

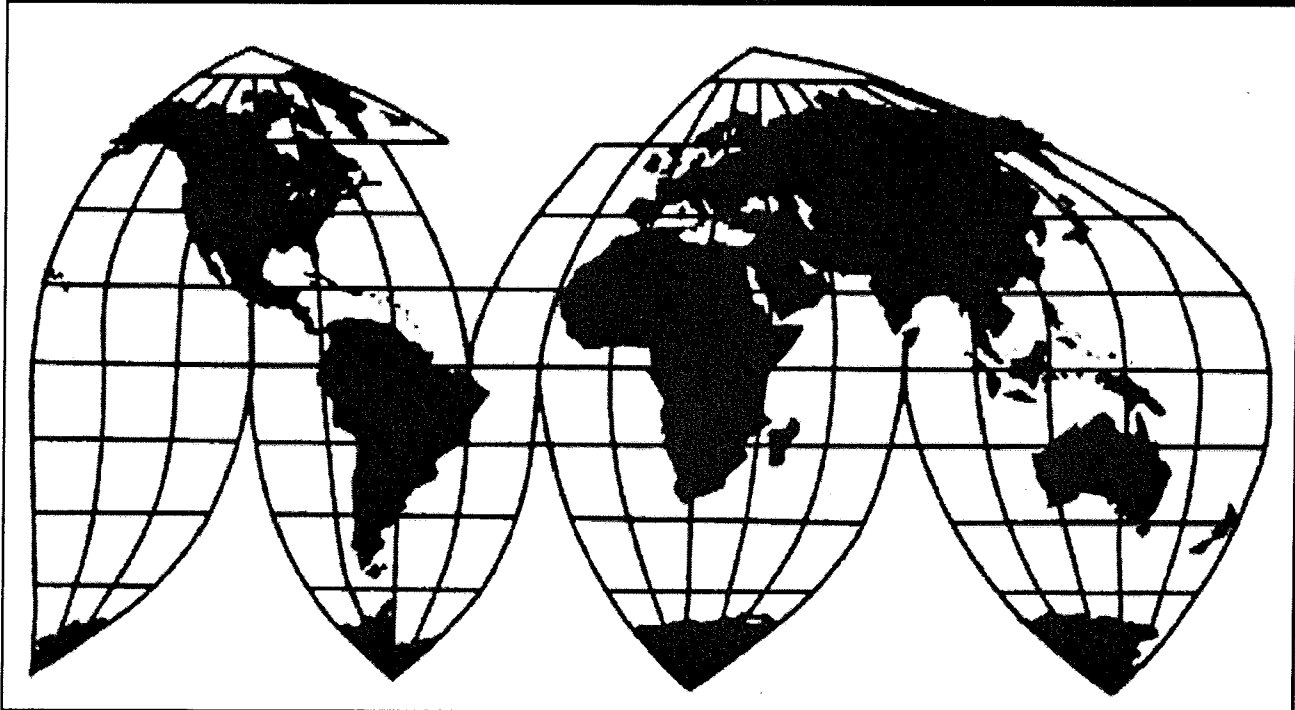
Steel Concrete Reinforcing Bar from Mexico

Investigation No. 731-TA-1227 (Final) (Remand)

Publication 4645

October 2016

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Irving A. Williamson, Chairman
David S. Johanson, Vice Chairman
Dean A. Pinkert
Meredith M. Broadbent
F. Scott Kieff
Rhonda K. Schmidlein

Catherine DeFilippo
Director of Operations

Staff assigned

Douglas Corkran, Supervisory Investigator
John Henderson, Attorney

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Steel Concrete Reinforcing Bar from Mexico

Investigation No. 731-TA-1227 (Final) (Remand)

Publication 4645



October 2016

Views of the Commission on Remand

On July 14, 2016, a NAFTA Chapter 19 Binational Panel issued an interim decision and order¹ concerning the Panel's review of the Commission's unanimous final affirmative determination in *Steel Concrete Reinforcing Bar from Mexico*.² The Panel affirmed several challenged portions of the Commission's determination, and also remanded to the Commission for further consideration the Commission's domestic like product finding. Upon consideration of the remand order, as discussed below, we again determine that an industry in the United States is materially injured by reason of imports of steel concrete reinforcing bar ("rebar") from Mexico found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value.

I. Background

On October 28, 2014, the Commission unanimously determined that an industry in the United States was materially injured by reason of imports from Mexico of rebar that were found by Commerce to be sold in the United States at less than fair value ("LTFV") and by reason of imports from Turkey of rebar that were found by Commerce to be subsidized. On December 1, 2014, Deacero S.A.P.I. de C.V. and Deacero USA, Inc. (collectively "Deacero"), which respectively produce and import subject merchandise from Mexico, filed a request for a NAFTA Panel Review of the Commission's final antidumping injury determination with respect

¹ *In the Matter of Steel Concrete Reinforcing Bar from Mexico and Turkey: Final Affirmative Antidumping Injury Determination*, Secretariat File No. USA-MEX 2014-1904-02, Interim Decision and Order of the Panel, issued July 14, 2016 ("Panel Decision"). All citations herein are to the Non-Proprietary Version of the Panel Decision.

² *Steel Concrete Reinforcing Bar from Mexico and Turkey*, Inv. Nos. 701-TA-502 and 731-TA-1227 (Final), USITC Pub. 4496 (Oct. 2014) ("Original Views").

to rebar from Mexico. On July 14, 2016, the Panel issued its interim decision and order, in which it remanded the Commission's domestic like product finding, but affirmed the Commission's holdings on the other challenged issues it addressed.³

The Panel remanded the Commission's finding that "rebar and in-scope deformed steel wire are both part of a single domestic like product."⁴ The Panel instructed the Commission on remand to "reconsider, based on the existing record evidence and on new information if the Commission elects to reopen the record, all six like product factors to determine whether Rebar and in-scope deformed steel wire are part of a single domestic like product."⁵ The Panel's Decision asked the Commission to explain its domestic like product finding with respect to all six domestic like product factors,⁶ and the Panel found that the Commission needed to provide further explanation with respect to several of the domestic like product factors, particularly as to manufacturing facilities, production processes and employees, as well as producers' and customers' perceptions.⁷

Pursuant to the Panel's order, the Commission issued a Federal Register notice giving notice of the remand.⁸ The notice stated that the Commission was not reopening the record, and was permitting the parties to file comments concerning how the Commission could best comply with the Panel's remand instructions, based solely on the information in the

³ Panel Decision at 59.

⁴ Panel Decision at 59.

⁵ Panel Decision at 59.

⁶ Panel Decision at 27, 59.

⁷ Panel Decision at 24-27.

⁸ 81 Fed. Reg. 60746 (Sept. 2, 2016).

Commission's record. The Commission received two sets of comments, one from Deacero⁹ and the other from a petitioner in the Commission investigations, the Rebar Trade Action Coalition ("RTAC").¹⁰

After considering the record as a whole in light of the Panel's remand instructions, we continue to find that there is a single domestic like product that is like the articles subject to these investigations. We further determine that an industry in the United States is materially injured by reason of imports of rebar from Mexico found by Commerce to be sold in the United States at less than fair value.

II. Domestic Like Product

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first defines the "domestic like product" and the "industry."¹¹ Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Tariff Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹² In turn, the Tariff Act defines "domestic like product" as "a product which is

⁹ Deacero's September 13, 2016 Remand Comments (Deacero's Remand Comments") (EDIS Document No. 590447).

¹⁰ RTAC's September 13, 2016 Remand Comments ("RTAC's Remand Comments") (EDIS Document No. 590471).

¹¹ 19 U.S.C. § 1677(4)(A).

¹² 19 U.S.C. § 1677(4)(A).

like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”¹³

The decision regarding the appropriate domestic like product in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹⁴ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁵ Given that no single factor is dispositive, there is no requirement that all six domestic like product factors must point to the same conclusion, and in many investigations the six factors do not each individually support the same conclusion. For example, in *Cleo*, the Federal Circuit sustained a domestic like product definition by the Commission that hinged on the Commission’s findings of significant overlap in physical characteristics and uses as well as in the manufacturing process; mixed evidence regarding interchangeability and consumer perceptions; and only limited overlap in channels of distribution and price.¹⁶ The Commission frequently makes domestic like product determinations in which one or more factors do not point in the same direction as the

¹³ 19 U.S.C. § 1677(10).

¹⁴ See, e.g., *Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁵ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹⁶ *Cleo Inc. v. United States*, 501 F.3d 1291, 1297-99 (Fed. Cir. 2007).

Commission's ultimate conclusion.¹⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁸

The Commission enjoys "broad discretion in determining whether a particular difference or similarity is minor" in its domestic like product analysis, and "[i]t is within the Commission's discretion to make reasonable interpretations of the evidence and to determine the overall significance of any particular factor or piece of evidence."¹⁹

B. Product Description

Commerce defined the scope of the imported merchandise under investigation as follows:

The merchandise subject to these investigations is steel concrete reinforcing bar imported in either straight length or coil form ("rebar") regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001,

¹⁷ See, e.g., *Cold-Rolled Steel Flat Products from China and Japan*, Inv. Nos. 701-TA-541 and 731-TA-1284 and 1286 (Final), USITC Pub. 4619 at 8-10 (July 2016) (defining a single domestic like product corresponding to the scope despite differences in channels of distribution and in several other factors between different types of cold-rolled steel); *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey*, Inv. Nos. 701-TA-559-561 and 731-TA-1317-1328 (Preliminary), USITC Pub. 4615 at 16-17 (May 2016) (defining a single domestic like product coextensive with the scope despite limited interchangeability between different grades of cut-to-length plate).

¹⁸ *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

¹⁹ *NEC*, 36 F.Supp.2d at 384, quoting *Maine Potato Council v. United States*, 613 F. Supp. 1237, 1244 (1985); see *Torrington*, 747 F. Supp. at 748-49.

7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.²⁰

The next-to-last sentence in the scope definition, regarding the exclusion of certain deformed steel wire from the scope, was first included as an amendment in Commerce's final determination on September 15, 2014.²¹

Rebar is a long-rolled steel product that is commonly used in construction projects to provide strength to concrete.²² Rebar sold in the U.S. market is generally manufactured to conform to the standards of ASTM International ("ASTM"), which specifies the following for each bar size: the nominal weight, nominal dimensions, deformation requirements, the chemical composition, tensile strength, yield strength (grade), and elongation tolerances.²³ The construction industry is the principal end user of rebar, and it uses rebar extensively to reinforce concrete structures.²⁴

²⁰ 79 Fed. Reg. 54967 (Sept. 15, 2014).

²¹ 79 Fed. Reg. 54967 (Sept. 15, 2014). Commerce's notice stated that petitioner had submitted a request for this amendment on June 19, 2014, and Commerce solicited comments from interested parties on the proposed amendment, but did not receive any further comments. Commerce stated that it saw no reason to deny petitioner's request and accordingly incorporated that amendment in the scope language in its final determination. *Id.*

²² Confidential Report ("CR") at I-15; Public Report ("PR") at I-11.

²³ CR at I-16; PR at I-12.

²⁴ CR at I-15; PR at I-11.

Deformed steel wire generally is a cold-drawn wire product used for the reinforcement of concrete, and is often used to produce welded wire mesh for concrete reinforcement.²⁵

Under Commerce's scope definition, deformed steel wire is included in the scope only if it meets ASTM A1064/A1064M, contains bar markings, and/or is subject to an elongation test. Thus, under the scope definition, deformed steel wire that meets ASTM A1064/A1064M is within the scope if it (1) contains bar markings; or (2) is subject to an elongation test; or (3) both contains bar markings and is subject to an elongation test.

The record indicates that in-scope deformed steel wire can be used as a substitute for rebar, as both petitioner and Deacero stated to the Commission during the Commission investigations. Petitioner stated that in-scope deformed steel wire that meets ASTM A1064/A1064M, contains bar markings, and is subject to an elongation test can be used as rebar.²⁶ Deacero supplied information that deformed steel wire that meets ASTM A1064 [(and therefore is within the scope), which Deacero produces, can also be used as rebar, [].²⁷ Thus, the record indicates that the deformed steel wire that Commerce ultimately determined to be part of the scope, containing bar markings and/or subject to an elongation test, can be used as rebar.

²⁵ CR at I-18 to I-19; PR at I-13 to I-14.

²⁶ Petitioner's Posthearing Brief, Exh. 1 at 50-51.

²⁷ May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission at 3 (EDIS Document No. 534825) ("Deacero's deformed steel wire products are primarily used to manufacture certain welded wire products (such as welded wire mesh and welded wire reinforcement mats) and, to a lesser extent, are used as substitutes for rebar"); September 23 and 25, 2014 email responses from Jay Campbell of White & Case on behalf of Deacero to Alan Treat of USITC (EDIS Document No. 542856) ([

])).

By contrast, deformed steel wire meeting ASTM A1064/A1064M, not containing bar markings, and not subject to an elongation test, is excluded from the scope. There is no indication in the record that out-of-scope deformed steel wire which neither contains bar markings nor is subject to an elongation test can be used as rebar.²⁸

C. Chronology of Commerce's Scope Rulings and the Commission's Investigation

Commerce's September 15, 2014 scope amendment is central to the issue that the Panel remanded to the Commission -- "whether Rebar and in-scope deformed steel wire are part of a single domestic like product"²⁹ -- since that amendment defines which deformed steel wire is in-scope and which deformed steel wire is out-of-scope. Because the sequence of Commerce's scope rulings is important to an understanding of the information in the Commission's record with respect to deformed steel wire, we review that chronology below.

On September 4, 2013, RTAC and its individual members filed the petition, and the Commission instituted antidumping duty investigations regarding imports of rebar from Mexico and Turkey and a countervailing duty investigation regarding imports of rebar from Turkey. On November 6, 2013, the Commission preliminarily determined that there was a reasonable indication that a U.S. industry was materially injured by reason of allegedly dumped imports of rebar from Mexico and Turkey and allegedly subsidized imports of rebar from Turkey. At the time of the Commission's preliminary determinations, the scope defined by Commerce in its

²⁸ Petitioner indicated that the scope amendment language, which it had proposed and Commerce included in its final determination, was specifically designed to ensure that deformed steel wire that can be used as rebar is included within the scope. Petitioner's Posthearing Brief, Exh. 1 at 49 (EDIS Document No. 542598).

²⁹ Panel Decision at 59.

notice of initiation included rebar, but did not include any mention of deformed steel wire,³⁰ and no party made any argument to the Commission during the preliminary phase of the investigations that any kind of deformed steel wire should be included in the domestic like product. In the Commission's preliminary determinations, it found there was no clear dividing line between different types of rebar and defined a single domestic like product consisting of rebar, whether coiled or straight length, that was coextensive with the scope of the investigations, making no mention of deformed steel wire in its domestic like product analysis.³¹

Following the Commission's affirmative preliminary determinations, Commerce issued its affirmative preliminary determinations in the antidumping investigations of rebar from Mexico and Turkey, which both contained a scope definition that was unchanged from that in its notice of initiation, addressed only rebar, and made no mention of deformed steel wire.³² On April 18, 2014, Commerce issued a decision memorandum preliminarily determining that certain deformed steel wire products produced by Deacero were within the scope of the investigation.³³ Deacero informed the Commission of Commerce's preliminary scope ruling in its comments on the Commission's draft final phase questionnaires, and shortly thereafter

³⁰ 78 Fed. Reg. 60827, 60831 (Oct. 2, 2013). The scope in Commerce's notice of initiation was identical to the scope in its final determination quoted above, with the exception of the penultimate sentence that was added in the final determination.

³¹ *Steel Concrete Reinforcing Bar from Mexico and Turkey*, Inv. Nos. 701-TA-502 and 731-TA-1227-1228 (Preliminary), USITC Pub. 4432 at 4-7 (November 2013).

³² 79 Fed. Reg. 22802 (April 24, 2014) (Mexico); 79 Fed. Reg. 22804 (April 24, 2014) (Turkey).

³³ April 18, 2014 Department of Commerce Scope Comments Decision Memorandum from James Doyle to Paul Piquado ("April 18, 2014 Commerce Decision Memo") (EDIS Document No. 540930). Commerce issued this preliminary scope determination in response to a request by Deacero that it confirm that two Deacero "product families" identified as "Varilla 6000" and "NMX B-253 wire products" were outside the scope of the investigations, a request that Commerce rejected. *Id.*

provided a copy of the public version of this Commerce memorandum (which contained redactions of confidential information) to the Commission.³⁴

In response to Deacero's request in its comments on the draft questionnaires, the Commission collected data in its final phase questionnaires as to any domestic production and U.S. imports from the subject countries of deformed steel wire. The Commission's U.S. producer and purchaser questionnaires also asked firms to comment on the characteristics of deformed steel wire as compared to rebar with respect to the Commission's six domestic like product factors.³⁵ Given that Commerce's decision memorandum did not indicate any limitation on the type of deformed steel wire that it found to be within the scope, the questionnaire data collected by the Commission concerned all deformed steel wire, with no breakdown between different kinds of deformed steel wire with different characteristics, and were summarized, along with all the other data collected by the Commission, in the Commission's August 27, 2014 Prehearing Report.³⁶

The Commission's Prehearing Report stated that the Commission had received usable data from four U.S. firms regarding their production of deformed steel wire. Two of these reporting firms, Insteel Wire Products ("Insteel") and Tree Island Wire, produced deformed steel wire but did not report producing rebar. The other two firms, Gerdau Ameristeel US Inc.

³⁴ May 27, 2014 letter from White & Case attaching Deacero's comments on draft questionnaires (EDIS Document No. 534545); May 28, 2014 transmittal from White & Case, attaching Commerce scope memorandum at Exh. 3 (EDIS Document No. 534642).

³⁵ U.S. Producers' Questionnaire at Question V-2; U.S. Purchasers' Questionnaire at Question V-2 (EDIS Document No. 535643).

³⁶ See Prehearing Report at I-16 to I-18, I-21 to I-33, Tables I-2 through I-8 (EDIS Document No. 540983).

("Gerdau"), and Nucor Corporation ("Nucor"), produced rebar as well as deformed steel wire.³⁷

The Prehearing Report stated that "staff believes that these responses {from the four U.S. producers of deformed steel wire} represent . . . most U.S. production of deformed steel wire."³⁸ The Commission's Prehearing Report stated that [] responding Mexican firms, [], produced deformed steel wire.³⁹

Commerce provided notice of its final scope determination (with the scope amendment) to the Commission on September 9, 2014, and published its final determination with the scope amendment in the *Federal Register* on September 15, 2014.⁴⁰ Commission staff promptly emailed representatives of the four reporting U.S. producers of deformed steel wire to ascertain whether their production of deformed steel was of in-scope deformed steel wire.⁴¹ At the Commission's September 15, 2014 hearing, the parties were asked to address the implications of Commerce's scope amendment for the Commission's domestic like product analysis in their posthearing briefs. [

]; Gerdau and Nucor, both among the members of the petitioning coalition, provided their responses in petitioner's response to Commission questions in its posthearing brief.⁴² As discussed below, none of these four firms reported domestic

³⁷ Prehearing Report at III-1 to III-2 (EDIS Document No. 540983)

³⁸ Prehearing Report at III-2 (EDIS Document No. 540983).

³⁹ Prehearing Report at VII-7 (EDIS Document No. 540983). The Commission received no information of any deformed steel wire production or exports to the United States by subject Turkish producers.

⁴⁰ 79 Fed. Reg. 54967 (Sept. 15, 2014).

⁴¹ See EDIS Document Nos. 542075, 542262, 542857.

⁴² Petitioners' Posthearing Brief, Exh. 1 at 48-54.

production of deformed steel wire that meets ASTM A1064/A1064M, contains bar markings, and/or is subject to an elongation test.⁴³

In addition, following Commerce's scope amendment, Commission staff emailed representatives of the [] Mexican firms that had reported producing deformed steel wire to determine whether they produced in-scope deformed steel wire.⁴⁴ Based on the responses of these firms, the Commission concluded that Deacero was the only subject producer of in-scope deformed steel wire.⁴⁵ Deacero reported [

].⁴⁶ The volume of subject imports of in-scope deformed steel wire from Mexico during the period of investigation, [] produced and exported by Deacero, was minimal. Deacero estimated that the U.S. imports of in-scope deformed steel wire from Mexico were at most [] short tons in 2011, [] short tons in 2012, [] short tons in 2013, and [] short tons during January-March 2014, or a total of [] short tons during the period of investigation.⁴⁷

Based on the information provided by domestic producers and subject foreign producers concerning the products subject to Commerce's final scope determination, the information presented in the final Commission Report with respect to deformed steel wire was revised from the information in the Prehearing Report, in order to eliminate import data

⁴³ CR at I-24; PR at I-17.

⁴⁴ See EDIS Document Nos. 542856, 542859.

⁴⁵ Original Views, USITC Pub. 4496 at 6; CR/PR at Table C-4.

⁴⁶ September 23 and 25, 2014 email responses from Jay Campbell of White & Case on behalf of Deacero to questions from Alan Treat of USITC (EDIS Document No. 542856).

⁴⁷ Deacero USA's Importer Questionnaire Response at 52 (EDIS Document No. 538262).

pertaining only to out-of-scope deformed steel wire from the tabulation of subject merchandise and not to include data for domestic production of out-of-scope deformed steel wire.⁴⁸

Appendix D of the Final Commission Report contained a compilation of questionnaire responses and other data comparing *all* deformed steel wire with rebar with respect to the six domestic like product factors.⁴⁹

As previously stated, on October 28, 2014, the Commission unanimously determined that an industry in the United States was materially injured by reason of imports from Mexico of rebar that were found by Commerce to be sold in the United States at LTFV and by reason of imports from Turkey of rebar that were found by Commerce to be subsidized.⁵⁰ In its final determinations, the Commission found a single domestic like product that was coextensive with the scope of the investigations consisting of rebar and in-scope deformed steel wire.⁵¹

⁴⁸ The tables in the Report showing the performance indicators for reported U.S. industry production of deformed steel wire were revised to reflect zero reported production, and the U.S. apparent consumption data were revised to reflect only U.S. shipments of subject imports but no shipments by U.S. producers. Moreover, the import data and the data on the deformed steel wire industry in Mexico were revised so that they only reflected imports and production of in-scope deformed steel wire. Compare Confidential Prehearing Report at Tables C-1 through C-4 (EDIS Document No. 540983) with CR/PR at Tables C-1 through C-4.

⁴⁹ Compare Confidential Prehearing Report at I-21 through I-33 (EDIS Document No. 540983) with CR/PR at Appendix D (EDIS Document No. 543248). The Report explained in a footnote why this table was moved from the body of the Report to an Appendix. This footnote stated that “[t]he Commission did not collect information from U.S. producers and purchasers on within-scope deformed steel wire (i.e., meeting ASTM A1064 with bar markings and with being subject to a elongation test), but rather on a broader category of deformed steel wire (i.e., meeting ASTM A1064) because the Commission issued questionnaires prior to Commerce’s amended scope. As a result, information provided by U.S. producers and purchasers concerns the broader category of deformed steel wire.” CR/PR at D-3 n.1.

⁵⁰ On September 15, 2014, Commerce issued a final determination finding that imports of rebar from Turkey were not being sold at LTFV. As a result of Commerce’s determinations, the Commission terminated its antidumping duty investigation of imports from Turkey, but continued its final phase antidumping duty investigation of imports from Mexico and its countervailing duty investigation of imports from Turkey. CR at I-2; PR at I-2.

⁵¹ Original Views, USITC Pub. 4496 at 7-9.

D. Arguments of the Parties on Remand

RTAC's Arguments. RTAC asserts that the Commission's original domestic like product determination properly analyzed all six domestic like product factors and was supported by substantial evidence, and that the Commission could therefore comply with the Panel's remand instruction by providing additional explanation with respect to its existing analysis.⁵² RTAC argues that the record information with respect to the Commission's six domestic like product factors as to rebar and as to in-scope deformed steel wire that can be used as rebar shows that the Commission should continue to find a single domestic like product that is coextensive with the scope of the investigations.⁵³ RTAC asserts that deformed steel wire was included in the scope of these investigations in order to forestall the circumvention of trade relief through a substitution of deformed steel wire for rebar, and that given this circumvention problem, the Commission should place more weight in the domestic like product analysis on factors and evidence demonstrating that the two products can be used in the same application.⁵⁴

Deacero's Arguments. Deacero asserts that the Commission record does not support a finding of no domestic production of in-scope deformed steel wire, contending that the record of the Commission's contacts with U.S. producers of deformed steel wire following Commerce's scope amendment does not establish that those U.S. producers produced only out-of-scope deformed steel wire.⁵⁵ Based on its assertion that the record does not support a finding of no domestic production of deformed steel wire, Deacero argues that the Commission should

⁵² RTAC's Remand Comments at 3-7.

⁵³ RTAC's Remand Comments at 7-14.

⁵⁴ RTAC's Remand Comments at 14-15.

⁵⁵ Deacero's Comments on Remand at 2-5.

further find that all of the information in the record regarding deformed steel wire relates to in-scope deformed steel wire, and thus none of it can be disregarded as irrelevant.⁵⁶

Deacero argues that, based on all the information on the record, the Commission should find that in-scope deformed steel wire and rebar are separate like products. Deacero asserts that each of the Commission's six domestic like product factors points to a finding of in-scope deformed steel wire as a separate like product from rebar. Deacero makes this argument based on the characteristics of "deformed steel wire" with respect to these six factors, without limiting it to "in-scope" deformed steel wire.⁵⁷

E. Analysis of Domestic Like Product

1. Whether There Is Domestic Production of In-Scope Deformed Steel Wire

In our Original Views, we stated that while the record indicated that there is U.S. production of deformed steel wire, there was not any reported U.S. production of in-scope deformed steel wire meeting ASTM A1064/A1064M, containing bar markings, and/or subject to an elongation test.⁵⁸ We supplement the discussion in the Original Views of this question.

Because none of the four known U.S. producers of deformed steel wire reported producing in-scope deformed steel wire meeting ASTM A1064/A1064M, containing the requisite bar markings, and/or subject to an elongation test, the Commission concluded that the reported production of these four firms was out-of-scope deformed steel wire. Insteel reported that it [], and that []

⁵⁶ Deacero's Comments on Remand at 2, 5.

⁵⁷ Deacero's Remand Comments at 2, 5-9. Deacero also argues alternatively that if the Commission determines that there is no domestic production of in-scope deformed steel wire, it should find that the product "most similar in characteristics and uses" to in-scope deformed steel wire is out-of-scope deformed steel wire rather than rebar. Deacero's Remand Comments at 10-11.

⁵⁸ Original Views, USITC Pub. 4496 at 6; CR at I-24 to I-25; PR at I-17.

].⁵⁹ Tree Island Wire

reported that [] and that [

].⁶⁰

The information in petitioner's posthearing brief indicated that [

]. Specifically, petitioner stated that [

] and [

].⁶¹

Petitioner also stated that [

]. However, it stated that

[

].⁶²

While Gerdau reported that the deformed steel wire it produced [

], we find that the [] does not constitute "bar markings"

within the language of the scope "(e.g., mill mark, size, or grade)." Given that Gerdau has a

number of mills producing rebar and/or deformed steel wire, [

].⁶³

⁵⁹ September 12, 2014 email response from [] of Insteel Wire Products to USITC Investigator Alan Treat (EDIS Document No. 542075).

⁶⁰ September 17, 2014 email response from [] of Tree Island Wire to questions from Alan Treat of USITC (EDIS Document No. 542262).

⁶¹ Petitioners' Posthearing Brief, Exh. 1 at 51-52.

⁶² Petitioners' Posthearing Brief, Exh. 1 at 51-52.

⁶³ CR/PR at Table III-1; []

].

Furthermore, other information in the record, including ASTM A615 specifications regarding bar markings, indicates that [] is not listed among the relevant bar markings for that specification.⁶⁴ Moreover, no party has argued that [] constitutes the necessary “bar markings” that would make its deformed steel wire be defined as in-scope deformed steel wire.⁶⁵

Thus, we conclude that the information from these four U.S. producers indicates that their reported production is out-of-scope deformed steel wire, and that they have not reported any production of deformed steel wire that meets ASTM A1064/A1064M, contains the requisite bar markings, and/or is subject to an elongation test. Although Deacero asserts in its remand comments that the reported responses of these four firms summarized above are not specific enough, and leave open the possibility that one or more of these firms may have produced in-scope deformed steel wire at some earlier point during the period of investigation,⁶⁶ as discussed above, there is no evidence indicating that any of these four U.S. firms (or any other U.S. firm) produced in-scope deformed steel wire during the period of investigation. Nonetheless, taking into account the possibility that there is or could be domestic production of in-scope deformed steel wire,⁶⁷ even though the record does not indicate any reported

⁶⁴ See ASTM A615 Deformed and Plain Billet-Steel Bars for Concrete Reinforcement Specification 15 (EDIS Document No. 543610).

⁶⁵ To the contrary, in its remand comments, Deacero interprets the relevant information in petitioner’s posthearing brief about [] as an assertion that []. Deacero’s Remand Comments at 4-5 and n.14.

⁶⁶ Deacero’s Remand Comments at 4.

⁶⁷ As previously discussed, the Commission’s Prehearing Report stated that the four responding U.S. producers of deformed steel wire (all producers of out-of-scope deformed steel wire) were believed to account for “most U.S. production of deformed steel wire,” leaving open the possibility that there may have been additional U.S. producers of deformed steel wire. Prehearing Report at III-2 (EDIS Document No. 540983).

production, we have considered, as elaborated below, whether deformed steel wire that has the characteristics that allow it to be used as rebar is a separate domestic like product from rebar.

As previously discussed, in its final phase questionnaires, the Commission collected questionnaire data from U.S. producers and purchasers comparing all deformed steel wire with rebar with respect to the six factors of the domestic like product analysis. Following Commerce's scope amendment, the compilation of these data was moved from the body of the Prehearing Report to a separate Appendix D in the final Commission Report,⁶⁸ because, as the Report explained, those data were not collected "on within-scope deformed steel wire."⁶⁹ Thus, much of the information in Appendix D was likely limited to out-of-scope deformed steel wire (of which there is reported domestic production) and not addressed to in-scope deformed steel wire (of which there is no reported domestic production). The Commission accordingly gave the comments in Appendix D relatively little weight in its original determinations.

Nevertheless, in our analysis here we will consider the information in Appendix D, particularly given that the Panel's Report discussed some of the information in Appendix D,⁷⁰ and both parties discussed information in Appendix D in their remand comments.⁷¹ However, we will give weight to the information in Appendix D to the extent that it may pertain to in-scope deformed steel wire, and will discount information if it only pertains to out-of-scope deformed steel wire.

⁶⁸ CR/PR at Appendix D.

⁶⁹ CR/PR at D-3 n.1.

⁷⁰ Panel Decision at 26.

⁷¹ See Deacero's Remand Comments at 6-9; RTAC's Remand Comments at 11-12.

We note that a number of the questionnaire comments cited in Appendix D indicate no response by a firm responding to the questionnaire as to a particular domestic like product factor, or indicate that the responding firm has no knowledge of deformed steel wire at all.⁷² For our analysis of in-scope deformed steel wire, we accord little weight to questionnaire comments indicating no response or no knowledge by the responding firm of the characteristics of deformed steel wire. We note that given the absence of reported domestic production and the minimal subject imports of in-scope deformed steel wire, it is not surprising that many firms would have no knowledge of the characteristics of in-scope deformed steel wire.

2. Analysis of Domestic Like Product Factors

The Panel directed the Commission to “reconsider, based on the existing record evidence and on new information if the Commission elects to reopen the record, all six like product factors to determine whether Rebar and in-scope deformed steel wire are part of a single domestic like product.”⁷³ Pursuant to the Panel’s order, we now address, based on the existing record evidence, all six like product factors to determine whether rebar and in-scope deformed steel wire are part of a single domestic like product.⁷⁴

We do not agree with Deacero’s argument that the Commission should disregard the distinction between in-scope deformed steel wire and out-of-scope deformed steel wire, and

⁷² See, e.g., questionnaire responses of U.S. rebar producers [] and U.S. purchaser [] with respect to all six factors indicating no knowledge with respect to deformed steel wire. CR/PR at Tables D-1 through D-6.

⁷³ Panel Decision at 59. The Commission decided not to reopen the record, in light of the extensive questionnaire data that the Commission collected during the proceeding with respect to all deformed steel wire, as well as the information that the Commission collected from the parties and other market participants with respect to in-scope deformed steel wire following the scope amendment in Commerce’s final determination.

⁷⁴ Panel Decision at 59.

should base its analysis of whether rebar and in-scope deformed steel wire constitute a single domestic like product based on record information that pertains only to out-of-scope deformed steel wire.⁷⁵ The question that the Panel directed the Commission to address further on remand concerns differences between rebar and in-scope deformed steel wire.⁷⁶

Consequently, Deacero's current contention that rebar and *all* deformed steel wire (both in-scope and out-of-scope deformed steel wire) are part of a single domestic like product is beyond the scope of the remand.⁷⁷

In our analysis below, we examine which domestically produced articles are like the articles described in the scope, using the Commission's usual six-factor analysis to guide the inquiry.⁷⁸ The articles described in the scope include rebar (imported in either straight length or coil form, but not including plain rounds) and deformed steel wire meeting ASTM A1064/A1064M, containing bar markings, and/or being subject to an elongation test.

Physical Characteristics and Uses. A principal characteristic of the articles included within the scope definition is that they can be used for construction applications, in particular

⁷⁵ Deacero's Remand Comments at 3, 5-9.

⁷⁶ Panel Decision at 59.

⁷⁷ By the same token, in the original investigation Deacero declined to argue that there was a separate domestic like product containing out-of-scope merchandise. *See Original Views*, USITC Pub. 4496 at 7. Because this argument consequently was not addressed by the Panel, the issue of whether all deformed steel wire is a distinct domestic like product from rebar is also beyond the scope of this remand.

⁷⁸ *See* 19 U.S.C. § 1677(10) (the domestic like product is "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title"); *Cleo*, 501 F.3d at 1295.

the reinforcement of concrete. This is a characteristic of rebar.⁷⁹ The record indicates that this is also true of in-scope deformed steel wire.⁸⁰

Both petitioner and Deacero agree that in-scope deformed steel wire can be and is used as a substitute for rebar, as they each have stated in their submissions to the Commission.⁸¹

Petitioner asserted that in-scope deformed steel wire can be used for the same purpose as rebar, and is interchangeable with rebar.⁸² Similarly, during the Commission investigations, Deacero provided the Commission with a copy of scope comments it had previously submitted to Commerce, in which Deacero stated that its deformed steel wire products were primarily used to manufacture certain welded wire products and “to a lesser extent, are used as substitutes for rebar.”⁸³ In its cover letter, Deacero made the same statement directly to the Commission that its deformed steel wire products “to a lesser extent, are used as substitutes for rebar.”⁸⁴ Moreover, in its preliminary decision memorandum, Commerce cited Deacero’s

⁷⁹ CR at I-15; PR at I-11.

⁸⁰ Petitioner’s Posthearing Brief, Exh. 1 at 50-51.

⁸¹ Petitioner’s Posthearing Brief, Exh. 1 at 53.

⁸² Petitioner’s Posthearing Brief, Exh. 1 at 49, 52-53.

⁸³ Deacero’s October 31, 2013 Scope Comments submitted to Commerce at 2, submitted to Commission as Attachment 1 to May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission; (EDIS Document No. 534825) (“{t}he Deacero products in question are steel wire products that are primarily used to manufacture certain welded wire products (such as welded wire mesh and welded wire reinforcement mats) and, to a lesser extent, are used as substitutes for rebar”).

⁸⁴ May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission at 3 (EDIS Document No. 534825) (“Deacero’s deformed steel wire products are primarily used to manufacture certain welded wire products (such as welded wire mesh and welded wire reinforcement mats) and, to a lesser extent, are used as substitutes for rebar”). We note that Deacero’s statements to Commerce and the Commission that its deformed steel wire products are used as substitutes for rebar “to a lesser extent” indicate that Deacero’s products are used as substitutes for rebar, but are currently used more often for other purposes. Deacero’s statements do not necessarily suggest any limitation on the ability of its in-scope deformed steel wire products to be used as rebar. Thus, the fact that the in-scope deformed steel wire produced by Deacero also has other end uses does (Continued...)

statement on this point, stating that “Deacero acknowledges that to a lesser extent, these wire products are substitutes for rebar.”⁸⁵ Furthermore, petitioner states that Deacero’s marketing brochure indicates that it markets its in-scope deformed steel wire as rebar, using a Spanish word, “Varilla,” which it states is understood in the steel industry to mean “rebar.”⁸⁶ Thus, in light of Deacero’s representations to the Commission and Commerce in the Commission investigations, as well as the information in its marketing brochure, the record shows that the in-scope deformed steel wire products produced by Deacero can be and are used as substitutes for rebar.

In addition to the statements by petitioner and Deacero, a number of questionnaire responses from U.S. producers and purchasers likewise suggest that rebar and deformed steel wire have similar end uses.⁸⁷ However, the questionnaire responses also indicate some differences in the physical characteristics between rebar and deformed steel wire.⁸⁸

(...Continued)

not detract from our findings that in-scope deformed steel wire can be used as a substitute for rebar, and that domestically produced in-scope deformed steel wire (if any) and domestically produced rebar have similar end uses.

⁸⁵ April 18, 2014 Commerce Decision Memo at 2 (EDIS Document No. 540930).

⁸⁶ Petitioner’s Posthearing Brief, Exh. 1 at 53 and Exh. 9; see EDIS Document No. 543610 (Deacero marketing brochure).

⁸⁷ See questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-1. A few U.S. purchasers indicated that they viewed the similarity in end uses between rebar and deformed steel wire to be more limited, but there is no indication that these purchasers were specifically addressing in-scope deformed steel wire. See questionnaire responses of U.S. purchasers []. *Id.*

⁸⁸ Both rebar and deformed steel wire are long steel products with deformations; as indicated above, non-deformed rebar is expressly excluded from Commerce’s scope. In-scope deformed steel wire is produced to ASTM 1064, and has bar markings and/or is subject to an elongation test, while rebar likewise contains bar markings, and is subject to elongation. CR at I-15 to I-23; PR at I-11 to I-16; Petitioner’s Posthearing Brief, Exh. 1 at 50-53; see questionnaire responses of U.S. producer [] and U.S. purchasers []

(Continued...)

Channels of Distribution. As we stated in our Original Views, the information supplied by petitioner suggests that in-scope deformed steel wire when used as rebar will likely be sold in the same channels of distribution as those for rebar.⁸⁹ The questionnaire responses of a number of U.S. producers and U.S. purchasers indicate that they perceive a substantial overlap in the channels of distribution for rebar and deformed steel wire.⁹⁰

Domestically produced rebar is sold to distributors, end users, and firms that are both distributors and end users.⁹¹ Over [] percent of subject imports of rebar from Mexico in each year of the period of investigation was reported to be sold to firms that were strictly distributors, while the limited information in the record with respect to U.S. shipments of subject imports of in-scope deformed steel wire was mixed, but included shipments to distributors and end users during the period of investigation.⁹²

(...Continued)

[]. Although the record reflects that rebar has protrusions, while deformed steel wire has indentations and generally higher yield strength, we note that both products share the characteristic of having deformations. CR at I-15 to I-23; PR at I-11 to I-16; see questionnaire responses of U.S. producers [] and U.S. purchasers []

[]. CR/PR at Table D-1.

⁸⁹ Original Views, USITC Pub. 4496 at 8, *citing* Petitioner's Posthearing Brief, Exh. 1 at 53.

⁹⁰ See questionnaire responses of U.S. producers [] and of U.S. purchasers []. CR/PR at Table D-5. A few questionnaire respondents perceive the overlap in distribution channels to be more limited. See questionnaire responses of U.S. purchasers []. *Id.* It is not clear to what extent the firms responding to this question are addressing in-scope deformed steel wire.

⁹¹ CR/PR at Table II-1.

⁹² CR/PR at Table II-1. []

[]

In its remand comments, Deacero asserts that information in the record from U.S. producers of deformed steel wire indicates that [] percent of their U.S. shipments went to end users, and argues that this demonstrates a difference in channels of distribution from domestically produced rebar.⁹³ However, as we have previously discussed, the record indicates that the deformed steel wire production of the four reporting U.S. producers was of out-of-scope deformed steel wire, and thus the information cited by Deacero does not relate to in-scope deformed steel wire. Therefore, we do not rely on it with respect to our inquiry.

Interchangeability. In-scope deformed steel wire can be used interchangeably with rebar in a number of construction applications.⁹⁴ The record indicates, and a number of questionnaire respondents stated, that deformed steel wire can be used to reinforce concrete, just like rebar.⁹⁵ As previously noted, Deacero stated to both the Commission and Commerce that its in-scope deformed steel wire products are used as substitutes for rebar,⁹⁶ and Commerce cited this representation by Deacero in its Preliminary Decision Memorandum.⁹⁷ Thus, the record indicates substantial interchangeability between rebar and in-scope deformed steel wire that can be used as rebar, particularly in construction applications, such as in the reinforcement of concrete.

⁹³ Deacero's Remand Comments at 8; *citing* CR at D-12 to D-13; PR at D-5.

⁹⁴ Petitioner's Posthearing Brief, Exh. 1 at 53.

⁹⁵ CR at I-18 to I-20; PR at I-13 to I-14; *see* questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-1; *see also* questionnaire response of U.S. producer []. CR/PR at Table D-3. In addition, U.S. purchaser [] stated that [], while U.S. purchaser [] stated that []. CR/PR at Table D-1.

⁹⁶ May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission at 3, and Attachment 1 at 2 (EDIS Document No. 534825).

⁹⁷ April 18, 2014 Commerce Decision Memo at 2 (EDIS Document No. 540930).

We note that while a number of questionnaire respondents stated that rebar and deformed steel wire can be used interchangeably under certain circumstances (as discussed above),⁹⁸ some responding firms stated that deformed steel wire was capable of being so used, but was not currently being used interchangeably with rebar.⁹⁹ Given the lack of reported domestic production and minimal volume of subject imports of in-scope deformed steel wire, it is not surprising that questionnaire respondents did not find much indication of deformed steel wire actually being used interchangeably with rebar at present. We find it more significant that these responses suggest that industry participants agree that in-scope deformed steel wire can be used interchangeably with rebar, confirming the information provided to the Commission by petitioner and Deacero.

Manufacturing Facilities, Production Processes, and Employees. As we stated in our Original Views, the record indicates that deformed steel wire is usually produced on different equipment than rebar with a different process, in that rebar is hot-rolled, while deformed steel wire is cold-drawn.¹⁰⁰

In its decision, the Panel stated that the Commission had not adequately explained the statement (or the information supporting it) that "other information from petitioner indicated that it was possible for one domestic producer to produce both products in the same facility

⁹⁸ See questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-3.

⁹⁹ See questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-3.

¹⁰⁰ Original Views, USITC Pub. 4496 at 8; see questionnaire responses of U.S. producers []. CR/PR at Table D-2.

with the same equipment, even though it was not doing so now.”¹⁰¹ We now address that question. In our Original Views, we noted that the petitioner had stated that in-scope deformed steel wire can be manufactured in the same facilities with rebar using the same employees.¹⁰² We further noted petitioner’s statement that Nucor could produce both products in its Connecticut facility using the same equipment, although Nucor does not currently produce in-scope deformed steel wire.¹⁰³ The record indicates that Nucor produces rebar at a plant in Wallingford, Connecticut.¹⁰⁴ In addition, a report by a Commission auditor concerning his verification of Nucor’s questionnaire response indicates that Nucor [

], although the report provides no information as to whether [

].¹⁰⁵ As

previously discussed, the record indicates that all of Nucor’s production of deformed steel wire is of out-of-scope deformed steel wire.¹⁰⁶

Producer and Customer Perceptions. As previously discussed, the record indicates that both U.S. producers and U.S. purchasers perceive that deformed steel wire and rebar can be used as substitutes for each other under certain circumstances (e.g., in concrete reinforcement

¹⁰¹ Panel Decision at 25-26 (quoting the Commission’s brief to the Panel).

¹⁰² Original Views, USITC Pub. 4496 at 8, *citing* Petitioner’s Posthearing Brief, Exh. 1 at 53.

¹⁰³ Original Views, USITC Pub. 4496 at 8, *citing* Petitioner’s Posthearing Brief, Exh. 1 at 53.

¹⁰⁴ CR/PR at Table III-1.

¹⁰⁵ Commission auditor David Boyland’s August 19, 2014 verification report at 3 n.1, 7-8 (EDIS Document No. 540966).

¹⁰⁶ Petitioner’s Posthearing Brief, Exh. 1 at 51-52.

applications).¹⁰⁷ Moreover, Deacero has stated that it views its in-scope deformed steel wire as a possible substitute for rebar.¹⁰⁸ In addition, petitioner states that Deacero markets its in-scope deformed steel wire to purchasers as rebar, using in its marketing brochures a Spanish word, “Varilla,” which is understood in the steel industry to mean “rebar.”¹⁰⁹

In its decision, the Panel indicated that the discussion of producer and customer perceptions in the Commission’s Original Views failed to articulate the circumstances under which in-scope deformed steel wire can be used as a substitute for rebar.¹¹⁰ We address this issue now, incorporating aspects of our previous discussion herein of interchangeability. As noted, petitioner provided information that in-scope deformed steel wire can be used interchangeably with rebar to reinforce concrete.¹¹¹ While Deacero stated to both the Commission and Commerce that its in-scope deformed steel wire products are used as a substitute for rebar, it did not provide any information on the specific application in which its products are used as a substitute for rebar.¹¹² A number of questionnaire respondents confirmed that deformed steel wire can be used to reinforce concrete, just like rebar, and some responding firms suggested other possible applications.¹¹³ Thus, we find that the record

¹⁰⁷ Petitioner’s Posthearing Brief, Exh. 1 at 53; *see* questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-1.

¹⁰⁸ May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission at 3, and Attachment 1 at 2 (EDIS Document No. 534825).

¹⁰⁹ Petitioner’s Posthearing Brief, Exh. 1 at 53 and Exh. 9; *see* EDIS Document No. 543610 (Deacero marketing brochure).

¹¹⁰ Panel Decision at 26.

¹¹¹ Petitioner’s Posthearing Brief, Exh. 1 at 52-53.

¹¹² May 30, 2014 letter from White & Case on behalf of Deacero to Acting Secretary Barton of the Commission at 3, and Attachment 1 at 2 (EDIS Document No. 534825).

¹¹³ *See* questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-1; questionnaire response (Continued...)

indicates that in-scope deformed steel wire can be used as a substitute for rebar to reinforce concrete.

The Panel also found that the Commission's Original Views had failed to address the comments of questionnaire respondents in Table D-4 of the Commission Report regarding the perceptions of U.S. producers and purchasers, and to explain the apparent differences in perceptions articulated in some of the questionnaire responses.¹¹⁴ We do so now.

First, we note that our review of the questionnaire responses of U.S. producers and purchasers for purposes of the analysis of this factor is not limited to the information supplied by these responding firms under the heading of "Assessment of producer and customer perceptions" contained in Table D-4. In our analysis of producer and customer perceptions, we have considered the responses provided by these U.S. producers and purchasers with respect to all of the six factors.¹¹⁵ Thus, as we have previously stated, a number of questionnaire respondents indicated that they perceive deformed steel wire and rebar to have similar end uses.¹¹⁶ In addition, a number of responding firms indicated that they perceive a substantial

(...Continued)

of U.S. producer [] CR/PR at Table D-3. In addition, U.S. purchaser [] stated that []

[], while U.S. purchaser []

[] stated that []

[] CR/PR at Table D-1.

¹¹⁴ Panel Decision at 26.

¹¹⁵ Several questionnaire respondents provided information as to their perceptions in response to Commission questions about other factors, but did not provide additional information with respect to this factor. See questionnaire responses of U.S. producers [] and U.S. purchasers [] CR/PR at Table D-4.

¹¹⁶ See questionnaire responses of U.S. producers [] and U.S. purchasers [] CR/PR at Table D-1.

overlap in the channels of distribution for rebar and deformed steel wire.¹¹⁷ Furthermore, a number of responding firms indicated that they perceive that deformed steel wire and rebar can be used interchangeably to reinforce concrete.¹¹⁸

With respect to the specific information in Table D-4, we note that a number of U.S. producers and purchasers provided no response at all or a response indicating no knowledge of deformed steel wire,¹¹⁹ but we accord little weight to the absence of substantive responses by a number of U.S. producers and purchasers. As previously discussed, given the lack of reported domestic production and minimal subject imports of in-scope deformed steel wire, it is not surprising that many U.S. producers and purchasers would be unfamiliar with it.

Of the [] substantive responses of U.S. producers to this question, four indicate that deformed steel wire is or can be used and/or marketed as a substitute for rebar under

¹¹⁷ See questionnaire responses of U.S. producers [] and of U.S. purchasers []. CR/PR at Table D-5.

¹¹⁸ See questionnaire responses of U.S. producers [] and U.S. purchasers []. CR/PR at Table D-1; questionnaire response of U.S. producer []. CR/PR at Table D-3. In addition, U.S. purchaser [] stated that [], while U.S. purchaser []

[]. CR/PR at Table D-1.

¹¹⁹ See questionnaire responses of U.S. producers [] and U.S. purchasers []

[]. CR/PR at Table D-4. As previously discussed, several of these firms provided information on their perceptions in response to other Commission questions.

some circumstances.¹²⁰ As previously discussed, the fact that some responding firms may note that some deformed steel wire (particularly out-of-scope deformed steel wire) has other end uses besides as a substitute for rebar, or that it may not presently be used interchangeably with rebar, but has the ability to be used interchangeably, does not detract from our finding that U.S. producers perceive that in-scope deformed steel wire and rebar can be used as substitutes for each other under certain circumstances (e.g., in concrete reinforcement applications).

Similarly, of the [] substantive responses by U.S. purchasers to this question, [] indicate that they perceive deformed steel wire can be used as used as a substitute for rebar under some circumstances.¹²¹ Again, for the reasons previously discussed, the limitations reflected in some of the comments as to how often deformed steel wire is currently used as a substitute for rebar do not detract from our finding that U.S. purchasers perceive that in-scope deformed steel wire and rebar can be used as substitutes for each other under certain circumstances.¹²²

¹²⁰ See questionnaire responses of U.S. producers []. CR/PR at Table D-1. U.S. producer [] provided a brief comment stating “[t]wo different sizes of construction,” *Id.*, but in response to other questions stated []. *Id.* at Tables D-1, D-3. Thus, the record indicates that [] perceives [].

¹²¹ See questionnaire responses of U.S. purchasers []. CR/PR at Table D-4. The response of [] is unclear to what extent it perceives that deformed steel wire can be used as a substitute for rebar. The response of [] appears to suggest that it may perceive deformed steel wire to be a separate product from rebar, but its comment [] may relate to out-of-scope deformed steel wire, and we accordingly give it limited weight.

¹²² See questionnaire response of U.S. purchaser []. CR/PR at Table D-4.

Price. Both Petitioner and Deacero agree that deformed steel wire can be more expensive to produce than rebar, although they differ as to how much more.¹²³ Given the lack of reported domestic production of in-scope deformed steel wire, there is no information on relative prices of rebar and domestically produced in-scope deformed steel wire used as rebar.¹²⁴

In its remand comments, Deacero argues that information in the record shows that average unit values (AUVs) of U.S. shipments of domestically produced deformed steel wire were [] than AUVs for U.S. shipments of domestically produced rebar.¹²⁵ Again, as previously discussed, the record indicates that the deformed steel wire production of the reporting U.S. producers was of out-of-scope deformed steel wire, and thus the AUV information for deformed steel wire cited by Deacero does not relate to in-scope deformed steel wire. Therefore, we accord this information little weight.

Conclusion. Based on the information available, we find that the group of domestically produced products most like the subject merchandise is rebar. In-scope deformed steel wire would be like both the subject merchandise and domestically produced rebar, given similarities in physical characteristics and end uses, as well as channels of distribution, interchangeability, and customer and producer perceptions. Both rebar and in-scope deformed steel wire can be

¹²³ See CR at D-15; PR at D-5 to D-6.

¹²⁴ Several questionnaire respondents suggested that the higher cost of producing deformed steel wire would generally result in a higher price for deformed steel wire than rebar. See questionnaire responses of U.S. producers [] and U.S. purchasers []

[]. CR/PR at Table D-6. However, there is no indication that any of these responding firms were addressing the price of in-scope deformed steel wire.

¹²⁵ Deacero's Remand Comments at 9; citing CR/PR at Table D-7.

used in construction applications, in particular the reinforcement of concrete. The record indicates, and both petitioner and Deacero agree, that in-scope deformed steel wire can be and is used as a substitute for rebar. The record further indicates a substantial overlap in the channels of distribution for rebar and in-scope deformed steel wire. In-scope deformed steel wire can be used interchangeably with rebar in some construction applications. Both U.S. producers and U.S. purchasers perceive that in-scope deformed steel wire and rebar can be used as substitutes for each other under certain circumstances.

We acknowledge that not all of the six domestic like product factors are necessarily indicative of a single domestic like product. Despite the similarity in end uses, there are some distinctions between rebar and in-scope deformed steel wire with respect to certain physical characteristics. Although the record indicates that a U.S. producer has the ability to produce rebar and in-scope deformed steel wire at the same plant, deformed steel wire is usually produced on different equipment than rebar with a different process. There is no information in the record about the price of domestically produced in-scope deformed steel wire. The record indicates that deformed steel wire is more expensive to produce than rebar, but this does not necessarily provide reliable information as to the relative prices of rebar and in-scope deformed steel wire.

On the whole, however, we find a number of similarities and no clear dividing line between rebar and in-scope deformed steel wire. Consequently, we define a single domestic like product that is coextensive with the scope of these investigations.¹²⁶

¹²⁶ As previously discussed, given that no single factor is dispositive, there is no requirement that all six domestic like product factors must point to the same conclusion, and the Commission frequently (Continued...)

Given our domestic like product definition, we again define the domestic industry to include all domestic producers of the domestic like product. We adopt and incorporate from Part III of the Original Views our findings, analysis, and conclusions with respect to related parties and other issues concerning the definition of the domestic industry.

Having again found, as explained in additional detail above, that there is a single domestic like product, we adopt and incorporate from the Original Views our findings, analysis, and conclusions on all other issues, including negligibility, cumulation, conditions of competition, subject import volume, price effects, impact, and critical circumstances. We note that the Panel did not remand the Commission's findings on any other issues, but affirmed the Commission's findings on those other issues that were challenged.¹²⁷

III. Conclusion

For the foregoing reasons, and the reasons provided in the Original Views undisturbed by the Panel and adopted here, we determine that an industry in the United States is materially injured by reason of subject imports of rebar from Mexico that are sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to subject imports from Mexico covered by Commerce's affirmative critical circumstances determination.

(...Continued)

makes domestic like product determinations, as here, in which one or more factors do not necessarily point in the same direction as the Commission's ultimate conclusion.

¹²⁷ Panel Decision at 59.

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-502 and 731-TA-1227 (Final) (Remand)]

Steel Concrete Reinforcing Bar From Mexico and Turkey

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of the remand of its final determinations in the antidumping and countervailing duty investigations of steel concrete reinforcing bar ("rebar") from Mexico and Turkey. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* September 2, 2016.

FOR FURTHER INFORMATION CONTACT:

Douglas Corkran (202-205-3057), Office of Investigations, or John Henderson (202-205-2130), Office of General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record of Investigation Nos. 701-TA-502 and 731-TA-1227 (Final) may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—In October 2014, the Commission unanimously determined that an industry in the United States was materially injured by reason of imports of rebar from Mexico that were sold in the United States at less than fair value and imports of rebar from Turkey that were subsidized by the government of Turkey. Respondents Deacero S.A.P.I., de C.V. and Deacero USA, Inc. contested the Commission's determinations concerning subject imports from Mexico before a bi-national Panel established pursuant to Article 1904 of the North American Free Trade Agreement. The Panel remanded

one issue to the Commission and affirmed all other aspects of the Commission's determinations. *In the Matter of Steel Concrete Reinforcing Bar from Mexico and Turkey: Final Affirmative Antidumping Injury Determination*, Secretariat File No. USA-MEX-2014-1904-02 (July 14, 2016). Specifically, the Panel remanded for the Commission to reconsider whether rebar and in-scope deformed steel wire are part of a single domestic like product.

Participation in the proceeding.—Only those persons who were interested parties that participated in the investigations (*i.e.*, persons listed on the Commission Secretary's service list) may participate in the remand proceedings. Such persons need not make any additional notice of appearances or applications with the Commission to participate in the remand proceedings, unless they are adding new individuals to the list of persons entitled to receive business proprietary information ("BPI") under administrative protective order ("APO"). BPI referred to during the remand proceedings will be governed, as appropriate, by the APO issued in the investigations. The Secretary will maintain a service list containing the names and addresses of all persons or their representatives who are parties to the remand proceedings, and the Secretary will maintain a separate list of those authorized to receive BPI under the APO during the remand proceedings.

Written Submissions.—The Commission is not reopening the record and will not accept the submission of new factual information for the record. The Commission will permit the parties to file comments concerning how the Commission could best comply with the Panel's remand instructions.

The comments must be based solely on the information in the Commission's record. The Commission will reject submissions containing additional factual information or arguments pertaining to issues other than the specific one on which the Panel has remanded this matter. The deadline for filing comments is September 13, 2016. Comments shall be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material.

Parties are advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission. All written submissions must conform with the provisions of

section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing*, available on the Commission's Web site at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

By order of the Commission.

Issued: August 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-21104 Filed 9-1-16; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on August 5, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 301 *et seq.* ("the Act"), ODVA, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accutron Instruments Inc., Sudbury, Ontario, CANADA; Sumitomo Heavy Industries, Ltd., Tokyo, JAPAN; Control Chief Corporation, Bradford, PA; and nLIGHT, Inc., Vancouver, WA, have been added as parties to this venture.

Also, Smarteye Corporation, Rochester Hills, MI; HB-Softsolution,

