



A-201-844  
Anti-Circumvention Inquiry  
Segment Name: Hooked Rebar  
**Public Version**  
E&C/OIII: EBG, JHE

February 28, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Antidumping Duty Order on Steel Concrete Reinforcing Bar from Mexico

**SUBJECT:** 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

## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of otherwise straight steel concrete reinforcing bar (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 S.A.P.I de C.V. (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 the antidumping duty (AD) *Order* on rebar (also referred to as straight rebar) from Mexico.<sup>1</sup>

## II. BACKGROUND

On October 18, 2019, Commerce, in response to a request from the Rebar Trade Action Coalition (RTAC) (also referred to as the petitioner),<sup>2</sup> initiated an anti-circumvention inquiry

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<sup>1</sup> 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*).

<sup>2</sup> See RTAC’s Letter, “Steel Concrete Reinforcing Bar from Mexico: Request for Scope Ruling or, Alternatively, an Anti-Circumvention Ruling,” dated September 3, 2019 (Circumvention Allegation).



pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup> On October 28, 2019, Commerce sent an initial minor alteration questionnaire to Deacero, requesting information regarding its sales of hooked rebar to the United States.<sup>4</sup> On December 5, 2019, Deacero submitted its response to the initial questionnaire.<sup>5</sup> On January 17, 2020, RTAC submitted comments and deficiency allegations regarding Deacero's initial questionnaire response.<sup>6</sup> Deacero issued a rebuttal to these comments on January 27, 2020.<sup>7</sup> Commerce issued a supplemental questionnaire to Deacero on January 28, 2020.<sup>8</sup> Deacero responded to question 1 of Commerce's supplemental questionnaire on February 7, 2020 and questions 2 – 5 on February 11, 2020.<sup>9</sup> On February 21, 2020, RTAC submitted comments on Deacero's February 11 Supplemental QR.<sup>10</sup>

### III. 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, 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.

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

<sup>4</sup> See Commerce's Letter, "Antidumping Duty Order on Steel Concrete Reinforcing Bar from Mexico: Minor Alteration Circumvention Inquiry on Hooked or Bent Steel Concrete Reinforcing Bar," dated October 28, 2019 (Minor Alteration IQR).

<sup>5</sup> See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Minor Alteration Questionnaire Response," dated December 5, 2019 (Deacero's IQR Response).

<sup>6</sup> See RTAC's Letter, "Steel Concrete Reinforcing Bar from Mexico: Comments on Deacero's Minor Alteration Questionnaire Response," dated January 17, 2020 (RTAC Comments on Deacero's IQR).

<sup>7</sup> See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Response to RTAC's January 17 Submission," dated January 28, 2020 (Deacero Rebuttal to RTAC's IQR Comments).

<sup>8</sup> See Commerce's Letter, "Antidumping Duty Order on Steel Concrete Reinforcing Bar from Mexico: Minor Alteration Questionnaire Issued to Deacero – Supplemental Questionnaire," dated January 28, 2020 (Supplemental Questionnaire).

<sup>9</sup> See Deacero's Letters, "Steel Concrete Reinforcing Bar from Mexico – Supplemental Minor Alteration Questionnaire Response – Question 1," dated February 7, 2020 (Deacero February 7 Supplemental QR); and "Steel Concrete Reinforcing Bar from Mexico – Supplemental Minor Alteration Questionnaire Response," dated February 11, 2020 (Deacero's February 11 Supplemental QR).

<sup>10</sup> Petitioner's Letter, "Steel Concrete Reinforcing Bar from Mexico: Response to Deacero's February 7, 2020 Comments and Minor Alteration Supplemental Questionnaire Response," dated February 21, 2020 (Petitioner's February 21 Response to Deacero Comments and Supplemental QR).

#### IV. STATUTORY AND REGULATORY FRAMEWORK

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an antidumping duty (AD) and/or countervailing duty (CVD) order when products which are of the class or kind of merchandise subject to an AD and/or CVD order have been “altered in form or appearance in minor respects... whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}” While the statute is silent as to 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. Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.<sup>11</sup> Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, along with the five factors enumerated above, Commerce has also considered additional factors, such as commercial availability of the product at issue prior to the issuance of the order as well as the circumstances under which the products at issue entered the United States, as well as the timing and quantity of said entries.<sup>12</sup>

#### V. ANALYSIS

##### A. Whether the Hooked Rebar at Issue Constitutes Merchandise Altered in Form or Appearance in Minor Respects

###### *Petitioner’s Arguments*

- The hooked rebar that was produced and/or exported by Deacero meets all five criteria that Commerce uses to determine that merchandise constitutes merchandise “altered in form or appearance in minor respects” from in-scope merchandise.
- Concerning the first criterion, overall physical characteristics, the hooked rebar and straight rebar have the same grade, diameter, and identical chemical properties. Aside from the hook on the end, the hooked rebar at issue and straight rebar are made using the same equipment and production processes.

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<sup>11</sup> See, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People’s Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from the PRC*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*; 74 FR 40565 (August 12, 2009).

<sup>12</sup> See, e.g., *CTL Plate from the PRC*, 74 FR at 33992-33993, *Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990) unchanged in *Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991), *Small Diameter Graphite Electrodes from the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012), and *Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR at 64930, 64931 (October 31, 2000) (*Preliminary Determination of CTL Plate from Canada*); unchanged in *Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate from Canada*, 66 FR 7617 at 7618 (January 24, 2001) (*Final Determination of CTL Plate from Canada*).

- Deacero added the hook, however, to avoid paying duties, rather than for any functional purpose. According to an affidavit of an individual who noticed the hooked rebar during a U.S. plant visit and inquired as to the circumstances of the hooked rebar’s initial sale by Deacero, Deacero sold the [ ] hooked rebar to [ ], with the understanding that [ ] would remove the hook after importation, which further demonstrates that, aside from the hook, the hooked rebar had the same physical characteristics as straight rebar.<sup>13</sup>
- Concerning the second criterion, expectations of the ultimate users, Deacero has offered hooked rebar to customers who previously purchased subject merchandise, which demonstrates that those customers have the same expectations for hooked bar as straight rebar, namely that the hooked bar will eventually become straight rebar once the hook is removed.<sup>14</sup>
- Thirty-foot straight rebar is a standard length, while the [ ] hooked rebar at issue is not a typical length, and the hooked segment’s length is [ ] the 30-foot straight rebar and the hooked rebar. Thus, the length of the hooked rebar and the length of the hook itself further demonstrates that the expectation of the customer is to remove the [ ] hook so that the resulting product is a 30-foot length of straight rebar.<sup>15</sup>
- Concerning the third criterion, use of merchandise, the uses of the hooked rebar and straight rebar are identical. Deacero sells both products to customers for reinforcing concrete and, once the hook is removed, the hooked rebar becomes 30-foot straight rebar.<sup>16</sup>
- Concerning the fourth criterion, channels of marketing, Deacero is selling the hooked rebar to the same customers as straight rebar. Deacero is also familiar with the *Order*, having been involved in the initial investigation and the subsequent reviews.<sup>17</sup>
- Concerning the fifth criterion, cost of modification relative to total value, according to the affidavit of the individual who noticed the hooked rebar during a U.S. plant visit, Deacero sold the [ ] hooked rebar to [ ] for the same price as 30-foot straight rebar. Given that Deacero determined that selling [ ] hooked rebar at the same price as 30-foot rebar was profitable, the marginal cost of modifying straight length rebar into hooked rebar is minimal.<sup>18</sup>

### *Deacero’s Arguments*

- Regarding overall physical characteristics, hooked rebar and straight rebar are undeniably different in physical characteristics. Hooked rebar has a significant hook, is not straight, and cannot be straightened.<sup>19</sup>
- Concerning expectations of the ultimate users, hooked rebar is used directly in construction, while straight rebar is usually further fabricated.<sup>20</sup> Deacero sold hooked rebar [ ] straight rebar on both an overall and customer-specific basis. In 2018, Deacero

<sup>13</sup> See Circumvention Allegation at 10 and Exhibit 1.

<sup>14</sup> *Id.* at 11 and Exhibit 1.

<sup>15</sup> *Id.* at 11 and Exhibit 1.

<sup>16</sup> *Id.* at 11 and 12.

<sup>17</sup> *Id.* at 12 and Exhibit 1.

<sup>18</sup> *Id.* at Exhibit 1.

<sup>19</sup> See Deacero’s Letter, “Steel Concrete Reinforcing Bar from Mexico – Response to Petitioner’s Scope Inquiry Request,” September 25, 2019 (Deacero’s September 25<sup>th</sup> Submission).

<sup>20</sup> *Id.*

sold hooked rebar at an average price that was approximately [ ] higher than the price it charged for straight rebar. On a per-customer basis, the price differential ranged from a [ ] premium to a [ ] premium.<sup>21</sup>

- Concerning use of merchandise, hooked rebar is tailored to, and designed for, a specific construction project and users expect to use the product for that project. Straight rebar is generally not tailored to, or designed for, particular projects.<sup>22</sup>
- Regarding channels of marketing, Deacero does not specifically market hooked rebar but, rather, markets all fabricated rebar generally.<sup>23</sup>
- Concerning the cost of modification relative to total value, the cost of fabrication constitutes a substantial portion of the total value of hooked rebar.<sup>24</sup> Deacero submitted monthly cost data for its production of hooked rebar. Deacero’s cost of production data for hooked rebar demonstrates that the fabrication process for hooked rebar made up an average roughly [ ] of the product’s total production costs. This is a substantial marginal cost that indicates that the sale of hooked rebar does not constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise.<sup>25</sup>

**Commerce’s Position:** For the reasons discussed below, we preliminarily determine that the hooked rebar at issue is altered in minor respects and is circumventing the *Order*, pursuant to section 781(c)(1) of the Act. Below, we address each of the five criteria that Commerce uses to determine whether a product constitutes merchandise “altered in form or appearance in minor respects” from in-scope merchandise.

Concerning the first criterion, overall physical characteristics, we note that Deacero’s IQR indicates that over [ ] of the hooked rebar that it sold in 2018 went to [ ].<sup>26</sup> Aside from a hook at the end, the hooked rebar sold to [ ] is identical to subject rebar in terms of physical characteristics, as evidenced by the email exchange where [ ] (a type of straight rebar) despite the fact that [ ] proposed product was, in fact, [ ].<sup>27</sup> Therefore, we preliminarily determine that, in terms of overall physical characteristics, the hooked rebar at issue is not significantly dissimilar to straight rebar that is subject to the scope of the *Order*.

Concerning the second criterion, expectations of the ultimate users, in 2018, Deacero sold [ ] percent of its hooked rebar to [ ] for an average unit value of [ ], which is similar to the AUV of [ ] for Deacero’s sales of straight rebar during the same period.<sup>28</sup> [ ] has also purchased straight rebar from Deacero.<sup>29</sup> Overall, Deacero’s 2018 sales of hooked rebar had an AUV that was only [ ] higher than the AUV of its

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<sup>21</sup> See Deacero’s IQR at 24-25 and Exhibit Q-40

<sup>22</sup> See Deacero’s September 25<sup>th</sup> Submission at 8.

<sup>23</sup> See Deacero’s IQR at 23

<sup>24</sup> See Deacero’s September 25<sup>th</sup> Submission at 9.

<sup>25</sup> See Deacero’s IQR at Exhibit Q-41.

<sup>26</sup> *Id.* at Exhibit Q-37.

<sup>27</sup> *Id.* at Exhibit Q-42.

<sup>28</sup> See Deacero’s IQR at Exhibit Q-37.

<sup>29</sup> See Circumvention Allegation at 12 and Exhibit 1.

straight rebar sales.<sup>30</sup> We find that the size of these price differences indicates that the expectations of end users do not significantly differentiate between hooked and straight rebar. Additionally, as explained in further detail below, [ ] initial purchase order contained a [ ] of hooked rebar while the text in the purchase order itself requested [ ] (e.g., [ ]).<sup>31</sup> [ ] characterization of the hooked product as [ ] demonstrates that its expectations and intended use of the hooked rebar were the same as straight rebar. Therefore, based on the physical similarities between hooked rebar and straight rebar and on [ ] characterization of hooked rebar as [ ] (e.g., [ ]), we preliminarily determine that hooked rebar is not significantly dissimilar to straight rebar in terms of the expectations of the ultimate users.

Concerning the third criterion, the use of the product, we note that in a(n) [ ], purchase order to Deacero, an [ ] asked Deacero to [ ]

[ ]<sup>32</sup> The [ ] drawing that is attached to [ ] purchase order depicts [ ] labeled as being [ ] in length along with a hook [ ]<sup>33</sup> On [ ], in reply to [ ], a Deacero representative states that:

[ ]

] <sup>34</sup>

The Deacero representative then e-mailed an attachment with a [ ] containing a [ ] and received approval for the revised purchase order from [ ].<sup>35</sup> We find the email exchange between Deacero and [ ] demonstrates that [ ] viewed the product that it was ordering as straight rebar. Thus, based on this evidence, we preliminarily determine that hooked rebar and straight rebar are not significantly dissimilar in terms of the use of the merchandise.

Concerning the fourth criterion, channels of marketing, Deacero's IQR indicates that it does not specifically market hooked rebar, but rather markets its fabrication capability more broadly to solicit sales of fabricated rebar.<sup>36</sup> Deacero claimed that in 2018, it attributed roughly [ ] in indirect selling and marketing expenses to its fabrication business, of which it states hooked rebar is a part.<sup>37</sup> Deacero's IQR further indicates that all of its products are sold through

<sup>30</sup> See Deacero's IQR at Exhibit Q-37.

<sup>31</sup> *Id.* at Exhibit Q-42.

<sup>32</sup> See Deacero's IQR at Exhibit Q-42. We note that [ ] reference to [ ] in its purchase order refers to a grade and length of straight rebar.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See Deacero IQR at 23.

<sup>37</sup> *Id.* at 23.

its U.S. affiliate Deacero USA, the same sales personnel sold both hooked and straight rebar, and the same sales personnel generally communicated with or visited potential customers.<sup>38</sup> Based on this information, we find that Deacero uses the same staff and methods for its sales of hooked and straight bar. Therefore, we preliminarily determine that hooked rebar and straight rebar are not significantly dissimilar in terms of channels of marketing.

Concerning the fifth criterion, the cost of modification relative to total value, Deacero submitted monthly cost data indicating that fabrication accounts for an additional cost of hooked rebar, ranging from around [ ] to [ ] percent in some months.<sup>39</sup> While much of the reported cost differential includes variables such as [ ] that are attributable to the bending of the rebar taking place at [ ] than the initial production of straight rebar, Deacero also reported non-trivial cost differentials related to the equipment required to bend the hooked rebar.<sup>40</sup> Further, Deacero reported that it conducted [ ] “research and development” expenditures related to the development of “fabricated rebar,” of which hooked rebar is a part.<sup>41</sup> Based on the information provided by Deacero, we preliminarily determine that, in some instances, hooked rebar and straight rebar are significantly dissimilar in terms of in terms of cost of production.

Deacero has also argued that it has no incentive to circumvent the *Order*, because it had an AD rate of zero percent during the period in which it shipped hooked rebar to the United States.<sup>42</sup> However, while the cash deposit rate may have been zero percent, the assessment rate on entries during this period will not be finalized until the conclusion of the 2017-2018 and 2018-2019 administrative reviews of the *Order*. By selling straight rebar as fabricated rebar, Deacero was able to avoid suspension of liquidation of the entries and, thus, the possibility that the entries would be subject to non-zero duties following the final results of the ongoing reviews.<sup>43</sup>

Therefore, 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, the 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 it regards the first four criteria we normally consider, we preliminarily determine that, based on the totality of the evidence, the hooked rebar at issue produced and/or exported by Deacero constitutes merchandise “altered in form or

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<sup>38</sup> *Id.* at 24.

<sup>39</sup> *See* Deacero IQR at Exhibit Q-41.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 18-19.

<sup>42</sup> *See* Deacero’s September 25th Submission at 4.

<sup>43</sup> Commerce assigned a 7.25 AD duty rate for Deacero in the preliminary results of the 2017-2018 administrative review of the *Order*. If this is maintained for the final determination it would be possible that a portion of Deacero’s hooked rebar shipments were, in fact, avoiding AD. *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2702 (January 16, 2020), and accompanying Preliminary Decision Memorandum.

appearance in minor respects” from in-scope merchandise, which is circumventing the *Order* within the meaning of section 781(c)(1) of the Act.

In the *Initiation Notice*, we noted that we 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,” noting that Commerce applied the circumvention ruling in *CTL Plate from China II* countrywide because it found multiple producers and importers circumventing the AD order.<sup>44</sup> The petitioner’s December 27, 2019, filing noted 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.<sup>45</sup>

The petitioner’s January 31, 2020, filing further noted that “the issue before the Department is whether Deacero’s sales to [ ] of [ ] circumvented the order.”<sup>46</sup> We preliminarily find there is no evidence on the record of this inquiry indicating that Mexican producers other than Deacero are exporting hooked rebar to the United States that did not have a connection to a specific, identified construction project. Further, unlike *Aluminum Extrusions*,<sup>47</sup> where we applied a country-wide circumvention finding, we find no arguments or information that has been submitted that demonstrates the need for Commerce to extend our preliminary findings in this inquiry to all Mexican producers. Therefore, we have not applied our preliminary affirmative finding to fabricated or hooked rebar produced and/or exported by other Mexican producers.

## **B. Certification Language**

### *Petitioner’s Comments*

- Commerce should include an importer certification requirement on all imports of Mexican fabricated rebar in the event of an affirmative finding of circumvention. Deacero has a history of circumventing AD orders and only covering bent/hooked rebar, as opposed to all fabricated rebar, makes further circumvention easier.
- The petitioner’s proposed certification language is as follows:

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<sup>44</sup> See *Initiation Notice*, Initiation Memorandum at 8-9 (citing *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 76 FR 50996, 50997 (August 17, 2011) (*CTL Plate from China II*)).

<sup>45</sup> See Petitioner’s Letter, “*Steel Concrete Reinforcing Bar from Mexico: Response to Deacero’s December 10, 2019 Comments*,” dated December 27, 2019, at 2.

<sup>46</sup> See Petitioner’s Letter, “*Steel Concrete Reinforcing Bar from Mexico: Response to Deacero’s January 15, 2020 Comments*,” dated January 31, 2020 (Petitioner’s January 31, 2020 Certification Comments), at 9.

<sup>47</sup> 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 Issues and Decision Memorandum at 18.

Imported fabricated rebar has been sold in connection to a specific, identified construction project and produced according to an engineer's structural design that meets or exceeds industry standards. All fabrication occurring in Mexico is necessary to the identified project and any additional processing of the product is limited to minor field adjustments unforeseen at the time of import that do not reverse or remove the prior fabrication."<sup>48</sup>

*Deacero's Comments*

- Deacero does not object to an importer certification requirement in the event of an affirmative finding of circumvention. However, RTAC's proposed language is overly burdensome.
- Deacero's proposed certification language is as follows:

To the best of the importer's knowledge, the imported bent or hooked rebar is or has been sold to be used as bent or hooked rebar, and, to the best of the importer's knowledge, will not be further altered after importation to remove the bend or the hook and then resold or used as straight rebar.<sup>49</sup>

**Commerce's Position:** We agree with the petitioner and Deacero that any affirmative determination of circumvention by Commerce as regards hooked rebar produced and/or exported by Deacero should be accompanied by an importer certification. However, because the preliminary determination of circumvention is specific to Deacero, we are preliminarily imposing the certification requirement for importers of hooked rebar produced and/or exported by Deacero and not on all importers of fabricated rebar from Mexico.

Based on record evidence indicating that, to the extent Deacero has sold non-circumventing fabricated rebar (including hooked rebar), such rebar was designed based on industry standards and sold in connection with a specific construction project,<sup>50</sup> we have drafted the importer certification language to state the following:

Imported otherwise straight rebar bent at one or both ends has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards.

This is information that an importer would have in its possession, and information which could be substantiated with documentation to which an importer would have access.

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<sup>48</sup> See, Petitioner's February 21 Response to Deacero Comments and Supplemental QR at 7; see also Petitioner's January 31, 2020 Certification Comments at 9.

<sup>49</sup> See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Response to RTAC's January 31 Submission," dated February 7, 2020, at 2.

<sup>50</sup> See Deacero's Letter, "Steel Concrete Reinforcing bar from Mexico – Response to RTAC's November 22, 2019 Letter," dated December 10, 2019, at 2. In this letter, Deacero stated that "the sale made to [ ]...has been and will be the only instance in which Deacero sold fabricated rebar that was [ ]; see also Deacero's IQR Response at 4 stating that "typical [ ] fabrication designs...formed the basic design of many fabricated products produced by Deacero."

Regarding the proposed language concerning the extent of processing the hooked rebar subsequent to importation, because the importer certification must be completed at or before the time of entry, knowledge of subsequent processing post-importation is not necessarily information that an importer would have in its possession. Further, we preliminarily find such language to be unenforceable by CBP at the border, because it refers to information regarding actions that take place subsequent to importation.

See Attachments II and III of the accompanying preliminary circumvention determination *Federal Register* notice for further details concerning the importer certification requirement.

## VI. RECOMMENDATION

We recommend that you approve the positions discussed above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/28/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance