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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-844]

Steel Concrete Reinforcing Bar from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

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

SUMMARY: We preliminarily determine that steel concrete reinforcing bar (rebar) from Mexico that is bent on one or both ends and otherwise meeting the description of in-scope merchandise – if produced and/or exported by Deacero S.A.P.I. de C.V. (Deacero) to the United States – is circumventing the antidumping duty order on rebar from Mexico.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, Office III, Antidumping and Countervailing Duty Operations, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1468.

SUPPLEMENTARY INFORMATION

Background

On September 15, 2014, the Department of Commerce (Commerce) published antidumping duty (AD) *Order* on rebar from Mexico.¹ On October 18, 2019, in response to a

¹ See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) (*Order*).

request from the Rebar Trade Action Coalition (the petitioner),² Commerce initiated a circumvention inquiry into whether imports of otherwise straight rebar bent on one or both ends (also referred to as hooked rebar) that is produced and/or exported to the United States by Deacero and otherwise meeting the description of in-scope merchandise, constitutes merchandise “altered in form or appearance in minor respects” from in-scope merchandise that should be considered subject to *AD Order* on rebar from Mexico.³ Commerce also indicated that it would examine “whether to apply the results of this anti-circumvention inquiry to imports of similarly situated other straight rebar bent at one or both ends from Mexico regardless of producer or exporter.”⁴ For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁵

Scope of the Order

The merchandise subject to this *Order* 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, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085,

² *See* Petitioner’s Letter, “Steel Concrete Reinforcing Bar from Mexico: Request for Scope Ruling or, Alternatively, an Anti-Circumvention Ruling,” dated September 3, 2019.

³ *See Steel Concrete Reinforcing Bar from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*; 84 FR 58132 (October 30, 2019), and accompanying Initiation Memorandum.

⁴ *Id.*, Initiation Memorandum at 8-9.

⁵ *See* Memorandum, “Affirmative Preliminary Decision Memorandum of Circumvention Concerning Certain Hooked or Bent Steel Concrete Reinforcing Bar Produced and/or Exported by Deacero S.A.P.I. de C.V.,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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.

Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of otherwise straight steel concrete reinforcing bar bent on one or both ends and otherwise meeting the description of in-scope merchandise under the *Order* produced and/or exported by Deacero from Mexico to the United States. The petitioner's December 27, 2019 filing stated that:

the issues present in this anti-circumvention inquiry are limited to deterring circumvention of the order due to modification of straight length with a hook or bend that is easily removable, has no commercially relevant purpose, and is not designed to an industry standard design for incorporation into a specific construction project. Petitioner does not attempt to include all fabricated products in the scope of the order as minor alterations and this issue is not before the Department.⁶

The petitioner's January 31, 2020 filing further noted that "the issue before the Department is whether Deacero's sales to (a particular customer) circumvented the order."⁷ Unlike for Deacero, we preliminarily find there is no evidence on the record of this inquiry indicating that other Mexican producers are exporting hooked rebar to the United States that did

⁶ See Petitioner's Letter "*Steel Concrete Reinforcing Bar from Mexico: Response to Deacero December 10, 2019 Comments*," dated December 27, 2019, at 2.

⁷ See Petitioner's Letter, "*Steel Concrete Reinforcing Bar from Mexico: Response to Deacero's January 15, 2020 Comments*," dated January 31, 2020, at 9.

not have a connection to a specific, identified construction project. Therefore, we have not applied our preliminary affirmative finding to hooked rebar country-wide.⁸

Statutory and Regulatory Framework

Section 781(c) of the Tariff Act of 1930, as amended (the Act), which deals with minor alterations of merchandise, states that:

(1) In general: The class or kind of merchandise subject to (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

As stated under 19 CFR 351.225(a), issues may arise as to whether a particular product is included within the scope of an AD or countervailing duty (CVD) order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in Commerce's determinations must be written in general terms. At other times, a domestic interested party may allege that a change to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, Commerce conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products. Pursuant to section 781(c) of the Act and 19 CFR 351.225(i), Commerce may include within the scope of an AD or CVD order articles altered in form or appearance in minor respects.

⁸ For further information, *see* the Preliminary Decision Memorandum.

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. Previous circumvention cases⁹ have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Act to include the circumvention provisions contained in section 781 of the Act), which states:

{i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.¹⁰

In the case of an allegation of a “minor alteration” under section 781(c) of the Act, it is Commerce’s practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.¹¹

Preliminary Determination

⁹ See, e.g., *Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada*, 66 FR 7617, 7618 (January 24, 2001)) (*CTL Plate from Canada*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4, in which Commerce discusses its application of the factors discussed in the Senate Finance Committee report; see also *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33677 (June 5, 2003); and *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China*, 74 FR 40565, 40566 (August 12, 2009), and accompanying IDM.

¹⁰ See Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987).

¹¹ See, e.g., *CTL Plate from Canada* IDM at Comment 4.

We preliminarily determine that hooked rebar and straight rebar are not significantly dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which Deacero exported the hooked rebar. We also preliminarily determine that, based on the information submitted by Deacero, there is a significant dissimilarity in production costs between the hooked rebar and straight rebar. Because we find that hooked rebar and straight rebar are not significantly dissimilar as regards the first four criteria, and based on the timing and circumstances under which Deacero exported the hooked rebar, we preliminarily determine that the hooked rebar at issue produced and/or exported by Deacero constitutes merchandise “altered in form or appearance in minor respects” from in-scope merchandise, within the meaning of section 781(c)(1) of the Act.¹²

Also, we preliminarily determine there is no evidence on the record of this inquiry indicating that other Mexican producers and exporters of hooked rebar to the United States are circumventing the AD *Order* on rebar from Mexico. Further, unlike *Aluminum Extrusions*,¹³ where Commerce applied a circumvention finding country-wide, there are no arguments or information on the record that demonstrates the need for Commerce to extend our preliminary findings to all Mexican producers.¹⁴

Suspension of Liquidation

¹² For additional information, *see* the Preliminary Decision Memorandum.

¹³ *See Aluminum Extrusions from the People’s Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders, and Partial Rescission*, 84 FR 39805 (August 12, 2019) (*Aluminum Extrusions*), and accompanying IDM at 18.

¹⁴ For additional information, *see* the Preliminary Decision Memorandum.

In accordance with section 351.225(l)(2) of Commerce's regulations, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of otherwise straight steel concrete reinforcing bar bent on one or both ends and otherwise meeting the description of in-scope merchandise under the *Order* that is produced and/or exported to the United States by Deacero that are entered, or withdrawn from warehouse, for consumption on or after October 18, 2019, the date of the initiation of this inquiry. Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require a cash deposit of estimated duties equal to the AD rate in effect for Deacero for each unliquidated entry of otherwise straight steel concrete reinforcing bar bent on one or both ends and otherwise meeting the description of in-scope merchandise under the *Order* that is produced and/or exported to the United States by Deacero on or after October 18, 2019.¹⁵ The suspension of liquidation instructions will remain in effect until further notice.

Hooked rebar produced and/or exported by Deacero that has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, is not subject to this inquiry. However, imports of such merchandise are subject to certification requirements, and cash deposits may be required if the certification requirements are not satisfied. Accordingly, if an importer imports hooked rebar from Mexico produced and/or exported by Deacero and claims that the hooked rebar has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, the importer is required to meet

¹⁵ See *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 35599 (July 24, 2019).

the certification and documentation requirements described in Appendices II and III, in order for cash deposits pursuant to the Mexico rebar order not to be required.

Public Comment

Interested parties are invited to comment on this preliminary determination of circumvention and may submit case briefs and/or written comments within 20 days of the publication of this notice.¹⁶ Interested parties may file rebuttal briefs limited to issues raised in the case briefs no later than 10 days after the date on which the case briefs are due.¹⁷ Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by Commerce of the location and time of any hearing, if one is requested.

Notification to Interested Parties

This affirmative preliminary circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: February 28, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

¹⁶ See 19 CFR 351.225(f)(3).

¹⁷ *Id.*

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Statutory and Regulatory Framework
- V. Analysis
 - A. Whether the Hooked Rebar at Issue Constitutes Merchandise Altered in Form or Appearance in Minor Respects
 - B. Certification Language
- VI. Recommendation

Appendix II

Certification Requirements

If an importer imports otherwise straight rebar bent on one or both ends (hooked rebar) from Mexico produced and/or exported by Deacero and claims that the hooked rebar has been sold in connection with specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, the importer is required to complete and maintain the importer certification attached hereto as Appendix III and all supporting documentation. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

For shipments and/or entries from October 18, 2019 through March 29, 2020, if a certification is required, importers should complete the required certification within 30 days of the publication of this notice in the *Federal Register*. Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within the time frame specified above. For example, the bullet in the importer certification that reads: "This certification was completed at or prior to the time of entry," could be edited as follows: "The imports referenced herein entered before March 30, 2020. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the preliminary determination of circumvention." For such entries/shipments, importers have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

For shipments and/or entries on or after March 30, 2020, if a certification is required, importers should complete the certification at or prior to the date of entry.

The importer is also required to maintain sufficient documentation supporting its certifications. The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer will be required to present the certifications and supporting documentation to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer is required to maintain the certification and supporting documentation for the later of: (1) a period of five years from the date of entry, or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

In the situation where no certification is provided for an entry, Commerce intends to instruct CBP to suspend liquidation of the entry and collect cash deposits at the rate applicable to Deacero.

Appendix III

IMPORTER CERTIFICATION

I hereby certify that:

- My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the otherwise straight rebar bent on one or both ends (hooked rebar) from Mexico produced and/or exported by Deacero S.A.P.I. (Deacero) that entered under entry number(s), identified below, and which are covered by this certification. "Direct personal knowledge" for purposes of this certification refers to facts in records maintained by the importing company in the normal course of its business.
- The hooked rebar covered by this certification was produced and/or exported by Deacero.

If the importer is acting on behalf of the first U.S. customer, complete this paragraph:

- The hooked rebar from Mexico produced and/or exported by Deacero covered by this certification was imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.
- The hooked rebar from Mexico produced and/or exported by Deacero covered by this certification was shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS FIRST SHIPPED IN THE UNITED STATES}, located at {ADDRESS OF SHIPMENT}.
- I have personal knowledge of the facts regarding the production of hooked rebar from Mexico produced and/or exported by Deacero identified below. "Personal knowledge" includes facts obtained from another party (e.g., correspondence received by the importer from the producer regarding the country of manufacture of the imported products).
- The hooked rebar from Mexico was produced and/or exported by Deacero.

- The imports of hooked rebar have been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards.
- This certification applies to the following entries:

Producer	Entry Summary #	Entry Summary Line Item #	Invoice #	Invoice Line Item #

- I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, production records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries.
- I understand that {NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce).
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.
- I understand that failure to maintain the required certifications, and/or failure to substantiate the claims made herein, and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a determination that all entries to which this certification applies are within the scope of the antidumping duty order on steel concrete reinforcing bar from Mexico. I understand that such finding could result in:

- o suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
 - o the requirement that the importer post applicable antidumping duty cash deposits (as appropriate) equal to the rates determined by Commerce; and
 - o the revocation of {NAME OF IMPORTING COMPANY}'s privilege to certify future imports of steel concrete reinforcing bar from Mexico.
- I understand that agents of the importer, such as brokers, are not permitted to make this certification.
 - This certification was completed at or prior to the time of entry.
 - I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

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