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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 Amended Final Determination and Notice of Second 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 III*,<sup>1</sup> sustaining the Department of Commerce's (the Department) negative circumvention determination from the First Remand Results as it relates to the antidumping duty order on carbon and certain alloy steel wire rod from Mexico.<sup>2</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken*,<sup>3</sup> as clarified by *Diamond Sawblades*,<sup>4</sup> the Department issued the *Amended Final Determination*<sup>5</sup> notifying the public that the final judgment of the CIT in this case was not in harmony with the Department's finding in the *Final Determination*.<sup>6</sup> In the *Amended Final*

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<sup>1</sup> See *Deacero S.A.P.I. de C.V. and Deacero Usa, Inc. v. United States and Arcelormittal USA LLC, Gerdau Ameristeel U.S. Inc., Evraz Rocky Mountain Steel, and Nucor Corporation*, Court No. 12-00345, Slip Op. 14-151 (December 22, 2014) (*Deacero III*).

<sup>2</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); *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>3</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>4</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>5</sup> See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Determination*, 80 FR 44326 (July 27, 2015) (*Amended Final Determination*).

<sup>6</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

*Determination*, the Department found, under protest, that, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225, Deacero's entries of wire rod with an actual diameter of 4.75 millimeters (mm) to 5.00 mm (also referred to in this notice as small diameter wire rod) did not constitute circumvention of the *Order*. On April 5, 2016, the Federal Circuit reversed the CIT's holding in *Deacero III*.<sup>7</sup> In its holding, the Federal Circuit reinstated the Department's original finding from the *Final Determination* that Deacero's shipments of small diameter wire rod to the United States constitute a minor alteration circumvention of the *Order*.<sup>8</sup>

DATES: Effective April 15, 2016.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, or James Terpstra. 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, (202) 482-3965, respectively.

SUPPLEMENTARY INFORMATION:

#### Background

On October 1, 2012, the Department issued the *Final Determination* in which it determined that Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm constitute a minor alteration circumvention of the *Order*.<sup>9</sup> Deacero challenged the Department's determination. Upon review, the CIT remanded the *Final Determination*, holding that the Department improperly determined that Deacero's entries of small diameter wire rod were inside

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Decision Memorandum (Final Decision Memorandum).

<sup>7</sup> See *Deacero S.A.de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016) (*Deacero IV*).

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

<sup>9</sup> See *Final Determination*, 77 FR at 59893.

the scope of the *Order* despite the fact that small diameter wire rod was commercially available before the investigation and Petitioners<sup>10</sup> “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>11</sup> On remand, based on the Court’s reasoning, the Department found that there was no alternative but to change the results of the anti-circumvention determination and find that Deacero’s entries of wire rod with an actual diameter of 4.75 mm to 5.00mm were not within the scope of the *Order*.<sup>12</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>13</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>14</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>15</sup> For these same reasons, the Department did not request a remand to further consider “commercial

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<sup>10</sup> Petitioners are ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc, Rocky Mountain Steel, Members of the Wire Rod Producers Coalition and Nucor Corporation (Nucor).

<sup>11</sup> See *Deacero S.A. de C.V. v. United States*, 37 CIT, 942 F. Supp. 2d 1321, 1324-25 (September 20, 2013) (*Deacero I*); *Deacero Remand*, Slip Op. 13-126 at 15.

<sup>12</sup> See First Remand Results at 6.

<sup>13</sup> See *Deacero S.A.P.I. de C.V. v. United States*, Slip Op. 14-99, 2014 WL 4244349, \*1-3 (August 28, 2014) (*Deacero II*) at 11-12.

<sup>14</sup> *Id.* at 12.

<sup>15</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).

availability” in the context of this minor alteration proceeding. On December 22, 2014, the CIT entered final judgment sustaining the First Remand Results.<sup>16</sup> Accordingly, July 27, 2015, the Department issued the *Amended Final Determination* in which it found that Deacero’s entries of small diameter wire rod were not circumventing the *Order* and, thus, were not subject to antidumping (AD) duties.<sup>17</sup> In the *Amended Final Determination*, the Department indicated that it would instruct Customs and Border Protection (CBP) to continue the suspension of liquidation of the subject merchandise, but set the cash deposit rate for Deacero’s entries of wire rod with an actual diameter of 4.75 mm up to 5.00 mm to zero pending a final and conclusive court decision.<sup>18</sup> Further, in the *Amended Final Determination*, the Department stated that for any AD duties which were deposited for Deacero’s entries of wire rod with an actual diameter of 4.75 mm up to 5.00 mm entered from January 1, 2015, to July 27, 2015, the publication date of the *Amended Final Determination*, the Department would instruct CBP to refund the cash deposit upon request but continue to suspend the entries at a zero cash deposit rate.<sup>19</sup>

In *Deacero IV*, the Federal Circuit held that in reversing the Department’s affirmative circumvention finding in the *Final Determination*, the CIT erred in its interpretation of case precedent.<sup>20</sup> The Federal Circuit found that the CIT incorrectly interpreted *Wheatland* to mean that an article cannot be subject to an anti-circumvention inquiry if that article is not expressly included within the literal terms of the order. Specifically, the Federal Circuit reasoned that where *Wheatland* held that a minor alternation inquiry is inappropriate when an order expressly

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<sup>16</sup> See *Deacero III*.

<sup>17</sup> See *Amended Final Determination*, 80 FR at 44327.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *Deacero IV*, 817 F.3d at 1337-39, citing to *Deacero I*, 942 F. Supp. 2d at 1328-1332 quoting *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1370 (Fed. Cir. 1998) (*Wheatland*).

excludes the allegedly altered product, the order at issue contains no explicit exclusion of steel wire rod with a diameter that is less than 5.00 mm.<sup>21</sup> The Federal Circuit also held that substantial evidence supports the Department's determination that small-diameter steel wire rod was not commercially available prior to the *Order*, notwithstanding that some small-diameter steel wire rod was in existence at some prior time in non-investigated countries.<sup>22</sup> Accordingly, the Federal Circuit held that the Department's initial finding in the *Final Determination* that Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm constitute a circumventing minor alteration of the *Order* was in accordance with law and supported by substantial evidence.<sup>23</sup>

#### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of 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 Federal Circuit's judgement in *Deacero IV* sustaining the Department's original finding in the *Final Determination* that Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm constitute a minor alteration circumvention of the *Order* constitutes a final decision of the Court that is not in harmony with the Department's negative circumvention finding in the First Remand Results and *Amended Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

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<sup>21</sup> See *Deacero IV*, 817 F.3d at 1338.

<sup>22</sup> *Id.* at 1339.

<sup>23</sup> *Id.* at 1339.

### Amended Final Determination

Because there is now a final court decision, we are amending the *Amended Final Determination* with respect to Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm. Based on the Federal Circuit's holding in *Deacero IV*, Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm are covered by the scope of the *Order* and, thus, subject to AD duties.

Accordingly, the Department will instruct CBP to continue to suspend liquidation of the subject merchandise and, as of January 1, 2015, the effective date for the *Amended Final Determination* giving effect to the CIT's since-reversed final judgment, to set the cash deposit rate for Deacero's entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm to the applicable cash deposit rate as determined in administrative reviews.<sup>24</sup> Specifically, for entries of small diameter wire rod from Deacero that entered the United States on or after January 1, 2015, whose entries were suspended at a zero cash deposit rate subject to the *Amended Final Determination*, we will instruct CBP to collect cash deposits at the following rates:

On or After	Before	Applicable Cash Deposit Rate
January 1, 2015	June 22, 2015	12.08 <sup>25</sup>
June 22, 2015	May 19, 2016	0.00 <sup>26</sup>

<sup>24</sup> As of January 1, 2015, the cash deposit rate applicable to Deacero's entries of subject merchandise was 12.08 percent, as established in *Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Administrative Review: 2010-2011*, 78 FR 28190, 28191 (May 14, 2013) (*10/11 Final Results*). Deacero's cash deposit rate was subsequently revised to zero percent in *Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Administrative Review: 2012-2013*, 80 FR 35626, 35627 (June 22, 2015) (*12/13 Amended Final Results*), and 1.13 percent in *Carbon and Certain Alloy Steel Wire Rod From Mexico: Amended Final Results of Administrative Review: 2013-2014*, 81 FR 41521, 41522 (June 27, 2016) (*13/14 Amended Final Results*).

<sup>25</sup> See *10/11 Final Results*, 78 FR at 28191.

<sup>26</sup> See *12/13 Amended Final Results*, 80 FR at 35627.

May 19, 2016		1.13 <sup>27</sup>
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Additionally, with regard to any of Deacero's unliquidated entries of wire rod with an actual diameter of 4.75 mm to 5.00 mm **for which an administrative review has been completed**, we will instruct CBP to assess AD duties at the applicable rates.

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.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

Dated: July 8, 2016.

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<sup>27</sup> See 13/14 Amended Final Results, 81 FR at 41522.

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