod product.[112] Further, the ITC distinguishes between common types of wire rod (*i.e.*, industrial and standard quality), which are highly interchangeable among different manufacturers and require limited recalibration of production facilities, and specialty wire rod product, which are produced to exact specifications and reduces substitutability.[113]

Deacero previously claimed that 4.75 mm wire rod had several advantages over 5.5 mm wire rod, such as better cooling, more uniformity in the size of the grain of the wire rod, and requiring fewer passes to draw the wire rod down to narrow gauge wire products, which results in wire products with greater tensile strength.[114] However, [ ] that after Commerce determined that 4.75 mm wire rod was subject to the *Order*, [ ].[115] Deacero now claims that 4.4 mm wire rod has similar advantages in terms of requiring fewer passes to draw down to narrow gauge wire products. We again see evidence of Deacero's customers [ ] for subject merchandise. For example, we find evidence that [ ] switched from purchasing 4.75 mm wire rod to purchasing 4.4 mm wire rod around [ ].[116] In addition, [ ].[117] Contrary to Deacero's claim, these purchase patterns suggest that Deacero's customers see 4.4 mm wire rod as interchangeable with 4.75 mm and 5.5 mm wire rod, which supports the conclusion that 4.4 mm wire rod does not offer the ultimate user any advantages over 4.75 mm or 5.5 mm wire rod.

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[110] *See* ITC Investigation at 24-25.
[111] *Id.* at 11; *see also* ITC Second Review at II-15.
[112] *See* ITC Second Review at II-15.
[113] *See* ITC Investigation at 11, 13, and 23.
[114] *See Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters* and accompanying Issues and Decision Memorandum at 4-5.
[115] *See* Nucor's April 20, 2018 Comments at Exhibit 7.
[116] *See* Deacero's June 27, 2018 SQR at Exhibit S-7.
[117] *Id.* at Exhibit S-7 and S-8.

Deacero additionally claims that 4.4 mm wire rod carries a price premium over subject wire rod, which indicates that customer expectations differ with respect to 4.4. mm. We examined Deacero's sales by customer to the United States. As part of our analysis we removed sales to [ ] given that it is an affiliated company. We found that the price of 4.75 mm to 19 mm wire rod is [ ].[118] Subject wire rod was [ ], respectively.[119] Deacero's data does not support its claim that 4.4 mm wire rod had a price premium over subject wire rod. Thus, we find the lack of a price premium between 4.4 mm wire rod and subject wire rod belies Deacero's claim that customer expectations differ with regard to the aforementioned wire rod diameters.

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of customer expectations.

iii. Use of Merchandise

As stated above, wire rod covered by the scope of the *Order* is generally used for nails, coat hangers, mesh, fencing, tire bead, mechanical springs, strand and rope, as well as high-end specialty products such as cold-heading quality wire rod, welding quality wire rod, and tire cord quality wire rod, and it is generally sold to end users.[120]

In 2017, Deacero sold wire rod products with a diameter of 19 mm or less in Mexico and [ ], including the United States.[121] The United States was Deacero's [ ] foreign market, consuming [ ] percent of Deacero's exports of wire rod products with a diameter of 19 mm or less.[122] The United States consumed [ ] of Deacero's sales of wire rod with a diameter less than 4.75 mm.[123]

Deacero describes its 4.4 mm wire rod product as a "[ ]."[124] As discussed above in the "Overall Physical Characteristics" section of this memorandum, we do not find that wire rod with diameters between 4.4 mm and 4.75 mm have different chemical or mechanical properties from subject wire rod of the same grade. The record demonstrates that Deacero's customers in the United States purchase [

[118] To determine the price premium of 4.4 mm wire rod, we calculated the average prices of 4.4 mm wire and 4.75 to 19 mm wire rod for each year from 2014 through 2017 (excluding sales to Deacero's affiliate, [ ]) using the U.S. export data in Deacero's June 27, 2018 SQR at Exhibit S-3. *See* Attachment 1.
[119] *See* Attachment 1.
[120] *See* ITC Investigation at 11 and 24-25.
[121] *See* Deacero's April 6, 2018 IQR at 22 and Exhibit 21.
[122] *Id*.
[123] *Id*.
[124] *See* Deacero's April 6, 2018 IQR at 26.

], and provides no basis, other than the existence of the *Order*, for [ ].[125] Further, as discussed in "Expectations of the Ultimate Users" section above, based on Deacero's sales data, we find evidence that [ ] substituted 4.4 mm wire rod for 4.75 mm wire rod within three years after Deacero began producing 4.4 mm wire rod, which indicates that Deacero's U.S. customers find that there are no meaningful differences between 4.4 mm and 4.75 mm wire rod.[126]

We find that Deacero has provided evidence that certain [ ] wire end products can be produced more efficiently using 4.4 mm wire rod because fewer passes and less heat is required to draw the wire rod down to a [ ].[127] However, the same types of wire end products can be produced using subject wire rod, albeit with varying degrees of efficiency. For example, the ITC found that [ ] can draw [ ].[128] Thus, we do not agree with Deacero's claim that [ ] could only draw [ ] using 4.4 mm wire rod, and we preliminarily conclude that 4.4 mm wire rod and subject wire rod are used to produce the same end products.[129]

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of use of merchandise.

iv. Channels of Marketing

The ITC found that wire rod in the United States is "overwhelmingly sold directly to the end users" and "is often tailored to customers' needs for specific applications and quality requirements."[130]

Deacero stated that it sells subject wire rod through [ ].[131] Deacero sells [ ],[132] which is the most common channel for sales of subject merchandise, according to the ITC.[133] Deacero made [ ] of 4.4 mm wire rod to a [ ].[134] Deacero advertises some, but not all, of the grades and diameters of wire rod it produces in its product brochures and website.[135] Even though Deacero claims 4.4 mm wire

[125] *Id*. at Exhibits 21 and 24; *see also* Deacero's April 11, 2018 IQR at 18-20.
[126] *See* Deacero's June 27, 2018 SQR at Exhibit S-7.
[127] *See* Deacero's April 11, 2018 IQR at Exhibit 24.
[128] *See* ITC Second Review at I-30.
[129] *Id*. at I-28 and I-30; *see also* Nucor's April 25, 2018 Comments at 6-7.
[130] *See* ITC Investigation at 11.
[131] *See* Deacero's April 6, 2018 IQR at 27.
[132] *Id*.
[133] *See* ITC Investigation at 11.
[134] *Id*.
[135] *See* Deacero's April 6, 2018 IQR at Exhibit 26.

rod is a "new product" that will help the company "develo{p} new markets, increas{e} Deacero's customer base, and increas{e} profits by selling a niche product," Deacero does not advertise 4.4 mm wire rod in product brochures or its website.[136] Instead, Deacero's [ ], which is the same method in which Deacero markets its subject wire rod products.[137]

On the basis of the foregoing, we preliminarily determine that wire rod with diameters between 4.4 mm to 4.75 mm and subject wire rod are not meaningfully different in terms of channels of marketing.

v. Cost of Modification Relative to the Value of the Imported Products

Deacero stated that it invested [ ] at both of its mills to develop and produce 4.4 mm wire rod.[138] This amount is equal to [ ] percent of the value of all 4.4 mm wire rod sold by Deacero from 2014 to 2017.[139] In comparison, when Deacero first developed 4.75 mm wire rod, it invested a total of [ ], which amounted to [ ] percent of the values of U.S. sales of that wire product over a four-year period.[140]

Although the manufacturing process for production of the different types of wire rod differ based on quality requirements, all wire rod shares a basic manufacturing process consisting of steelmaking, casting, hot-rolling, and coiling and cooling.[141] The ITC found that the hot-rolling process determines the diameter of the wire rod produced and that wire rod manufacturers produce billets in the desired cross-sectional dimension based on the dimensions of the wire rod and the design of the rolling mill.[142] The ITC further found that a larger billet will produce a heavier coil.[143]

As discussed in the "Overall Physical Characteristics" section above, we find that the differences in the production process for 4.4 mm and subject wire rod are not any greater than the differences in the production process between other diameters of in-scope wire rod. For example, producing wire rod with a diameter of [ ] requires [ ] stands for the rolling process, which is the [ ] required to produce subject wire rod with a diameter of [ ] mm.[144] In comparison, [ ] wire rod requires [ ] stands, [ ] wire rod requires [ ] stands, and [ ] wire rod requires [ ] stands.[145] Deacero's Celaya mill and Saltillo mill both have [ ] stands each; therefore,

[136] *See* Deacero's April 11, 2018 IQR at 17; *see also* Deacero's April 6, 2018 IQR at 25-26 and Exhibit 26; Deacero's July 5, 2018 IQR at 3.
[137] *See* Deacero's April 6, 2018 IQR at 25-26 and Exhibit 26.
[138] *See* Deacero's April 11, 2018 IQR at 5-7.
[139] *See* Deacero's April 6, 2018 IQR at Exhibits 14 and 15; *see also* Deacero's April 11, 2018 IQR at 2-8.
[140] *See Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters* and accompanying Issues and Decision Memorandum at 8.
[141] *Id*. at 11.
[142] *See* ITC Second Review at I-33.
[143] *Id*.
[144] *See* Deacero's June 27, 2018 SQR at 6-7.
[145] *Id*.

producing any diameter of wire rod in the [ ] range requires recalibrating some, but not all, of the existing stands and does not require entirely different production equipment.[146]

Regarding the costs Deacero incurred to develop and produce 4.4 mm wire rod relative to the value of the exported product, we included in our analysis the $[ ] in labor and equipment costs that were directly related to testing and producing 4.4 mm wire rod. We did not include in our analysis the $[ ] investment in new equipment and $[ ] in installation costs to overhaul the Saltillo mill as this amount went towards improving the efficiency of all stands and was not primarily directed towards the production of 4.4 mm wire rod.[147] Deacero emphasizes the fact that 4.4 mm wire rod cannot be produced efficiently using [ ] billets and thus the company found it necessary to develop a [ ] mm billet.[148] However, Deacero admits that the [ ] mm billet size already existed and is used to produce a variety of products.[149] The company also used [ ] mm billets to produce [ ] tons of wire rod in diameters from [ ] mm in diameter, so the [ ] mm billet size is not exclusive to 4.4 mm wire rod. Thus, we are excluding the costs Deacero reported for producing [ ] mm billet when analyzing the cost of modification relative to total value.

As such, we preliminarily find that the additional capital expenditures Deacero incurred to produce 4.4 mm diameter wire rod are insignificant relative to the value of exports of 4.4 mm wire rod.

vi. Other Case-Specific Criteria (Circumstances Under Which the Products Enter the United States, Timing of Entries, and Quantity of Merchandise Entered)

We examined Deacero's sales of 4.4 mm wire rod and subject wire rod to the United States from 2014, when Deacero began producing 4.4 mm wire rod, through 2017. We note that the company's U.S. exports of 4.4 mm wire rod to the United States [

].[150] This [ ] in the share of 4.4 mm wire rod among Deacero's exports of wire rod 19 mm or smaller as a share of Deacero's total U.S. exports of wire rod 19 mm or smaller is due to the fact that U.S. exports of 4.4 mm wire rod [ ] kgs in 2017, while U.S. exports of subject wire rod [ ] kgs in 2017.[151] We find the data indicate that end users' demand for 4.4 mm wire rod was [ ].

We also examined Deacero's U.S. sales data for 4.4 mm wire rod and 4.75 mm wire rod from 2009 to 2017 to determine how consumption patterns changed after 4.75 mm wire rod became subject to the antidumping duties in December 2011 and as Deacero began producing and

[146] *See* Deacero's April 6, 2018 IQR at 7.
[147] *Id*. at 8.
[148] *Id*. at 2-3.
[149] *Id*.
[150] *See* Deacero's June 27, 2018 SQR at Exhibit S-2.
[151] *Id*.

exporting 4.4 mm wire rod in 2014. The data indicate that Deacero's U.S. sales of 4.75 mm wire rod [
].[152] The data further indicate that [ ] of Deacero's U.S. customers purchased [
].[153] [
].[154] Over this same period, Deacero [
].[155]

Based on the record evidence described above, we preliminarily find that certain customers of Deacero switched their purchases of 4.75 mm wire rod for 4.4 mm wire rod shortly after Commerce's decision that 4.75 mm wire rod was circumventing the *Order*.[156] Accordingly, we preliminarily find the information detailed above supports the finding that end users consider 4.4 mm wire rod to be a substitute for subject wire rod.

vii. Preliminary Finding

We preliminarily determine that wire rod with diameters greater than or equal to 4.4 mm and less than 4.75 mm are indistinguishable from wire rod covered by the literal terms of the *Order* in any meaningful sense in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, and the channels of marketing. We also preliminarily determine that the costs incurred to produce wire rod with diameters greater than or equal to 4.4 mm and less than 4.75 mm are insignificant relative to the total value of Deacero's U.S. sales of such wire rod products during the same period of time. Further, we also preliminarily find that certain customers have replaced their purchases of 4.75 mm wire rod with 4.4. mm wire rod and that end users consider 4.4 mm wire rod to be a substitute for 4.75 mm wire rod. Therefore, in light of these findings, we preliminarily determine that wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm produced and/or exported by Deacero constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.

B. Wire Rod with Diameters Less Than 4.4 mm Produced and/or Exported by Deacero

For purposes of this preliminary determination, and to prevent future circumvention of the *Order*, we will apply our affirmative circumvention finding to wire rod with diameters less than 4.4 mm that are produced and/or exported by Deacero.

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[152] *See* Deacero's June 27, 2018 SQR at Exhibit S-7.
[153] *See* Deacero's April 6, 2018 QR at Exhibit 14.
[154] *Id*.
[155] From 2014 to 2015, Deacero [
]. *See* Deacero's June 27, 2018 SQR at Exhibit S-1.
[156] *See 4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum.

Congress enacted section 781 of the Act to combat certain forms of circumvention of antidumping and countervailing duty orders. When Congress passed the Omnibus and Trade Competitiveness Act in 1988, it explained that "{a}n order on an article presumptively includes articles altered in minor respects in form or appearance…."[157] The legislative history explains that the purpose of the circumvention statute "is to authorize the Commerce Department to apply antidumping and countervailing duty orders in such a way as to prevent circumvention and diversion of U.S. law."[158] Further, it indicates that Congress was concerned with the existence of "loopholes," *i.e.*, foreign companies evading orders by making slight changes in their method of production, because such scenarios "seriously undermine the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purposes for which these laws were enacted."[159] Congress also recognized that "aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices."[160] When implementing the Uruguay Round Agreements Act in 1994, Congress expressed similar concerns with scenarios limiting the effectiveness of the antidumping duty law (*i.e.*, completion or assembly in a country other than the subject country).[161] Accordingly, Commerce "has been vested with authority to administer the antidumping laws in accordance with the legislative intent" and, thus, "has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law."[162]

As noted above, Nucor contends that Deacero will continue to circumvent the *Order* unless Commerce makes an affirmative circumvention finding with respect to all wire rod with diameters less than 4.75 mm.[163] Based on the physical characteristics of inquiry and subject merchandise, as well as the history of this proceeding, we find this determination to be a reasonable exercise of our authority to administer the Act and consistent with our duty to ensure that the *Order* provides effective relief to the domestic industry. With respect to the physical characteristics, our analysis in this anti-circumvention inquiry demonstrates that the tensile strength and chemical content of wire rod varies by grade and not by diameter.[164] For this reason, we have found that all wire rod less than 4.75 mm is indistinguishable from wire rod covered by the literal terms of the *Order* in any meaningful sense in terms of overall physical characteristics of the merchandise.

Additionally, the history of this proceeding demonstrates that Deacero has repeatedly sought to evade the *Order* by making slight changes to its production methods. The record demonstrates

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[157] *See* H.R. Rep. No. 100-576 at 600 (1988) (Conference Report accompanying the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)).
[158] *See* Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).
[159] *Id.*
[160] *Id.*
[161] *See* Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316 (1994), at 892-95.
[162] *See Tung Mung Dev. Co. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002) (quoting *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988)), *aff'd* 354 F.3d 1371 (Fed. Cir. 2004).
[163] *See* Circumvention Ruling Request at 2-3; Nucor's September 11, 2018 Comments at 7-8.
[164] *See supra* at the "Overall Physical Characteristics" section of this memorandum; *see also 4.75 mm Final Circumvention Determination* and accompanying Issues and Decision Memorandum at comment 4.

that since the publication of the *Order*, Deacero has produced wire rod with diameters less than 5.00 mm, and that in the *4.75 mm Final Circumvention Determination* we determined that wire rod with actual diameters between 4.75 mm and 5.00 mm produced and/or exported by Deacero was circumventing the *Order*. In this inquiry, Deacero's sales data reveals that within [ ] following the company's initial production of 4.4 mm wire, Deacero [ ],[165] and that by 2017 the company had [ ] of 4.75 mm wire rod and [ ] of 4.4 mm wire rod.[166] The record evidence demonstrates that Deacero required only [ ] to reconfigure its facilities to produce 4.4 mm wire rod following the prior anti-circumvention determination regarding wire rod with an actual diameter of 4.75 mm to 5.00 mm.[167] Further, as explained above, in this anti-circumvention inquiry, we are preliminarily determining that wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm produced and/or exported by Deacero is circumventing the *Order*. The history of this proceeding, therefore, indicates that limiting our affirmative circumvention finding in this inquiry to wire rod with a diameter greater than or equal to 4.4 mm and less than 4.75 mm could allow for further circumvention of the *Order* if Deacero were to again make another marginal change to the diameter of its wire rod.

In enacting the circumvention provisions, Congress did not intend to allow foreign companies to avoid antidumping duties by advantageously modifying their manufacturing process to produce merchandise altered in minor respects in form or appearance from that which is covered by the order. In similar circumstances, Commerce has found it appropriate to implement measures necessary to prevent future circumvention.[168] The circumstances of this proceeding require Commerce to exercise its discretionary authority under the antidumping duty law in a manner that is tailored to prevent future evasion or circumvention of the *Order* by Deacero. Therefore, consistent with the legislative intent of the statutory circumvention provisions, and to prevent future circumvention, we find it necessary to apply this preliminary affirmative circumvention finding to wire rod with diameters that are less than 4.4 mm that are produced and/or exported by Deacero.[169] Accordingly, for the reasons discussed above, we further preliminarily determine that any wire rod manufactured by Deacero with a diameter less than 4.4 mm also constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.

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[165] *See* Deacero's June 27, 2018 SQR at Exhibit S-7.
[166] *Id.* at Exhibit S-1.
[167] *See* Deacero's August 27, 2018 SQR at 3.
[168] *See Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 76 Fed. Reg. 50996, 50997 (August 17, 2011) (applying an affirmative circumvention finding to all producers in the subject country where circumvention occurred repeatedly by multiple parties producing and importing different specifications of cut-to-length plate that used boron).
[169] *See Appleton Papers, Inc. v. United States*, 929 F. Supp. 2d 1329, 1337 (CIT 2013) ("Commerce has a certain amount of discretion to act in order to 'prevent {} the intentional evasion or circumvention' of the Act. To that end, Commerce may impose measures . . . where it believes they will be effective in preventing future circumvention of its orders.") (internal citations omitted).

IX. Recommendation

We recommend that, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce issue an affirmative preliminary determination that wire rod with a diameter less than 4.75 mm produced and/or exported by Deacero is circumventing the *Order*. If this recommendation is accepted, we will instruct U.S. Customs and Border Protection to suspend liquidation and to collect cash deposits equal to 12.56 percent *ad valorem* for all unliquidated entries of wire rod with a diameter less than 4.75 mm, produced and/or exported by Deacero that are entered or withdrawn from warehouse on or after February 7, 2018, the publication date of the *Initiation Notice* in the *Federal Register*.[170]

☒	☐
Agree	Disagree

/S/ Christian Marsh

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

[170] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 16832 (April 17, 2018) and accompanying Decision Memorandum.

Attachment 1

Business Proprietary Information in Entirety

Not Susceptible to Public Summary