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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Court Decision Not in Harmony with Final Results and Notice of Amended Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 22, 2014, the United States Court of International Trade (CIT) entered its final judgment in *Deacero S.A.P.I. de C.V. and Deacero Usa, Inc. v. United States and Arcelormittal USA LLC, Gerdau Ameristeel U.S. Inc., Evraz Rocky Mountain Steel, and Nucor Corporation*, Court No. 12-00345, Slip Op. 14-151 (*Deacero III*), sustaining the Department of Commerce's (the Department) negative circumvention determination from the First Remand Results.<sup>1</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination*<sup>2</sup> that, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225,

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<sup>1</sup> See Final Results of Redetermination Pursuant to *Deacero S.A. de C.V. and Deacero USA Inc. v. United States and Arcelormittal USA LLC, Gerdau Ameristeel U.S. Inc., Evraz Rocky Mountain Steel, and Nucor Corporation*, Court No. 12-00345; Slip Op. 13-126 (CIT 2013) (January 29, 2014) (First Remand Results)

<sup>2</sup> 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) (*Final Determination*) and accompanying Issues and Decision Memorandum (Final Decision Memorandum).

Deacero's entries of wire rod with an actual diameter of 4.75 millimeters (mm) to 5.00 mm constitute circumvention of the *Order*.<sup>3</sup>

DATES: Effective Date: (January 1, 2015).

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6071.

SUPPLEMENTARY INFORMATION:

### **Background**

On October 1, 2012, the Department issued its *Final Determination* in which it determined that Deacero's shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm constitute a circumventing minor alteration of the *Order*.<sup>4</sup> Deacero challenged the Department's determination. Upon review, the CIT remanded the *Final Determination*, holding that the Department improperly determined that wire rod with a thickness between 4.75 mm and 5.00 mm was inside the scope despite the fact that it was commercially available before the investigation and petitioners "consciously chose to limit the *Order's* reach to certain steel products 5.00 mm or more, but less than 19.00 mm in solid cross-sectional diameter."<sup>5</sup> On remand, based on the Court's reasoning, the Department found that there is no alternative but to change the results of the anti-circumvention determination and find on remand that 4.75 mm

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<sup>3</sup> See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).

<sup>4</sup> See *Final Determination*.

<sup>5</sup> See *Deacero S.A. de C.V. v. United States*, 37 CIT, 942 F. Supp. 2d 1321, 1324-25 (2013) (*Deacero I*); *Deacero Remand*, Slip Op. 13-126 at 15.

wire rod is not within the scope of the *Order*.<sup>6</sup> In *Deacero II*, the Court held that although the Department ultimately reached a supportable result in the First Remand Results, remand was nonetheless necessary because the Department arrived at the result by misinterpreting *Deacero I*.<sup>7</sup> Therefore, in *Deacero II*, the Court instructed the Department to explain whether it seeks the Court's leave to revisit the issue of commercial availability.<sup>8</sup> In the Second Remand Results, the Department continued to respectfully disagree with the Court that the "commercial availability" of a product in the country in question, in a third country or in the United States bars the Department from reaching an affirmative anti-circumvention determination under the minor alteration provision of the statute.<sup>9</sup> For these same reasons, the Department did not request a remand to further consider "commercial availability" in the context of this minor alteration proceeding. On December 22, 2014, the CIT entered final judgment sustaining the First Remand Results.<sup>10</sup>

### **Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 22, 2014 judgment sustaining the Department's First Remand Results with respect to *Deacero's* shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm not

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<sup>6</sup> See First Remand Results at 6.

<sup>7</sup> See *Deacero S.A.P.I. de C.V. v. United States*, Slip Op. 14-99, 2014 WL 4244349, \*1-3 (CIT Aug. 28, 2014) (*Deacero II*) at 11-12.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> See Final Results of Redetermination Pursuant to *Deacero S.A. de C.V. et al v. United States*, Court No. 12-00345; Slip Op. 14-99 (CIT August 28, 2014) (Second Remand Results).

<sup>10</sup> See *Deacero III*.

constituting a circumventing minor alteration of the *Order* constitutes a final decision of the Court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

### **Amended Final Determination**

Because there is now a final court decision, we are amending the *Final Determination* with respect to Deacero's shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm. Based on the negative circumvention determination, Deacero's 4.75 mm wire rod is not subject to antidumping duties.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise, but set the cash deposit rate for the 4.75 mm up to 5 mm diameter wire rod to zero pending a final and conclusive court decision. For any antidumping duties which have been deposited for 4.75 up to 5mm diameter wire rod entered from January 1, 2015 to the date of this notice, we will instruct Customs and Border Protection to refund the cash deposit upon request but continue to suspend the entries at a zero cash deposit rate.

### **Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 20, 2015.

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance