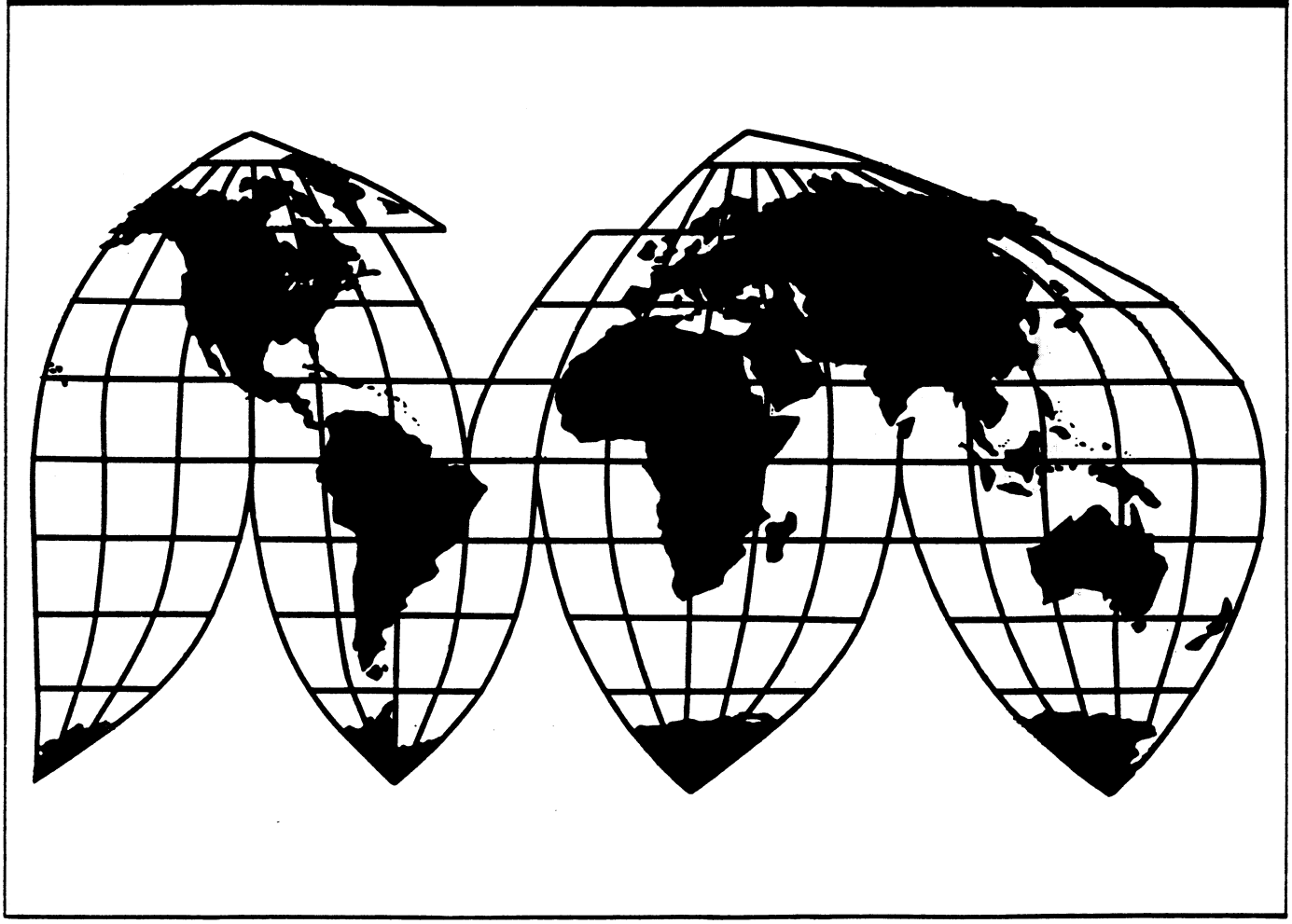
Stainless Steel Wire Rod From Brazil and France

Investigations Nos. 731-TA-636 and 637

Publication 2721 **January 1994**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert A. Rogowsky
Director of Operations

Staff assigned:

Larry Reavis, Investigator
Charles Yost, Commodity-Industry Analyst
Michael Anderson, Economist
Jim Stewart, Accountant
Shara Aranoff, Attorney

Robert Eninger, Supervisory Investigator

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

U.S. International Trade Commission

Washington, DC 20436

Stainless Steel Wire Rod From Brazil and France

Publication 2721

January 1994

CONTENTS

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-636 and 637 (Final)

STAINLESS STEEL WIRE ROD FROM BRAZIL AND FRANCE

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil and France of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective August 2, 1993, following preliminary determinations by the Department of Commerce that imports of stainless steel wire rod from Brazil and France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 18, 1993 (58 F.R. 43908). The hearing was held in Washington, DC, on October 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

---

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Brunsdale dissenting.

VIEWS OF THE COMMISSION

Based on the record in these final investigations,[1] we determine[2] that the industry in the United States producing stainless steel wire rod ("SSWR") is materially injured by reason of imports of SSWR from Brazil and France that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[3] We further find that critical circumstances do not exist with respect to imports from Brazil.

I. LIKE PRODUCT

In these final investigations, we considered two like product issues: whether the like product includes stainless steel bar, and whether "commodity" stainless steel wire rod and "specialty" stainless steel wire rod are separate like products.

A. Background and Product Description

To determine whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ."[4] In turn, the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[5]

---

[1] The petitions in Stainless Steel Wire Rod from Brazil and France were filed simultaneously with the petition in Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 (Nov. 1993), and the Commission conducted simultaneous preliminary and final investigations and held one hearing on all three investigations. The Commission was unable to issue simultaneous final determinations in these three investigations because the schedules for Commerce's final investigations of Brazilian and French imports were postponed at the request of respondents. See Notice of Postponement of Final Determinations of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from Brazil and France, 58 Fed. Reg. 44,660 (Aug. 24, 1993). The Commission's Report in Stainless Steel Wire Rod from Brazil and France incorporates by reference the Commission's Report in Stainless Steel Wire Rod from India, USITC Pub. 2704 (Nov. 1993). The Commission also issued a supplemental report in the instant investigations. Therefore, we refer to the Report in Stainless Steel Wire Rod from India as the "Report" and the supplemental report in Stainless Steel Wire Rod from Brazil and France as the "Supplemental Report".

[2] Commissioner Brunsdale dissenting. Commissioner Brunsdale joins the Like Product and Domestic Industry sections of these views, as well as footnote 36. In all other respects, see her dissenting views.

[3] Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10). The Commission's like product determinations are factual, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. See 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). In defining the like product, the Commission generally considers a number of factors including (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) customer and producer perceptions, (5) common manufacturing facilities and production employees, and, where appropriate, (6) price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992); Torrington, 747 F. Supp. at 749; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1168 n.4, 1180 n.7 (Ct. (continued...)

Commerce has identified the imported merchandise subject to these investigations as:

> products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.[6]

Stainless steel wire rod is a semifinished product made principally for cold-rolling or cold-drawing into stainless steel wire and bar, and is also used, inter alia, in the manufacture of fasteners and medical and dental instruments.[7] It is produced in a three step process: (1) billet production (consisting of melting and casting); (2) hot-rolling and coiling; and (3) finishing (annealing, pickling, and coating).[8]

B. Whether the Like Product Includes Stainless Steel Bar

In our preliminary determination in these investigations, we concluded that stainless steel bar is not "like" stainless steel wire rod. This conclusion was based on evidence showing differences in physical characteristics, uses, and production processes, lack of interchangeability, and customer perceptions that bar and rod are different products. We concluded that these factors outweighed the fact that stainless steel wire rod and bar share the first several production steps in common and are generally produced on the same line.[9]

In our recent final determination in Stainless Steel Wire Rod from India, we readopted our preliminary decision not to include stainless steel bar in the like product.[10]

---

[5] (...continued)
Int'l Trade 1988). No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49. Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations among them. Torrington, 747 F. Supp. at 748-49.

[6] Notice of Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from Brazil, 58 Fed. Reg. 68,862 (1993); Notice of Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, 58 Fed. Reg. 68,865 (1993).

[7] Confidential Report ("CR") at I-12; Public Report ("PR") at II-9.

[8] The first step involves the production of molten steel with the desired chemistry, which is then poured into molds to create semifinished shapes (billets) that can be processed into rod. Billets are reduced in size by hot-rolling, and the strands are then coiled. In the final step, the rod may be heat-treated (annealed) to avoid thermal cracking and improve surface quality, grain size and mechanical properties, pickled (immersed in an acid or chemical bath to remove mill scale from the surface), and coated with chemicals to neutralize acid and provide a lubricant for wire drawing operations. CR at I-8-I-9; PR at II-6-II-7.

[9] Stainless Steel Wire Rod from Brazil, France, and India, Inv. Nos. 731-TA-636-638 (Preliminary), USITC Pub. 2599 at 7-8 (Feb. 1993) ("Preliminary Determination").

[10] Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-6-I-7 (Nov. 1993). The Commission conducted the instant final investigations in conjunction with the final investigation of SSWR from India. Since the three investigations were briefed and argued together, and since the French and

(continued...)

Since the parties have not submitted and the Commission has not discovered any new evidence in these final investigations that would support including stainless steel bar in the like product, we again determine that stainless steel bar is not "like" SSWR for the reasons stated in our previous determinations.

C. Whether "Commodity" and "Specialty" SSWR Are Separate Like Products

In its preliminary determination, the Commission rejected respondents' argument that stainless steel wire rod (and bar) should be divided into "commodity" and "specialty" like products.[11] In these final investigations, petitioners renewed their argument that no valid like product distinction can be made between commodity and specialty grades of SSWR.[12] Respondents offered no new argument or evidence supporting their argument from the preliminary investigations that commodity and specialty grades are separate like products, and stated at the hearing that such a like product distinction was not essential to their case.[13]

In Stainless Steel Wire Rod from India, we determined that commodity and specialty SSWR are a single like product. We based that determination on a traditional like product analysis, which showed that SSWR is available in hundreds of grades; these varieties of SSWR are used in the production of multiple end use products and are generally not interchangeable in such uses; there is no evidence of record establishing any difference between the channels of distribution through which commodity and specialty grades are sold nor any evidence that domestic producers or purchasers perceive any bright-line distinction between specialty and commodity grades; all SSWR is produced using the same basic production process and all grades can be and generally are produced using the same machinery and the same employees; and the record does not demonstrate any consistent price differences between so-called "commodity" and "specialty" grades.[14]

We readopt that analysis here. Thus, as in Stainless Steel Wire Rod from India, we conclude that there is a continuum of SSWR products representing a spectrum of qualities, grades, chemistries, shapes, sizes and other features, reflected in dozens of industry

---

[10] (...continued)
Indian respondents generally supported each other's arguments, we addressed the like product arguments of both groups of respondents in our opinion in Stainless Steel Wire Rod from India. We readopt that discussion here. Throughout this determination, we will continue to refer to both groups of respondents arguments where applicable. No Brazilian respondents participated in these final investigations.

[11] Preliminary Determination at 8-9.

[12] Petitioners argued that, while SSWR is available in many grades for many specific end uses, all grades of SSWR share one primary end use -- cold-drawing into wire -- and the same basic physical characteristics. They argued that, in cases involving multiple product variations and end uses, the Commission has concluded that similarities in production processes and general physical characteristics outweigh differences in end uses and support a finding of one like product. They contended that SSWR presents just such a continuum of product varieties. Petitioners' Pre-Hearing Brief at 15-20.

[13] Pre-Hearing Brief on Behalf of Imphy, S.A., Ugine-Savoie, Metalimphy Alloys Corp., and Techalloy Company, Inc. (Oct. 7, 1993) at 21 ("French Respondents' Pre-Hearing Brief"); French Respondents' Post-Conference Brief at 19-34; Transcript of Commission Hearing (Oct. 14, 1993) at 149-50 ("Hearing Tr."). Respondents Mukand, Ltd. and Gulf & Northern Trading Corp. ("Indian respondents") made no like product arguments in their briefs, but concurred with the position taken by French respondents. Hearing Tr. at 196.

[14] Stainless Steel Wire Rod from India, USITC Pub. 2704 at I-7-I-8.

specifications and many more variations on each grade for specific end uses.[15] In light of these numerous variations and the lack of a clear dividing line between the two proposed "basket" like products, we again find one like product, consisting of all SSWR and excluding stainless steel bar.

II. DOMESTIC INDUSTRY

In these final investigations, we consider several issues with respect to the definition of the domestic industry: whether Armco is a domestic producer, whether toll producers are domestic producers, and whether we should exclude from our consideration domestic industry data derived from domestic producers' captively consumed production of SSWR.

A. Whether Armco and Toll Producers Are Domestic Producers

Respondents argued that one petitioner, Armco Stainless & Alloy Products, Inc. ("Armco"), was not a domestic producer of the subject merchandise during the period of investigation and that its questionnaire responses should therefore be disregarded.[16] Armco performs two of the three steps in the SSWR production process -- billet production (melting and casting) and finishing (annealing, pickling and coating) -- while the hot-rolling and coiling of Armco's billets is performed by other domestic producers (principally Talley Metals Technology, Inc. ("Talley")) on a toll basis.[17] Respondents contended that the plant at which Armco reported producing SSWR in fact produced only stainless steel billets and that the Commission has previously determined -- in a different investigation involving different products -- that semifinished steel shapes, including billets, comprise a separate like product from downstream steel products.[18] They also argued that the hot-rolling process causes the "substantial transformation" of billets into wire rod for finishing and that, since Armco does not perform this process, it is not a producer of SSWR.[19]

Petitioners responded that, at least until it shut down its Baltimore melting and casting facility in April of 1993, Armco was a domestic producer of SSWR. Petitioners contended that Armco's production-related activities, which included the finishing steps of annealing, pickling and coating as well as billet production, were significant. They argued that the Commission has traditionally included toll-produced merchandise as domestic production, even where the tolled material was imported and the finished product was

---

[15] We have been reluctant to fragment our like product definition where a continuum of products exists or to divide a spectrum of products into two like product groups. See, e.g., Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 11-12 (Aug. 1993) ("Certain Flat-Rolled Carbon Steel Products") (citing Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-459, USITC Pub. 2383 at 8-14 (May 1991)); Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 731-TA-659-660, USITC Pub. 2686 at 13 (Oct. 1993); see also S. Rep. No. 249 at 90-91.

[16] French Respondents' Pre-Hearing Brief at 29.

[17] CR at I-10-I-11; PR at II-7; Hearing Tr. at 83-84.

[18] French Respondents' Pre-Hearing Brief at 29-31 (citing Certain Specialty Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil, Inv. No. 731-TA-572 (Final), USITC Pub. 2662 at 12-15 (July 1993)).

[19] Id. at 32.

delivered to customers by the toller. That is not the case in these investigations, since all sales were made by Armco, which retained title to the merchandise throughout the process.[20]

The statute defines the relevant domestic industry as the domestic producers as a whole of the like product.[21] All of the steps associated with Armco/Talley's production of SSWR are performed in the United States. There is therefore no question that SSWR produced by Armco/Talley is domestic production, and the proposal that the Commission simply disregard this domestic production data is without merit.

The Commission's general practice is to include toll producers in the domestic industry, except where the record reflects unusual circumstances that suggest the toll processing activities are minor in nature.[22] Such circumstances are not present here. Based on the significance of the production-related activities performed by Talley and other producers that toll for Armco, we conclude that the rolling and coiling of billets into SSWR by these tollers is domestic production.

Moreover, based on the particular circumstances of this investigation, in which significant production-related activities were performed by the "tollee" Armco as well as by the tollers, we conclude that Armco is a domestic producer. In so concluding, we need not reach the issue posed by respondents with respect to Armco's billet production operations, because we find that Armco's finishing activities alone qualify it as a domestic producer.

In analyzing whether a producer's operations are sufficient to constitute domestic production, the Commission focuses on the overall nature of its production-related activities in the United States.[23] Finishing accounts for a significant share of the cost of producing SSWR if billet production costs are excluded.[24] Similarly, if billet production is excluded, the capital investment required to establish an annealing, pickling and coating line accounts for a significant share of the total cost of a full SSWR production facility.[25] Employment in finishing operations is not insignificant relative to total employment in the industry.[26] Thus, Armco's overall production activities are not the kind of minor finishing activities that the

---

[20] Petitioners' Post-Hearing Brief at 6-8 & n.16.

[21] 19 U.S.C. § 1677(4)(A).

[22] See, e.g., Shop Towels from Bangladesh, Inv. No. 731-TA-514 (Final), USITC Pub. 2487 at 10 (Feb. 1992); Refined Antimony Trioxide from the People's Republic of China, Inv. No. 731-TA-517 (Final), USITC Pub. 2497 at 6-7 and A-7 (Apr. 1992); Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379-380, USITC Pub. 2099 (July 1988).

[23] Specifically, the Commission examines six factors: (1) the source and extent of the firm's capital investment; (2) the technical expertise involved in U.S. production activities; (3) the value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See, e.g., Certain Cased Pencils from the People's Republic of China and Thailand, Inv. No. 731-TA-669-670 (Preliminary), USITC Pub. 2713 at I-8 n.27 (Dec. 1993); Silicon Carbide from the People's Republic of China, Inv. No. 731-TA-651 (Preliminary), USITC Pub. 2668 at 13 (Aug. 1993). No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. Certain Personal Word Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. 2411 at 18-19 (Aug. 1991).

[24] CR at I-10 n.5; PR at II-7 n.5; Table 8, CR at I-27, PR at II-17.

[25] Telephone Note Re: Nov. 1, 1993, conversation between Larry Reavis, Office of Investigations, and Dr. Patrick Magrath, Georgetown Economic Services.

[26] Table 3, CR at I-17, PR at II-12; Petitioners' Post-Hearing Brief, Attachment 9, at 1.

Commission has considered not to qualify as domestic production.[27] We therefore determine that Armco is a domestic producer by virtue of its finishing activities alone.[28]

B. Whether Captive Production Constitutes Domestic Production

Petitioners argued that the statute neither expressly prevents the Commission from excluding captive production from domestic shipments nor expressly requires that it be included. They further argued that, in these investigations, the Commission should exclude from its consideration SSWR produced by domestic producers for captive consumption because the open market is the only market in which imports and domestic production compete.[29] Respondents agreed with petitioners that captive shipments face no import competition, but argued that captive shipments must be included in the Commission's analysis.[30]

We have previously rejected petitioners' statutory argument on the grounds that the statute "requires captive production to be included in the domestic industry."[31] [32] As we have

---

[27] Compare Dry Film Photoresist from Japan, Inv. No. 731-TA-622 (Preliminary), USITC Pub. 2555 at 13-15 (Aug. 1992) (merely slitting film is not production) with Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (Final), USITC Pub. 1790 at 4-5, A-29 n.2 (Jan. 1986) (coating of wire that was already annealed and pickled constituted domestic production) and Low-Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 at 7 (Nov. 1985) (same).

[28] The conclusion that both Armco and Talley are domestic producers of the tolled production raises a possibility of double or even triple counting in the Commission's data. Where double or triple counting is an issue, as in the case of shipments and production, we have ascribed the tolled production to Armco rather than to Talley and counted Armco's finished production rather than its billet shipments to Talley. See, e.g., Table 1 n.4, CR at I-11, PR at II-8. When Talley completes its hot-rolling and coiling, it has produced an unfinished product which is dedicated to the production of SSWR but for which there is no commercial market. Talley's output is therefore not comparable to that of the other domestic producers nor would its "prices" for the product (if there were a market to set them) be comparable to the prices for finished merchandise. By contrast, when Armco completes the finishing, the SSWR is fully comparable to other producers' products and sells in the same market. On the other hand, no double counting issue is raised by financial and employment data and data for both Armco and Talley appear in the Report. See, e.g., CR at I-18 n.7; PR at II-12 n.7; Table D-1, CR & PR at Appendix D. With respect to these data, we note that the exclusion of Armco's financial and employment data would lessen, but not shift, the trends that we discuss below.

[29] Petitioners' Pre-Hearing Brief at 20-26. They contended that contrasting shipment trends in the captive and non-captive markets show that imports only affect the non-captive market and that inclusion of captive shipments would be contrary to the statutory requirement to consider the competitive impact of unfairly traded imports on the domestic industry.

[30] French Respondents' Post-Hearing Brief at 2-4 and n.7.

[31] Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 17 (emphasis added); see also Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Canada, Japan, Malaysia and Taiwan, Inv. Nos. 701-TA-292 and 731-TA-400 and 402-404 (Final), USITC Pub. 2152 (Jan. 1989); Industrial Phosphoric Acid from Belgium and Israel, Inv. Nos. 701-TA-286 and 731-TA-365-366 (Final), USITC Pub. 2000 (Aug. 1987).

[32] Vice Chairman Watson and Commissioner Nuzum note that, regardless of whether the statute would require such an analysis, they would take into account both captive production and open market production because of the economic reality that both types of production affect, and are relevant to understanding, the condition of the domestic industry. Especially in capital-intensive industries, in which capacity utilization rates are important determinants of the industry's financial condition, captive production may play a very important if not critical role in corporate planning and decisionmaking. Although this production may not compete directly with imports in the open market, it does affect both strategic decisions as well as the bottom line of the companies involved. They note that the statute does not expressly distinguish between captive domestic production and open market domestic

(continued...)

stated, "[t]he impact of the subsidized or dumped imports must be evaluated in relation to U.S. production of a like product" because the statute "defines the domestic industry in terms of production, not in terms of markets, distribution channels, or similar factors."[33] Moreover, where, as here, a substantial proportion of production is captively consumed, exclusion of captive production would contravene the statutory injunction to analyze a "major proportion" of total domestic production in each industry.[34]

Accordingly, we reject petitioners' argument and determine not to exclude captive production data from our analysis. Nevertheless, we consider the extent of captive consumption to be relevant as a condition of competition, as discussed below.[35]

---

[32] (...continued)
production. They have, both in these investigations as well as in previous investigations, taken into account both captive production and non-captive production, recognizing that each has a different role in the dynamics of competition between the subject imports and the domestic like product.

[33] Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 16 (emphasis in original) (citing 19 U.S.C. § 1677(4)(A) & (D)).

[34] Id. at 17. Petitioners' attempt to limit the holding in Certain Flat-Rolled Carbon Steel Products to cases involving multiple products is misguided, as the Commission rested its decision to include captive production in that case on the statutory language, not on the particular facts on which petitioners focus.

[35] See Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 15, 17; Industrial Phosphoric Acid from Belgium And Israel, Inv. Nos. 701-TA-286 and 731-TA-365-366 (Final), USITC Pub. 2000 (Aug. 1987); Titanium Sponge from Japan and the United Kingdom, Inv. Nos. 731-TA-161-162 (Final), USITC Pub. 1600 (Nov. 1984); Electrolytic Manganese Dioxide from Greece and Japan, Inv. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (Apr. 1989); Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Inv. Nos. 701-TA-148-150 and 731-TA-88 (Preliminary), USITC Pub. 1230 (Mar. 1982).

III. CONDITION OF THE DOMESTIC INDUSTRY [36]

In assessing whether the domestic industry is materially injured by reason of dumped imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and we consider all relevant factors "within the context of the business cycle

---

[36] In accordance with the Commission's standard practice, the period of investigation in these investigations covered three full years, 1990-1992, and interim data through the last complete quarter available as of the date questionnaire responses were due, in this case January-June 1993. Questionnaires were sent out on August 18, 1993, after the parties had an opportunity to comment on their content, and were due on September 3, 1993. On August 24, 1993, at the request of French and Brazilian respondents, Commerce postponed its final determinations as to those countries. The Commission's final determinations were accordingly postponed from November 1993 to January 1994. On November 16, 1993 the Commission reached an affirmative final determination with respect to SSWR from India. On December 28, 1993, less than three weeks before the Commission's scheduled vote, French respondents filed a letter requesting that the Commission gather unspecified "information pertaining to the third and fourth quarters of 1993" on the grounds that gathering such updated data was legally required and that failure to do so would penalize French respondents. French respondents also requested that the Commission postpone its vote to a date nearer the statutory deadline of February 9 to maximize its ability to gather further data, and sought an opportunity to comment on any updated information. They offered no evidence that any probative facts or trends noted in the Report or the Stainless Steel Wire Rod from India decision might have changed in the second half of 1993 nor was there anything on the record to alert the Commission that such changes might be imminent. See Letter dated December 28, 1993, from Stuart Rosen, Esq., Weil, Gotshal & Manges, to Donna Koehnke, Secretary, USITC and responding Letter dated January 3, 1994, from Laurence A. Lasoff, Collier, Shannon, Rill & Scott, to Donna Koehnke, Secretary, USITC.

The Commission's rules do not provide for "motions." Nevertheless, the Commission determined to accept both letters into the record pursuant to 19 C.F.R. § 201.12. As a practical matter, the Commission cannot continuously update its record until the moment of its vote, nor is it required to do so. See, e.g., General Motors Corp. v. United States, Slip Op. 93-128 (Ct. Int'l Trade July 12, 1993). Aside from the practical difficulties, such a practice would encourage parties to seek postponements every time there existed the possibility that additional data gathered during the postponement would bear favorably on their case. Nevertheless, and despite the tardiness of respondents' request, the Commission sought updated information with respect to imports, domestic shipments, consumption, production, market share and capacity. No information with respect to fourth quarter 1993 was available and only limited information was available with respect to third quarter 1993. See Memorandum INV-R-007 (Jan. 10, 1994). As will be discussed in further detail infra, such updated information as was available did not alter the Commission's analysis in these investigations. Accordingly, the Commission determined that no opportunity for further party comments was necessary. The Commission also determined that it would be futile to seek updated pricing, lost sales or financial data, since such information either would not be available or could not be verified and audited to ensure its comparability with the Commission's data in the time remaining. (Significant time was required, for example, to audit the financial data contained in the original Report, due to varying methodologies for allocating between bar and rod and to various accounting adjustments requested by the parties.)

Statutory deadlines set by Congress provide a maximum, not a minimum, time period within which the Commission is to complete its investigation, and Congress has urged the Commission to complete its investigations in less than the permitted time whenever possible. See H.R. Rep. No. 317, 96th Cong., 1st Sess. at 62 (1979). In these investigations, additional usable information regarding the second half of 1993 could not have been compiled even if the investigations were extended to the statutory deadline. Accordingly, the Commission rejected respondents' request to postpone its vote in these investigations.

and conditions of competition that are distinctive to the affected industry."[37] In evaluating the condition of the domestic industry, we look at the domestic industry as a whole.[38]

Approximately two-thirds of domestic production of SSWR is captively consumed in the production of wire and small diameter bar.[39] As discussed above, we have followed our practice of declining to exclude captive production and shipments from our analysis of the condition of the domestic SSWR industry. Nonetheless, we consider as a condition of competition in this industry the fact that imports do not compete with captive shipments in the same way and to the same extent that they compete with open market shipments. While the subject imports of SSWR arguably have an indirect effect on domestic producers' captive production, two-thirds of the production in this industry is shielded to some extent from any potential adverse effects of LTFV imports.[40] Accordingly, while we base our analysis on the condition of the industry as a whole, we also have considered, where appropriate, the condition of U.S. producers' merchant market operations.

Apparent U.S. consumption (including captive consumption) of SSWR on the basis of quantity increased by 11.5 percent from 1990 to 1992, rising from 117,926 short tons in 1990 to 123,855 short tons in 1991 and to 131,521 short tons in 1992. Apparent consumption in interim (January-June) 1993 was 7.3 percent higher than in the same period of 1992.[41] Open market apparent consumption grew at an even faster rate.[42]

U.S. production of SSWR (including captive production) fell by 1.9 percent between 1990 and 1992, declining from 91,292 short tons in 1990 to 89,499 tons in 1991, then rising slightly to 89,574 tons in 1992. Production levels were virtually the same in interim 1992 and interim 1993.[43] Average-of-period capacity utilization fell by 0.4 percent from 1990 to 1992, and capacity utilization remained below 50 percent throughout the period of investigation. Capacity utilization was 7.3 percent higher in interim 1993 than in interim 1992, but this improvement may be accounted for by Armco's exit from the industry in early

---

[37] 19 U.S.C. § 1677(7)(C)(iii). Respondents contended that this industry is cyclical, that the period of investigation was characterized by a period of economic decline followed by a weak recovery, and that the industry's performance should be assessed in the context of this asserted downturn in the business cycle. French Respondents' Pre-Hearing Brief at 4-5. The statute directs us to consider the business cycle for this particular industry, not general U.S. economic conditions, although the two may be linked. As discussed below, there is no evidence of a downturn in this industry's business cycle during the period of investigation, since domestic demand for SSWR was steadily rising.

[38] See, e.g., Welded Steel Pipe from Malaysia, Inv. No. 731-TA-644 (Preliminary), USITC Pub. 2620 at 19-20 and n.79 (Apr. 1993) ("The Commission may take into account the departures from an industry or the unique circumstances of individual companies, but ultimately must assess the condition of the industry as a whole, and not on a company-by-company basis."), citing Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 735 (Ct. Int'l Trade 1989).

[39] CR at I-12; PR at II-9.

[40] Indeed, all parties agree that there is no direct competition between captively consumed SSWR and open market shipments. Petitioners' Pre-Hearing Brief at 20-21; French Respondents' Post-Hearing Brief at 2-4; Indian Respondents' Pre-Hearing Brief at 16-19.

[41] Table 19, CR at I-46, PR at II-26; Table C-1, CR at C-3, PR at C-3. If January through September 1992 is compared with the same period in 1993 (the "alternate interim periods"), the increase in consumption is smaller but the increasing trend is still evident. See Memorandum INV-R-007 at 1, Supplemental Table ("Supp. Table") 1.

[42] Table 21, CR at I-48, PR at II-27; see also Memorandum INV-R-007 at 1, Supp. Table 1.

[43] Table 2, CR at I-15, PR at II-11; Table C-1, CR at C-3, PR at C-3. Production was 16.7 percent lower in alternate interim 1993 than in alternate interim 1992. See Memorandum INV-R-007 at 2, Supp. Table 1.

1993.[44] U.S. producers' production capacity fell by 0.7 percent from 1990 to 1992, declining from 251,718 tons in 1990 to 249,894 tons in 1992. Capacity was 16.3 percent lower in interim 1993 than in interim 1992, principally as a result of Armco's exit.[45]

U.S. producers' total U.S. shipments of SSWR rose from 93,583 short tons in 1990 to 97,624 short tons in 1991, before falling to 89,421 tons in 1992, for an overall decline of 4.4 percent. Shipments were 2.3 percent lower in interim 1993 than in interim 1992.[46] The average unit value of U.S. producers' shipments of SSWR rose from $2,915 in 1990 to $3,022 in 1991, then declined to $2,877 in 1992. Unit values were 3.1 percent lower in interim 1993 than in interim 1992, ending the period at $2,781 per ton.[47]

U.S. producers' end-of-period inventories of SSWR fell from 7,582 tons in 1990 to 3,047 tons in 1991, rising slightly to 3,158 in 1992. However, inventories in interim 1993 were 29.1 percent higher than in interim 1992.[48] The ratio of U.S. producers' inventories to their total shipments decreased by 4.6 percent from 1990 to 1992, but was 1.1 percent higher in interim 1993 than in interim 1992.[49]

The average number of production and related workers producing SSWR rose by 9.6 percent from 1990 to 1992, increasing from 1,257 in 1990 to 1,296 in 1991 and to 1,378 in 1992, but fell to roughly the 1990 level in interim 1993.[50] Hours worked by such workers rose by 4.6 percent from 1990 to 1992, but were 7.5 percent lower in interim 1993 than in interim 1992.[51] Total compensation paid to production and related workers by U.S. producers rose by 13.6 percent from 1990 to 1992 and was 4.3 percent higher in interim 1993 than in interim 1992.[52]

---

[44] CR at I-10, I-14; PR at II-7, II-10; Table 2, CR at I-15, PR at II-11; and Table C-1, CR & PR at C-3. The increase in capacity utilization is smaller if alternate interim periods (using updated data) are compared. See Memorandum INV-R-007 at 2, Supp. Table 1. U.S. producers' plant and equipment is not dedicated to the production of SSWR, although the ability of specific equipment to manufacture other products varies from firm to firm. The capacity for SSWR production reported by U.S. producers represents an allocation based on the weight of the products shipped, normal product mix, or, in the case of one producer, the maximum capacity of its pickling equipment, which is dedicated to the production of SSWR. The capacity calculations for the subject product are therefore principally useful as an index for annual comparison purposes, although we have given some weight to their extremely low absolute level.

[45] Table 2, CR at I-15, PR at II-11; Table C-1, CR & PR at C-3. Capacity declines were even more substantial if alternate interim periods are compared. See Memorandum INV-R-007 at 2, Supp. Table 1.

[46] Table 2, CR at I-15, PR at II-11; Table C-1, CR & PR at C-3. Open market shipments rose from 34,920 tons in 1990 to 35,234 tons in 1991, before falling to 29,808 tons in 1992, a net decline of 14.6 percent. Open market shipments were 14,607 tons in interim 1993, compared with 15,910 in interim 1992, a difference of 8.2 percent. Table 2, CR at I-15, PR at II-11. If alternate interim periods are compared, interim 1993 shipments (including captive shipments) are 4.2 percent less than in interim 1992, lessening but not eliminating the downward trend. See Memorandum INV-R-007 at 2, Supp. Table 1.

[47] Table 2, CR at I-15, PR at II-11.

[48] Table 2, CR at I-15, PR at II-11; Table C-1, CR at C-3, PR at C-3.

[49] Id.

[50] Table 3, CR at I-17, PR at II-12; Table C-1, CR &PR at C-3.

[51] Id.

[52] Id. Since workers, like production equipment, are used in the production of bar as well as SSWR, these data represent allocations on various bases between the two products and we afford them limited weight. Moreover, the data do not reflect the loss of employment caused by Armco's exit from the industry in April of 1993. We have considered respondents' contention that Armco's exit may not have been prompted by import-related reasons. We note, however, that "importers take the domestic industry as they find it." Iwatsu Electric Co. v. United States, 758 F. Supp. 1506, 1518 (Ct. Int'l Trade 1991).

Net sales of U.S. producers of SSWR on their SSWR operations (including company transfers) remained relatively flat from 1990 to 1992 and were five percent lower in interim 1993 than in interim 1992.[53] U.S. producers realized positive operating income in 1990 and 1991, but experienced operating losses in 1992. The operating income margin decreased in each full year of the period examined, falling to a negative figure by the end of 1992, although it was somewhat higher in interim 1993 than in interim 1992.[54] [55]

Capital expenditures on SSWR rose slightly from 1990 to 1991 then declined significantly from 1991 to 1992 and were lower in interim 1993 than in interim 1992.[56] The value of total assets of U.S. producers for SSWR operations fell slightly from 1990 to 1992, and return on total assets for SSWR production declined steadily over the period of investigation.[57] Domestic producers identified specific planned investments that were delayed or reduced due to competition from low-priced imports.[58] [59]

IV. CUMULATION

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and effects of imports from two or more countries of like products subject to investigation if such imports are reasonably coincident and compete with one another and with the domestic like product in the United States market.[60] In addition to imports from Brazil and France, which are the subject of these investigations, imports of SSWR from India were recently subject to investigation and

---

[53] Net sales were $250,215,000 in 1990, rose to $264,903,000 in 1991, then fell to $252,014,000 in 1992. Table 9, CR at I-31, PR at II-18; Table C-1, CR & PR at C-4. Trade only net sales declined by 21.7 percent between 1990 and 1992. Table 5, CR at I-22, PR at II-15.

[54] Table 9, CR at I-31, PR at II-18. Operating income margins were considerably lower in each period for trade only operations. Table 5, CR at I-22, PR at II-15. The parties proposed that the financial data be adjusted to correct for the effects of various non-recurring expenses and accounting changes. We note that, if the proposed adjustments were made, the trends in operating income margins would be very similar, except that operating income margins would have declined rather than improved in interim 1993. Figure 2, CR at I-23, PR at II-16; Table 9 n.3, CR at I-31, PR at II-18. Thus, even if we use the adjusted financial data, our assessment of the condition of the industry does not change.

[55] We reject respondents' argument that we should consider the profitability of the SSWR industry on the basis of the asserted historical relationship between the profitability of SSWR and stainless steel bar. See Indian Respondents' Pre-Hearing Brief at 27-32. While we may appropriately consider (and have considered) whether accounting allocations between bar and rod were properly made, the statute and case law direct us to consider whether subject imports are adversely affecting the industry producing the like product, which does not include bar. 19 U.S.C. § 1677(7)(B)(i); General Motors Corp. v. United States, 827 F. Supp. 774, 780 (Ct. Int'l Trade 1993); Softwood Lumber from Canada, Inv. No. 701-TA-312 (Final-Remand), USITC Pub. 2689 at 12 (Oct. 1993). As we stated in Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 17, the Commission is not to ignore findings of specific industries in order to evaluate the statutory factors in the context of a larger industry "family".

[56] Table 11, CR at I-33, PR at II-19.

[57] Table 12, CR at I-34, PR at II-19.

[58] CR & PR at Appendix E.

[59] Based on their analysis of these indicators, Chairman Newquist and Commissioner Rohr find that the domestic industry is experiencing material injury.

[60] 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990). However, the Commission has discretion not to cumulate imports from a particular country that are "negligible" and have no discernable adverse impact on the domestic industry. 19 U.S.C. § 1677(7)(C)(v). Respondents make no claim that either Brazilian or French imports are negligible.

are subject to an antidumping duty order dated December 1, 1993.[61] The only issue with respect to cumulation raised by the parties is whether the subject imports from Brazil and France compete with each other, with imports from India, and with the domestic like product. In addition, we consider whether the antidumping duty order on imports from India is recent enough that imports entered prior to that order are having a continuing injurious impact on the domestic industry.

A. Reasonable Overlap of Competition

In assessing whether imports compete with each other and with the domestic like product, the Commission generally considers four factors, including:

> (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
>
> (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
>
> (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
>
> (4) whether the imports are simultaneously present in the market.[62]

While no single factor is determinative, and the list of factors is not exclusive, these factors provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product. Only a "reasonable overlap" of competition is required.[63]

There is no dispute that imports from Brazil, France, and India are present in the same geographical markets with one another and with the domestic like product,[64] were simultaneously present in the U.S. market during most of the period of investigation,[65] and are sold through the same channels of distribution, often to the same customers.[66] The only disputed issue is whether asserted quality or market niche differences among the imports or

---

[61] Antidumping Duty Order: Certain Stainless Steel Wire Rods from India, 58 Fed. Reg. 63,335 (1993).

[62] Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[63] Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required."); Granges Metallverken AB v. United States, 716 F. Supp. 17, 21-22 (Ct. Int'l Trade 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products . . . the Commission need only find evidence of reasonable overlap in competition").

[64] Domestic producers sell their product nationwide and importers have competed for sales to purchasers located in all regions of the country. CR at I-10-I-13 and I-72-I-81; PR at II-7-II-9 and II-36.

[65] Table 18, CR at I-44, PR at II-24. Imports from India did not begin until 1990.

[66] CR at I-12-I-13; PR at II-9.

between the imports and the domestic like product are so pronounced as to preclude a reasonable overlap of competition between them.[67]

Petitioners argued that there is a reasonable overlap of competition between the subject imports from Brazil and France, between the subject imports and imports from India, and between all imports and the domestic like product. They contended that, even if the imports and the domestic product fall in different places along a spectrum of quality and serve different niche markets, they still compete with each other in the marketplace in a manner sufficient to establish a reasonable overlap.[68]

French respondents argued that the market for SSWR is highly fragmented among various grades and types that are not substitutable in end use applications, making any competition in the market very attenuated.[69] They contended that French imports do not compete with Brazilian or Indian imports, since French imports are largely concentrated in specialty grades and are all primary quality. Brazilian and Indian imports, by contrast, are largely commodity grades of secondary quality. They also argued that most French commodity grade imports are captively consumed, and that French and Indian SSWR, "even of the same AISI grade," are different products used for different end uses.[70]

In Stainless Steel Wire Rod from India, we concluded that the extent of captive consumption did not preclude our finding a reasonable overlap of competition, since one third of domestic production, a large share of French imports, and all of Brazilian and Indian imports are sold on the open market.[71] Since there is no new information of record that indicates a smaller open market, we reaffirm that finding here.[72]

The Commission has the discretion to consider quality differences among products in determining whether or not to cumulate imports.[73] Perceived quality differences, however, are only one factor among those the Commission considers.[74] In order to justify not

---

[67] Chairman Newquist notes that, in his analytical framework, competition based on quality differences, i.e., characteristics and uses, is principally an issue to be resolved in defining the like product. Thus, once Chairman Newquist has defined the like product, only in the most exceptional of circumstances would he find that, for purposes of cumulation, the like product and the subject imports do not compete. See Chairman Newquist's "Additional and Dissenting Views" in Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 260-262.

[68] Petitioners' Pre-Hearing Brief at 47.

[69] They argued that commodity grades do not compete with specialty grades; that even within these market segments, individual grades do not compete with each other; and that within an individual grade, primary and secondary quality SSWR do not compete. French Respondents' Pre-Hearing Brief at 17-28.

[70] French Respondents' Pre-Hearing Brief at 40-42; French Respondents' Post-Hearing Brief at 7..

[71] USITC Pub. 2704 at I-15; CR at I-12-I-13; PR at II-9. Compare Ferrosilicon from Egypt, Inv. No. 731-TA-642 (Final), USITC Pub. 2688, at I-16-I-17 (Oct. 1993) (where maximum of 8.7 percent of Brazilian imports could potentially compete with Egyptian imports, insufficient basis for finding overlap of competition).

[72] We similarly reaffirm our finding that Indian imports are not sold as "secondary" material, as that term is understood in this industry. USITC Pub. 2704 at I-15 n.80.

[73] See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992) (supporting Acting Chairman Brunsdale's decision not to cumulate Chinese ball bearings due, inter alia, to quality differences).

[74] Thus, the Commission has often found perceived quality differences to be less important than other factors in determining whether a reasonable overlap of competition exists. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-358-59 (Final), USITC Pub. 2383 at 26 (May 1991) (stressing sales in the same market segments despite asserted quality differences); Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Inv. Nos. 731-TA-439-444, USITC Pub. 2295 at 12-13 (June 1990) (Commission cumulated due, inter alia, to sales in similar geographic market despite alleged quality differences).

cumulating, differences in quality or market niche served must be so pronounced as to outweigh other evidence suggesting that the goods, in fact, compete with each other.[75] [76]

In these investigations, we find that the record demonstrates a reasonable overlap of competition among imports from Brazil, France and India, and between those imports and the domestic like product.[77] While there is some support for respondents' claim that, at least by the end of the period of investigation, some purchasers had concluded that Indian rod suffered from quality defects and could only be used for low end applications,[78] the record indicates that imports from Brazil and France do compete with each other, with imports from India, and with the domestic like product. In particular, all three exporting countries and the U.S. industry reported significant sales of each of the five selected products in most quarters for which data were collected,[79] and most producers concentrate their sales in standard grades, principally AISI 302, 304, and 316.[80] Although many perceived some quality differences between the various imports and the domestic product,[81] purchasers responding to the Commission's questionnaire indicated that Brazilian, French and Indian imports respectively were nonetheless interchangeable with the domestic product,[82] and that they purchased them for the same end uses.[83] The majority of SSWR is purchased by wire redrawers, most of which reported that they had purchased SSWR from all three subject

---

[75] See, e.g., Certain Flat-Rolled Carbon Steel Products at 36 (cumulating French imports where evidence showed "niche" product in fact competed with domestic product and at least one other exporter); High-Tenacity Rayon Filament Yarn from Germany and the Netherlands, Inv. Nos. 731-TA-530-531 (Preliminary), USITC Pub. 2444 at 14 (Oct. 1991) (while domestic product could not meet specifications for high end uses served by imports, they were substitutable in most applications); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-59 (Final), USITC Pub. 2383 at 24-26 (May 1991) (finding reasonable overlap despite multiple subproducts and markets).

[76] For the reasons expressed in note 67, supra, Chairman Newquist does not concur with this statement.

[77] Commissioner Crawford concurs that SSWR imports from France and Brazil should be cumulated, but does not cumulate imports from India, since she earlier found no material injury by reason of such imports. She concurs that subject imports from Brazil and France compete with each other and with the domestic like product. In Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), Commissioner Crawford did not cumulate imports from India with imports from Brazil and France. Her views in that investigation are incorporated herein by reference. Commissioner Crawford joins the discussion in this section only with respect to Brazil and France.

[78] CR at I-72-I-81; PR at II-36. See also Indian Respondents' Pre-Hearing Brief at 3-15 and Exhibits 1-4; Hearing Tr. at 191 (Gulf & Northern has gone from 14 to 4 U.S. customers for Indian product since 1990). However, purchasers responding to the Commission's questionnaire generally did not support Indian respondents' testimony that Indian SSWR competes with non-stainless products rather than higher quality SSWR in the low end applications they serve. CR at I-52; PR at II-29.

[79] CR at I-53-I-62; PR at II-30-II-33. We note that the absence of price data for some products in some quarters does not preclude a finding of a reasonable overlap of competition. Cf. Granges Metallverken AB v. United States, 716 F. Supp. 17, 22 (Ct. Int'l Trade 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products."). See also Petitioners' Post-Hearing Brief, Exhibit 2 (chart showing overlap by grades and dimensions).

[80] Hearing Tr. at 32; Petitioners' Post-Hearing Brief, Attachment 2 (Response to Question of Vice Chairman Watson).

[81] CR at I-50-I-52; PR at II-28-II-29.

[82] Memorandum EC-Q-115 at 14 n.24 (14 out of 15 purchasers of Brazilian rod found them interchangeable); Hearing Tr. at 250 (10 out of 14 and 17 out of 19 purchasers, respectively, reported that Indian and French rod are interchangeable with the domestic product). French respondents assert that questionnaire respondents who stated that products are interchangeable were referring merely to the technical feasibility of substitution rather than stating that substitution is economically feasible. See French Respondents' Post-Hearing Brief at 7. There is no evidence of record to support this interpretation. Commissioner Crawford notes that interchangeability can exist over a broad range of elasticities of substitution.

[83] Memorandum EC-Q-115 at 20-21.

countries and from domestic producers during the POI.[84] Moreover, a number of purchasers indicated that they obtained price quotes from domestic producers as well as importers from the subject countries and made their purchasing decisions mainly on the basis of price.[85] Finally, even if we were to accept respondents' claim that nearly 44 percent of French imports are grades that face no domestic competition, the remaining 56 percent would be more than sufficient to establish a reasonable overlap of competition with domestic production.[86]

Based on the foregoing, we conclude that evidence of quality differences and market segmentation is outweighed by evidence that there is significant competition among Brazilian, French and Indian imports and between those imports and the domestic like product. Accordingly, we find that the competition requirement for cumulation is satisfied.

B. Cumulation With Imports Subject to a Recent Order [87]

If the statutory requirements for cumulation are otherwise met, the Commission may cumulate the volume and price effects of imports subject to an ongoing investigation with those of imports that entered the United States prior to issuance of a recent antidumping or countervailing duty order.[88] Having determined that the statutory requirements are met, we further determine that it is appropriate to cumulate imports from Brazil and France with imports from India entered prior to the recent antidumping duty order. We base this determination on a number of factors.

The investigations of imports from Brazil, France and India were instituted simultaneously, the Commission collected one set of data for all investigations (with the exception of limited updated data obtained after the India vote) and, in Stainless Steel Wire Rod from India, the Commission determined that cumulation of all imports was required by statute. These separate final injury determinations were required solely as a result of postponements granted to French and Brazilian respondents by Commerce,[89] and the antidumping duty order at issue is less than two months old. In these circumstances, we find

---

[84] CR at I-72-I-81; PR at II-36; Petitioners' Post-Hearing Brief, Attachment 2 (Response to Question of Vice Chairman Watson), citing responses to Questionnaire question V-B.3. Respondents contend that the fact that certain redrawers purchase SSWR from all relevant countries is not evidence of actual competition since redrawers use SSWR from different sources for different purposes. French Respondents' Post-Hearing Brief at 9. While respondents offer some evidence to this effect, other evidence of record supports our conclusion that many such purchases are used to make the same products. In any event, Congress did not intend nor have the courts required the Commission to trace in detail the precise uses to which end users who purchased product from domestic producers' customers put a product in order to find a reasonable overlap of competition.

[85] CR at I-74-I-75, I-76, I-79, I-80, I-81; PR at II-36. Indian respondents contended that consistent underselling by Indian imports demonstrates that they do not compete with the domestic product. Indian Respondents' Pre-Hearing Brief at 37-42. Congress has warned that not all price differences can be explained by differences in the merchandise, S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987). In light of the evidence that Indian imports and the domestic like product do compete, we conclude that the observed margins of underselling are not fully accounted for by quality differences alone. Commissioner Crawford does not join in the discussion in this note. Her views on underselling are stated infra at note 109.

[86] French Respondents' Post-Hearing Brief, Attachment A at Q-31 (Response to Question by Commissioner Brunsdale) and Attachment 5.

[87] In Stainless Steel Wire Rod from India, Commissioner Crawford did not cumulate imports from India with imports from Brazil and France, and she determined that the domestic industry was not materially injured or threatened with material injury by reason of LTFV imports from India. Therefore, she does not join in this discussion.

[88] See, e.g., Ferrosilicon from Russia and Venezuela, Inv. Nos. 303-TA-23, 731-TA-568 and 570 (Final), USITC Pub. 2650 at 16-17 (June 1993); Sulfur Dyes from India, Inv. No. 731-TA-550 (Final), USITC Pub. 2619 at 13-14, 25-26, 34-36 (Apr. 1993).

[89] See 58 Fed. Reg. 44,660 (Aug. 24, 1993).

that a decision not to cumulate in these investigations would undermine the purpose of cumulation in the Commission's analysis, which is to capture fully the simultaneous effects of unfairly traded imports from more than one country on the domestic industry.[90] Moreover, end-of-period U.S. inventories of imports from India increased significantly from 1990 to 1992 and then rose sharply by the end of June 1993,[91] and the amount of Indian imports held in inventory represent a substantial percentage of total Indian imports in the relevant periods.[92] We therefore conclude that Indian imports were still affecting the domestic market after the antidumping duty order was issued. Based on these factors, we determine that cumulation of the Brazilian and French imports with imports from India entered prior to the recent order is appropriate.

V. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In determining whether a domestic industry is materially injured by reason of the imports that Commerce has determined are sold at LTFV, the statute directs the Commission to consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product.[93] Although the Commission may consider causes of injury other than the LTFV imports, it is not to weigh causes.[94] [95] [96] For the

---

[90] A decision not to cumulate would require the Commission to conduct investigations in a piecemeal fashion and may encourage respondents to request postponement by Commerce of various investigations in order to obtain from the Commission a separate causation analysis on their imports.

[91] CR at I-38; PR at II-22. The Report notes that these inventory figures reflect only half of Indian imports and are limited to inventories available for open market consumption. Thus, actual inventory figures may be higher.

[92] Table C-1, CR at C-3, PR at C-3.

[93] 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." Id.

[94] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Chairman Newquist, Commissioner Rohr and Commissioner Nuzum further note that the Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101.

[95] Vice Chairman Watson notes that the courts have interpreted the statutory requirement that the Commission consider whether there is material injury "by reason of" the subject imports in a number of different ways. Compare United States Engineering & Forging v. United States, 779 F. Supp. 1375, 1391 (Ct. Int'l Trade 1991) ("[I]t must determine whether unfairly traded imports are contributing to such injury to the domestic industry . . . Such imports, therefore, need not be the only cause of harm to the domestic industry") (citations omitted) with Metallverken Nederland B.V. v. United States, 728 F. Supp. at 741 (affirming a determination by two Commissioners that "the imports were a cause of material injury") and USX Corp. v. United States, 682 F. Supp. 67, 69 (Ct. Int'l Trade 1988) ("any causation analysis must have at its core the issue of whether the imports at issue cause, in a non de minimis manner, the material injury to the industry").

Accordingly, Vice Chairman Watson has determined to adhere to the standard articulated by Congress, in the legislative history of the pertinent provisions, which states that "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury." S. Rep. No. 249 at 275.

[96] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. She finds that the clear meaning of the statute is to require a determination on whether the domestic industry is materially injured by reason of LTFV imports, not by reason of LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently is causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249 at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize

(continued...)

reasons discussed below, we find that the domestic industry producing SSWR is materially injured by reason of cumulated imports of SSWR from Brazil, France, and India.[97]

The volume of cumulated imports of SSWR from Brazil, France and India increased from 6,701 short tons in 1990 to 8,966 short tons in 1991 and then more than doubled to 18,849 short tons in 1992, an overall increase of 181 percent. Imports were 7.8 percent higher in interim 1993 than in interim 1992.[98] By value, imports of SSWR from Brazil, France and India followed the same pattern, rising by 120 percent from 1990 to 1992.[99]

In terms of both quantity and value, the market share held by the cumulated imports more than doubled, rising from 5.7 percent of total consumption (by quantity) in 1990 to 7.2 percent in 1991 and 14.3 percent in 1992 and remaining unchanged between interim 1992 and interim 1993.[100] In the open market, the market share of cumulated imports was even greater.[101] These gains occurred at the same time that domestic producers' market share declined by 11.4 percent and the market share of non-subject imports increased by only 2.7 percent.[102] Moreover, in 1991-1992, when cumulated imports experienced their greatest increase, domestic producers experienced their greatest decline in shipments.[103] In light of the market share held by imports from Brazil, France, and India, their rapid increase in volume, and their increase in market share at the expense of domestic shipments, we find the volume of the cumulated imports, and the increase in that volume, to be significant.[104]

---

[96] (...continued)
the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 74. Rather, it is to determine whether any injury "by reason of" the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

[97] Commissioner Crawford did not cumulate imports from India since she earlier found no material injury by reason of LTFV imports from India. However, she does find material injury by reason of cumulated imports of SSWR from Brazil and France. She concurs in the general discussion below, but in her analysis of material injury by reason of the subject imports she made the appropriate downward adjustments in the volume of imports reported below to account for not cumulating imports from India.

[98] Table 18, CR at I-44, PR at II-24; Table C-1, CR at C-3, PR at C-3. We note that, if the alternate interim periods are compared, cumulated imports were 18.3 percent lower in interim 1993 than in interim 1992. Memorandum INV-R-007 at 2, Supp. Table 1. We further note that the volume of open market imports rose from 4,758 short tons in 1990 to 13,226 short tons in 1992, an increase of 178 percent. Open market imports were 20 percent higher in January-June 1993 than in the same period of 1992. Tables 18, 20 & 21, CR at I-44, I-47-I-48, PR at II-24, II-27. We give little weight to the apparently substantial decline in cumulated imports in the third quarter of 1993, which followed the suspension of liquidation in these investigations in August 1993. See, e.g., USX Corp. v. United States, 655 F. Supp. 487, 492 (Ct. Int'l Trade 1987) (Commission may give less weight to decreases in import volumes following institution of an investigation).

[99] Table 18, CR at I-44, PR at II-24; Table C-1, CR & PR at C-3. The trend is even more apparent with respect to open market imports, which rose by over 200 percent by value between 1990 and 1992. Tables 18, 20 & 21, CR at I-44, I-47-I-48, PR at II-24, II-27.

[100] Table 19, CR at I-46, PR at II-26. We note that if the alternate interim data is used, the market share of cumulated imports was 2.7 percent lower in interim 1993 than in interim 1992. We give little weight to this decline for the same reason we discounted the significance of the decline in cumulated import volume in the third quarter of 1993.

[101] Table 21, CR at I-48, PR at II-27.

[102] Table C-1, CR & PR at C-3.

[103] Table C-1, CR at C-3-C-4, PR at C-3-C-4.

[104] Commissioner Crawford finds the cumulated volume of imports from Brazil and France to be significant; subject imports increased 120 percent by quantity between 1990 and 1992 and represented 11.1 percent of the total apparent U.S. quantity consumed in 1992. Table C-1, CR & PR at C-3.

Despite an 11.5 percent increase in domestic consumption between 1990 and 1992, domestic producers' prices for all five products for which the Commission collected data trended downward over the period of investigation, and importers' prices fell farther and faster than domestic producers' prices in most cases in which comparisons were possible.[105] For example, while domestic prices for AISI grade 304 SSWR, the most common grade, declined by nearly 15 percent over the period of investigation, prices of Brazilian and French imports declined by even greater percentages and prices for Indian imports both declined consistently and were consistently below domestic producers' prices.[106] We thus find that the cumulated imports have depressed prices to a significant degree.[107] In addition, the cumulated imports undersold the domestic product in 60 out of 91 possible producer/importer price comparisons and 100 out of 129 purchasers' price comparisons, by margins of up to 30 percent.[108] We therefore find significant underselling by the cumulated imports.[109]

We have considered respondents' contentions that declining domestic prices are fully accounted for by declines in raw material costs.[110] We find, however, that domestic producers' overall costs rose over the period of investigation, belying any possible connection between raw material cost reductions and the observed price declines.[111] We likewise reject respondents' contention that price declines were caused by non-subject imports selling at prices lower than those of subject imports.[112] Regardless of whether non-subject imports were also selling for low prices, the low and falling prices of the cumulated imports at a time when demand was rising, subject import market share was rising, and domestic producers' market share was declining, have clearly contributed to the significant declines in domestic prices.[113]

While we have found that the SSWR market is characterized by some degree of product differentiation, the record provides evidence of considerable price-based competition between Brazilian, French and Indian imports and the domestic product.[114] The existence of significant price-based competition is further illustrated by the confirmation of sales or revenues lost on the basis of price.[115] In light of the declining domestic prices and relatively

---

[105] This is true regardless of whether importer/producer prices or purchasers' prices are used. Tables 22-31 and Figures 3 and 4, CR at I-52-I-72, PR at II-29-II-36; Table C-1, CR at C-3, PR at C-3.

[106] CR at I-60-I-62; PR at II-32-II-33; Table 23, CR at I-56, PR at I-31.

[107] Commissioner Crawford finds a minimal negative price effect by reason of LTFV imports from Brazil and France. Given the size of the dumping margins for French and Brazilian SSWR and the high supply elasticity of non-subject imports, it may be true that no subject imports would be sold in the U.S. market if fairly priced. However, she believes the availability of supply from non-subject imports, the substantial excess capacity of the domestic industry, and the presence of multiple domestic suppliers would largely minimize any price effect from a reduction in French and Brazilian imports.

[108] CR at I-60 & I-63; PR at II-32 & II-35; Tables 22-31, CR at I-55-I-59 & I-65-I-69, PR at II-31 & II-34.

[109] Commissioner Crawford notes that interpretation of over- and underselling data is complicated by differences in quality between subject imports and domestic product. She notes that many purchasers reported perceived quality differences between the subject imports and the domestic like product. In her view, such reported quality differences make reliance on underselling data particularly inappropriate in these investigations.

[110] French Respondents' Pre-Hearing Brief at 62-66.

[111] Table 9, CR at I-31, PR at II-18 (rising cost of goods sold as percent of net sales from 1990 to 1992).

[112] French Respondents' Pre-Hearing Brief at 58-62.

[113] See Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Inv. Nos. 731-TA-448-450 (Final), USITC Pub. 2312 at 52 (Sept. 1990) (alternate causes must "fully explain" injury being experienced by U.S. industry), remanded on other grounds, Chung Ling Co. v. United States, 805 F. Supp. 45 (Ct. Int'l Trade 1992).

[114] A significant number of purchasers responding to the Commission's questionnaire reported taking bids for and purchasing Indian, Brazilian, French, and U.S.-produced SSWR for the same end use applications. Memorandum EC-Q-115 at 20-21; CR at I-72-I-81, PR at II-36.

[115] CR at I-72-I-81; PR at II-36.

low and declining import prices in the face of rising demand, as well as the significant underselling by the cumulated imports, we find that the lower prices of the LTFV imports have depressed domestic prices to a significant degree.

We further find that the lower prices of cumulated imports have enabled those imports to increase their volume and share of the U.S. market at the expense of the domestic product, causing domestic producers' market share to decline in an expanding market. The combination of lower prices and reduced market share was, in turn, reflected in the declining production, shipments, profitability, and return on assets of the domestic industry, as well as in its consistently low capacity utilization and in the cancellation or reduction of several domestic producers' investment plans.[116] [117]

VI. CRITICAL CIRCUMSTANCES

Commerce has made a final determination that critical circumstances exist with respect to imports from Brazilian producers Acos Finos and Acos Villares, but found that critical circumstances do not exist with respect to Brazilian producer Electrometal.[118] When Commerce makes an affirmative critical circumstances determination, the Commission is required to determine, for each domestic industry for which it makes an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[119] The purpose of the provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.[120]

In these investigations, the petitions were filed on December 30, 1992, and Commerce suspended liquidation effective August 5, 1993.[121] Thus, the 90-day period to which retroactive duties could apply would include the months of May, June and July of 1993. The record shows that imports from Brazil peaked in January of 1993 and declined to zero by April.[122] Retroactive duties therefore would not affect any of the imports entered since the petition was filed. These factors support the conclusion that any import surge ceased prior to the time such imports could be included in any retroactive application of duties pursuant to a critical circumstances finding.

Given the evidence that there were no imports from Brazil during the 90-day period for which retroactive duties could be assessed, we determine that retroactive imposition of antidumping duties on the merchandise is not necessary to prevent the recurrence or

---

[116] Table 2, CR at I-15, PR at II-11; Table 9, CR at I-31, PR at II-18; Table 12, CR at I-34, PR at II-19; CR and PR at Appendix E.

[117] For the reasons given in note 107, supra, Commissioner Crawford finds that, had Brazilian and French imports been fairly traded, domestic prices would not have increased significantly. Rather, she finds that the domestic industry would have been able to increase its quantity of sales significantly if subject imports had been sold at fair value, to the point that the domestic industry would have been materially better off. Therefore, she determines that the domestic industry is materially injured by reason of LTFV imports from Brazil and France.

[118] 58 Fed. Reg. 68,862, 68,863 (1993) (attached to the Supplemental Report at Appendix A). Commerce found that critical circumstances did not exist with respect to imports from any French producer.

[119] 19 U.S.C. § 1673d(b)(4)(A)(i).

[120] See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

[121] 58 Fed. Reg. 45,110 (Aug. 5, 1993).

[122] Supplemental Report at I-4.

prolongation of material injury. We thus make a negative determination with respect to critical circumstances on imports from Brazil.[123]

CONCLUSION

Based on the information of record in these investigations, we determine that the domestic industry producing stainless steel wire rod is materially injured by reason of imports from Brazil and France that have been determined to be sold at LTFV. We base this conclusion principally on the rapidly rising volume and market share of cumulated imports from Brazil, France and India, their low and declining prices, and their pervasive underselling, viewed in light of the decline in the domestic industry's performance during the period examined as reflected in declining production, shipments, profitability, and return on assets, and curtailed investment plans.

---

[123] In Stainless Steel Wire Rod from India, we noted that the fact that a surge of imports predates the 90-day period for which retroactive duties may be assessed does not preclude a finding of critical circumstances. USITC Pub. 2704 at I-20 n.126. In the instant investigations, even had Commerce's preliminary determination not been delayed at petitioners' request, we would still have reached a negative determination on critical circumstances on the ground that there was no massive surge in imports. With the exception of January 1993, import levels in 1993 were comparable to or lower than import levels in the same months of 1992. Supplemental Report at I-4.

DISSENTING VIEWS OF COMMISSIONER BRUNSDALE

In my view, the record in this investigation supports a finding of neither material injury nor threat of material injury to an industry in the United States by reason of imports of stainless steel wire rod from Brazil and France that the Department of Commerce ("Commerce") has found to be sold at less than fair value (LTFV). Nevertheless, I concur in my colleagues' discussion defining the like product and domestic industry in this investigation, and incorporate as well my discussion of those issues with Commissioner Crawford in our dissenting opinion in Stainless Steel Wire Rod from India ("Indian Rod").[124]

I disagree with their analysis of the key issues of cumulation and material injury, and it is to those that I now turn.

II. CUMULATION

In Indian Rod, I concluded that "[w]e should find competition between two products to exist only if changes in their relative price will affect the demand for each,"[125] and that the cumulation provision in the statute "does not allow us to conflate evidence of the competition between the like product and imports from one country with evidence of the competition between imports from several countries."[126] For the reasons I stated in Indian Rod, I continue to find no substantial evidence on the record of the required competition between Indian and Brazilian, and Indian and French wire rod imports.[127]

I renew my conclusion even though the delay between the decision in Indian Rod and these investigations has allowed me to see my colleagues' reasoning in support of cumulating Indian imports with the others. As I suspected, their principal reason was that imported Indian wire rod comes in the same grades and is sold to some of the same buyers as other subject imports. However, as I noted in that case, my colleagues are making the implicit assumption that sales of the same grade to the same buyer amount to a reasonable overlap of competition.[128] I continue to find that assumption unwarranted.

The majority in Indian Rod also justified cumulating imports from all three countries because they were interchangeable with the domestic product, and bought for the same end uses.[129] This "transitive property of cumulation" (as I dubbed it in Indian Rod) does not tell us whether all the types of the domestic product itself are interchangeable and bought for the same end. In a market with as differentiated a product as this one, that proposition must be proved, not just assumed.

The case for cumulating the imports subject to these investigations with Indian imports is weaker still in light of the final order already placed on Indian wire rod. Indian imports are not now "subject to investigation" and so may not be cumulated at all unless Indian imports from before last November continue to have a present injurious effect.[130] Indian imports are not subject to long-term contracts or special purchasing arrangements.

---

[124] Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-22 (Nov. 1993). I concur as well in their footnote 36 discussing respondents' motion to supplement the record and postpone the vote.

[125] Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. No. 2704 at I-23 (Nov. 1993) ("Indian Rod").

[126] Id. at I-22, I-23.

[127] I also note with some concern the view of Chairman Newquist that "once [he] has defined the like producct, only in the most exceptional of circumstances would he find that, for purposes of cumulation, the like product and the subject imports do not compete." Indian Rod at I-15 n.76. Our like product determination is the result of comparing domestic products with subject imports; our cumulation determination is that plus a comparison of two or more sets of subject imports with each other. That second comparison appears to be missing from a test that uses the like product determination as a proxy for the statutory cumulation test.

[128] Indian Rod at I-24.

[129] Id. at I-16.

[130] See Mitsubishi Materials Corp. v. U.S., 820 F. Supp. 608, 622 (Ct. Int'l Trade 1993).

Rather, they are sold to independent steel service centers and resold to end users.[131] The only way that imports from before last November could continue to have any effect on the domestic industry is through a buildup of inventory, yet the best information on the record is that inventories of unfairly traded Indian wire rod amounted most recently to substantially less than one percent of annual consumption.[132]

In contrast, the case for cumulating the effects of French and Brazilian imports seems closer, because there is no affirmative evidence that either has carved out a niche in the market. But there is at the same time little evidence that they compete with each other in the sense that changes in their relative price will affect demand for each. Nevertheless, I will cumulate their volumes and effects -- and note that doing so makes no difference to my determination.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In determining whether a domestic industry is materially injured by reason of the imports under investigation, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.[133]

Evaluating the effects of LTFV imports on domestic prices requires an understanding of the factors in the domestic market that influence or determine prices. It is necessary to understand how purchasers of the product react to an increase or decrease in the price of the product they purchase (i.e., the elasticity of demand). It is also necessary to understand how the imported and domestic products are different from each other and how that affects purchasers' decisions. When purchasers can choose between imports and domestic products, differences or similarities between those products will affect the price purchasers pay for each. The extent of those differences or similarities determines whether purchasers buy more of the domestic product when the price of the imported product increases (i.e., the elasticity of substitution). Similarly, when evaluating the impact of LTFV imports on the domestic industry, it is necessary to understand whether the industry could increase the volume of its production as a result of an increase in the price of the domestic product (i.e., the elasticity of domestic supply).

Having developed an understanding of the market and the domestic industry, one must then evaluate the effects of the dumping. We compare the domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had not been dumped, i.e., if they had been sold at fair prices. Similarly, to evaluate the impact of the dumping on the domestic industry, one must compare the state of the industry when the imports were dumped with the state of the industry had the imports been sold at fair, not dumped, prices. The impact on the domestic industry's sales volume and revenues is critical, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on sales volume and revenues.

---

[131] CR at I-13; PR at II-9

[132] Compare CR at I-38, PR at II-22 with CR + PR at C-3.

[133] 19 USC § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 USC § 1677(7)(B)(ii).

Only then can I determine whether the price effects and impact of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had not been dumped.[134] If this is affirmative, I find that the domestic industry is materially injured by reason of LTFV imports.

A. Volume of the Subject Imports

In 1992, the last year before the petition was filed, LTFV imports of Brazilian and French wire rod held a 10.3 share of domestic consumption. The market share of the domestic wire rod industry is substantially larger, at 73.1 percent, and there are many non-subject imports.[135] I do not find this volume to be significant, particularly in light of the very limited effects on industry revenue discussed below.

B. Effect of LTFV Imports on Domestic Prices

To analyze the effect of Brazilian and French imports on domestic prices of the like product and on the domestic industry, I consider a number of factors about the industry and the nature of the products, such as the degree of substitutability between the imports and the domestic like product, and the dumping margin, which Commerce determined ranged between 24.39 and 26.50 percent.[136]

The degree of substitutability between the imports and the domestic product involves an analysis of factors such as quality and conditions of sales, as well as purchaser preferences. Brazilian wire rod and the domestic product are fairly substitutable, with the domestic product being of slightly better quality and having a broader assortment.[137] The staff estimated an elasticity of substitution of between 2 and 4. Because a very substantial fraction of Brazilian imports are bought by one purchaser for its own consumption, I conclude that the elasticity is most likely to fall at the bottom end of that range.

I also conclude that the French imports' elasticity of substitution with the domestic product falls at the bottom of the staff's estimated range of 1 to 3. Again, most of the French imports are sold to one buyer for its own end use. The remainder is sold on the market where it fills the high quality, more specialized end of the market. The price comparisons on which the majority relied so heavily for proof of causation in Indian Rod[138] instead support a conclusion that the French wire rod is less substitutable than the Brazilian. The aggregate elasticity of substitution of both Brazilian and French wire rod with the domestic like product is probably somewhere between 1 and 2.

To determine the effect of the dumping of the LTFV imports on the like product's prices requires us to consider as well the elasticities of demand and supply. The demand for wire rod critically depends on the availability of substitute products. All the information in the record supports the conclusion that few economically meaningful substitutes exist except at the low end of the market.[139] But that end of the market is the one that Indian wire rod inhabits, not Brazilian or French. I therefore agree with the staff that the elasticity of demand is in the range of 0.5 to 1.0, but conclude that it is likely to be closer to the lower part of that range for the comparatively higher quality imported wire rod whose effects I am estimating today.

The elasticity of domestic supply depends on the extent of U.S. producers' excess capacity, alternative production possibilities, and alternative markets. None of these factors

---

[134] This method of analysis has been upheld, see e.g. Torrington Co. v. United States, Slip. Op. 92-49, and is consistent with Article VI, para. 4 of the GATT.

[135] Table C-1, CR + PR at C-3.

[136] Supp. Rep at I-3, I-4.

[137] EC-Q-115 at 15.

[138] Indian Rod at I-18.

[139] EC-Q-115 at 22.

has changed since my determination in Indian Rod, and I incorporate my discussion in that case here.[140]

C. Impact on the Domestic Industry

The effect of such a highly elastic supply is that, just as in Indian Rod, were wire rod from Brazil and France to increase in price to levels that Commerce would find fair, domestic suppliers would increase their production and sales rather than raise their prices. It seems unlikely that prices would increase significantly, particularly for the vast bulk of domestic production that is captively consumed.

The lack of significant price effects, however, is not determinative. Imports that command a large share of the market and are highly substitutable with the like product can materially injure a domestic industry through their effect on the volume of the domestic industry's sales, and thus its revenue. And, as noted above, the effect on other statutory factors -- such as employment, wages, cash flow, and investment[141] -- either reflects or is derived from the material effect on revenues caused by the dumping of the subject imports.

The imports under investigation here, however, though they command a market share larger than in Indian Rod, are not highly substitutable. Even if the imports' price increased by the full amount of the dumping margin, their limited substitutability would, in the presence of a highly elastic domestic supply, mean that the effect of the subject imports on price is nugatory, and on the domestic industry's volume, is not much more. I therefore conclude that the dumping of imports from Brazil and France is not materially injuring the domestic stainless steel wire rod industry.

I was therefore a bit startled by the majority's conclusion in Indian Rod that the principal effect of the cumulated imports on the domestic industry was to reduce domestic prices.[142] This conclusion seems to rest largely on dubious evidence of underselling (which, by longstanding Commission practice, means a lower per unit price for the largest quarterly sale of imports from a particular country compared to the largest quarterly sale of the domestic product).

There are several problems with relying on evidence of underselling in these investigations. First, they reflect open market sales alone, which gives a skewed picture in a market where the overwhelming majority of production goes into captive production. To the extent that the underselling data show anything useful, they show it only about a small part of this market.

Second, the majority looked at underselling on a cumulated basis. It is very unclear whether we have the statutory authority to do so. Section 1677(7)(C)(iv) requires us to cumulate the "volume and effect" of imports from two or more countries, not their prices. The plain language of Section 1677(7)(C)(ii) requires a consideration of underselling as part of the estimation of the effect of imported merchandise, and so should be done before cumulating those effects with the effects of imports from other countries. The distinction is important. By cumulating the imports before cumulating their effects, the majority claimed to be able to make either 91 or 129 price comparisons.[143] A country-by-country comparison would have revealed that meaningful data did not exist for a great many quarters,[144] and so might have inclined the majority to rule the other way.

In any event, it does not make sense to attribute any price effects to the subject imports in this case. So long as the domestic industry, with its commanding share of the market compared to the subject imports, has such a large amount of unused capacity, even the complete disappearance of those imports would not lead to an increase in domestic prices

---

[140] Indian Rod at I-26.
[141] 19 USC § 1677(C)(iii).
[142] Indian Rod at I-18.
[143] Id.
[144] See Tables 27-31, CR at I-65-69, PR at II-34.

in the absence of some agreement among the various firms in the domestic industry not to expand output but rather increase price.

Finally, I must note my disagreement with my colleagues' conclusion that the data in the record show declining prices in a period of increased demand. I fear that they have confused an increase in demand with an increase in total shipments (i.e., the total quantity demanded). They are not the same thing. Demand is a measure of the relationship between the price of a good and the quantity that will be bought. An increase in demand means that, at any given price, the quantity that will be bought is comparatively higher. In contrast, an increase in the quantity demanded means that, as the price of a good declines, more will be demanded.[145] What the majority may be interpreting as an increase in demand may in fact be an increase in the quantity demanded. If so, the declines in overall market prices for wire rod may have caused the increased sales rather than, as the majority appears implicitly to assume, be unrelated to them.

IV. THREAT OF MATERIAL INJURY

I also determine that there is no threat of material injury by reason of LTFV steel wire rod imports from Brazil or France. Under the statute, the Commission is required to consider various criteria.[146]

My application of the statutory threat criteria supports my negative determination. The statute provides that a threat determination "shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent," and also provides that our decision "may not be made on the basis of mere conjecture or supposition."[147] In addition, the evidence must show more than a "mere possibility" that injury might occur.[148]

This investigation does not involve subsidies, agricultural products, or any potential for product shifting due to other findings or orders under the U.S. antidumping or countervailing duty laws. Thus, those factors are not pertinent to this investigation.

Capacity utilization in the Brazilian industry seems low until one realizes that it is defined as 144-168 hours a week. There is no evidence of any intent on the part of any Brazilian company to switch to round-the-clock production or to expand capacity in any way.[149] The French firms, which do produce almost round-the-clock, have a large home market and no plans to expand capacity or shift exports to the U.S. market.[150] Accordingly, I conclude that neither the Brazilian nor the French industry's capacity and capacity utilization data constitutes evidence that any threat of material injury is real.

Although the market share of subject imports increased during the period of investigation, I do not find it likely that market penetration will increase to an injurious level. The Brazilian share is too low for it to injure the U.S. industry in the near future, and the French share is concentrated at one end of the market, with most of it going to a related end user.

Similarly, given the very high elasticity of domestic supply it is extremely unlikely that LTFV imports will cause price depression or suppression in the future. Accordingly, I conclude that the probability is small that LTFV imports will have a price depressing or suppressing effect on domestic prices sufficient to justify a finding that actual injury is imminent.

I find no evidence of any other demonstrable adverse trends that indicate the probability that subject imports will be the cause of actual injury. Accordingly, I determine that the domestic industry is not threatened with material injury by reason of LTFV imports

---

[145] To use a bit of economics jargon, an increase in demand is a shift of the demand curve; an increase in the quantity demanded is a shift along the demand curve.

[146] See 19 USC § 1677(7)(F).

[147] See 19 USC § 1677(7)(F)(ii).

[148] Alberta Gas Chemicals, Inc. v United States, 515 F. Supp. 780 (CIT 1981).

[149] See Tables 14, 15, CR at I-39-40, PR at II-22.

[150] See Table 16, CR at I-41, PR at II-23.

of stainless steel wire rod from Brazil and France.

PART II

SUPPLEMENTAL INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On December 30, 1992, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Al Tech Specialty Steel Corp., Dunkirk, NY; Armco Stainless & Alloy Products, Inc., Baltimore, MD; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL-CIO/CLC, alleging that imports of stainless steel wire rod from Brazil, France, and India are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, the Commission instituted and conducted preliminary antidumping investigations (Nos. 731-TA-636-638) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), and determined that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports. Commerce, therefore, continued its investigations into the existence and extent of LTFV sales and on August 5, 1993, published affirmative preliminary determinations in the Federal Register (58 F.R. 41723) with respect to all three countries. On the basis of Commerce's preliminary determinations, the Commission instituted final antidumping investigations to be completed by November 23, 1993. Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on August 18, 1993 (58 F.R. 43908). Subsequently, Commerce published a notice in the Federal Register (August 24, 1993, 58 F.R. 44660) postponing its final LTFV determinations for Brazil and France from October 11, 1993, to December 20, 1993. In response, the Commission extended its schedule for Brazil and France to January 21, 1994 (published in the Federal Register of September 15, 1993 (58 F.R. 48375)). Commerce continued its LTFV investigations and issued an affirmative final determination for India on October 13, 1993. The Commission held its vote for India on November 16, 1993, determining that the subject imports from India were materially injuring a U.S. industry. Commerce issued affirmative final determinations for Brazil and France on December 22, 1993 (published in the Federal Register of December 29, 1993 (58 F.R. 68862)).[1] The Commission's votes for Brazil and France were held on January 14, 1994.

NATURE AND EXTENT OF THE LTFV SALES FOR BRAZIL AND FRANCE

Three producers in Brazil (Acos Finos Piratini SA, Acos Villares SA, and Electrometal SA) and two producers in France (Imphy SA and Ugine-Savoie) account for virtually all, if not all, of the subject product produced and exported to the United States from these countries.

Commerce's final margins for Brazil range from 24.63 percent for Electrometal to 26.50 percent for Acos Finos and Acos Villares. (For either lack of cooperation (in the case of Acos Finos and Acos Villares) or unusable data (in the case of Electrometal), Commerce based its final calculations on "best information available" (BIA)--in this case information contained in the petition). Commerce's final dumping margin for France, based on Imphy's and Ugine-Savoie's questionnaire responses, is 24.39 percent, applicable to all French producers and exporters.

Commerce also determined that critical circumstances exist with respect to two of the Brazilian firms--Acos Finos and Acos Villares. Because margins for these firms were above 25 percent, Commerce concluded that the person by whom, or for whose, account the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value (Commerce's first of two conditions for critical circumstances). Also, because these

[1] Copies of Commerce's notices of its final LTFV determinations for Brazil and France are shown in app. A.

firms did not respond to its questionnaires, Commerce adversely assumed, as BIA, that imports from these firms were massive over a relatively short period of time (Commerce's second condition for critical circumstances). None of the Brazilian firms participated in the Commission's final investigations, and actual imports from Acos Finos and Acos Villares exclusive of Electrometal are unknown. For each year of the period for which data were gathered, however, Acos Finos and Acos Villares together accounted for about *** percent of the total imports from Brazil, shown below in short tons by month:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1992 . .	220	100	322	295	511	378	343	221	339	294	225	121
1993 . .	506	202	202	0	0	0	0	0	0	0	[1]	[1]

[1] Not available.

For all other data please refer to the final staff report for Investigations Nos. 731-TA-636-638 (Final), Stainless Steel Wire Rod from Brazil, France, and India, dated November 9, 1993. (The non-confidential version of this report was published as USITC Publication 2704 (November 1993), entitled "Stainless Steel Wire Rod from India: Investigation No. 638 (Final)."

APPENDIX A

COMMERCE'S FEDERAL REGISTER NOTICES OF ITS FINAL LTFV DETERMINATIONS FOR BRAZIL AND FRANCE

(A-351-819)

Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4207.

FINAL DETERMINATION: We determine that stainless steel wire rods from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the affirmative preliminary determination on August 5, 1993 (58 FR 41723), the following events have occurred.

On August 18, 1993, the Department sent Eletrometal-Metais Especiais SA (Eletrometal) a deficiency questionnaire. On September 7, 1993, Eletrometal responded to the deficiency questionnaire.

On September 13, 1993, the Department visited Eletrometal's facilities in Sumare, Brazil for verification. Also, on September 13, 1993, the Department notified Eletrometal that it was terminating verification because respondent had omitted a significant number of sales from the sales listing it had submitted to the Department.

On October 26, 1993, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners) and Eletrometal submitted case briefs. On November 1, 1993, petitioners submitted their rebuttal brief.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled, annealed, and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, the exporters of SSWR from Brazil did not do so. Consequently, we based our determination in this investigation on BIA.

We applied BIA to respondents in accordance with the two-tiered BIA methodology, under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See Allied-Signal Aerospace Co. v. the United States, Slip Op. 93-1049 (Fed Cir. June 22, 1993); *see also Krupp Stahl AG. et al. v. the United States*, Slip Op. 93-84 (CIT May 26, 1993).)

Acos Finos Piratini SA and Acos Villares SA

During the course of this investigation, the Department encountered serious problems in obtaining from these two firms the volume and value data needed for its analysis. The Department attempted to solicit this information, stating that if we did not receive a response to our requests, we might make our determination on the basis of BIA. In spite of this attempt, we did not receive any information from either Acos Finos Piratini SA (Piratini) and Acos Villares SA (Villares), the two manufacturers and exporters named in the petition.

Since Piratini and Villares did not respond to our questionnaires, we used as BIA the highest margin contained in the January 15, 1993, pre-initiation amendment to the petition in this investigation, 26.50 percent.

Eletrometal

We did not use Eletrometal's response to the Department's questionnaire for purposes of our preliminary determination since it contained major deficiencies which could not be corrected in time for use in the preliminary determination. We gave Eletrometal the opportunity to correct the deficiencies in its response prior to verification. Because of the problems encountered at the verification of Eletrometal, we have used as BIA for this respondent the average of the margins contained in the January 15, 1993, pre-initiation amendment to the petition.

We terminated verification because at the start of our verification, Eletrometal informed the verifiers that it had omitted a significant portion of its home market sales from the sales listing it reported to the Department.

Moreover, in reaching our decision to terminate verification, we considered the fact that the Department had already afforded Eletrometal opportunities to respond to three supplemental questionnaires in order to rectify deficiencies in its previous responses and that the time for making substantial revisions to questionnaire responses had passed.

We decided that, given these previous opportunities to rectify its responses, Eletrometal's admission that a significant percentage of sales were omitted from its home market sales database called into question the reliability and accuracy of its home market sales database and areas of its response affected by this database. The omission of these sales taints Eletrometal's entire database since it affects model matching, the calculation of differences in physical merchandise, and weighted-average home market expenses. Even if Eletrometal had provided a corrected sales database at verification, the untimely submission of such a substantial amount of data would not have allowed the Department an adequate opportunity to analyze it prior to attempting to verify its accuracy.

Despite Eletrometal's deficiencies, we consider it a cooperative respondent. In reaching this determination, we have considered Eletrometal's deficiency responses and other attempts to comply with our requests for information. While Eletrometal's responses were inadequate and unreliable for purposes of our investigation, these problems do not appear to have stemmed from a deliberate attempt to deceive the Department. We have also considered the fact that Eletrometal volunteered the omitted sales at the start of verification and that it provided a reasonable explanation for its error. For Eletrometal, therefore, we have used, as BIA for a cooperating respondent, the average of the margins contained in petitioners' January 15, 1993, amendment to the petition, 24.63 percent.

Critical Circumstances

Petitioners alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Brazil. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports, if such data is available.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987).

Since the margins for SSWR from Brazil for Piratini and Villares are above 25 percent, we determine in accordance with section 735(a)(3)(A)(ii) of the Act that importers had knowledge of dumping of SSWR by these companies. Since Piratini and Villares have not responded to our questionnaire, we are making the adverse assumption, as BIA, that imports from Piratini and Villares were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. Based on this analysis, we find that critical circumstances exist for imports of SSWR from Brazil for Piratini and Villares.

Since all of Eletrometal's sales to the United States are purchase price sales, and the margin assigned to Eletrometal is less than 25 percent, we determine that importers did not have knowledge of dumping of SSWR by Eletrometal. Furthermore, no allegation has been made that there is a history of dumping in the SSWR industry. Since the first prong of the critical circumstances test is not met for Eletrometal, it is not necessary to examine whether there have been massive imports of SSWR over a relatively short period. Therefore, we find that critical circumstances do not exist with respect to Eletrometal.

Because we have not found that critical circumstances exist with respect to all respondents, we also do not find that critical circumstances exist with respect to all other exporters and producers of subject merchandise from Brazil.

Analysis of Comments Received

Comment 1

Petitioners argue that Eletrometal failed verification and should, therefore,

be assigned a margin based on BIA. Petitioners state that given the problems with Eletrometal's data during the course of this investigation and its failure to complete verification, the Department should use a BIA margin of 26.50 percent for Eletrometal for this determination.

DOC Position

We agree in part. While we agree that early termination of Eletrometal's verification warrants the use of BIA, as stated above, we consider Eletrometal a cooperative respondent. For the reasons stated above, we have used, as BIA for a cooperating respondent, the average of the margins contained in petitioners' January 15, 1993, amendment, 24.63 percent.

Comment 2

Petitioners argue that the Department should find that critical circumstances exist with respect to imports from all exporters. They state that since Piratini and Villares did not respond to the Department's questionnaire, the Department must affirm its preliminary finding that imports from these two companies were massive over a relatively short period of time. They further state that since Eletrometal failed verification, and, since the integrity of its response and all the data contained in the response is unreliable, the Department should find that critical circumstances exist with respect to Eletrometal also.

DOC Position

We agree in part. While we agree with petitioners' statement that critical circumstances exist with respect to Piratini and Villares, we disagree that critical circumstances exist with respect to Eletrometal.

Since petitioners have not alleged a history of dumping in the SSWR industry, and since all of Eletrometal's sales to the United States are purchase price sales and the margin assigned to Eletrometal is less than the 25 percent threshold at which the Department will impute knowledge of dumping in purchase price situations, we have determined that critical circumstances do not exist with respect to Eletrometal.

Comment 3

Eletrometal argues that the Department should have accepted its additional sales prior to or at the start of verification. Eletrometal states that there is no regulatory provision that prohibits the Department from accepting additional information prior to verification and that the Department should not penalize Eletrometal for omitting these sales from its responses to the Department's questionnaire. Eletrometal explains that the omission of these sales was due to an administrative error at the time of preparing its questionnaire response and that a list of the omitted sales was presented to the Department at the start of verification. It also states that the Department has no basis to reject this information on grounds that Eletrometal has not cooperated with the Department's investigation.

Eletrometal argues that the Department regularly accepts corrected information after verification and cites *Monsanto Co.* v. *United States*, 698 F. Supp 275 (CIT 1988). Eletrometal also argues that the Court of International Trade (CIT) has held that the Department enjoys considerable discretion not to verify every piece of information regarding a respondent's sales. It also argues that Congress intended that the Department have latitude in its verification procedures and, in support, cites *Kerr-McGee Chemical Corp.* v. *United States*, 739 F. Supp. 613 628 (CIT 1990).

DOC Position

We disagree with respondent. The omitted sales in question were never properly reported, even at verification. It was only at verification that the Department was informed of their existence, provided company reports illustrating these sales and given the percentage of home market sales represented by these omitted transactions. While Eletrometal did provide a list of sales that were omitted, this list was presented at the end of the verification. Under 19 CFR 353.31(a)(i), the deadline for submitting factual information is seven days before the scheduled date on which the verification is to commence, unless the Department requests such factual information. The Department did not request this information. Moreover, the information Eletrometal presented did not include information, such as control numbers, product codes, payment terms, taxes, movement expenses, and selling expenses, which were requested by the Department in the antidumping questionnaire. Thus, with regard to Eletrometal's argument that the Department should have accepted additional sales that it submitted at verification, the Department cannot accept information that has not been properly submitted in a timely fashion.

Moreover, the Department's three deficiency letters provided ample opportunities for Eletrometal to adequately examine the accuracy of the sales listings that it had submitted. While we agree that Eletrometal has cooperated with the Department's investigation, Eletrometal's omission of such substantive data calls into question the reliability and accuracy of Eletrometal's home market sales database and areas of its response affected by this database. Moreover, the late submission of such substantive data would not have allowed the Department an adequate opportunity to analyze it prior to verification.

Unlike the situation in *Monsanto Co.* v. *United States*, the information omitted by Eletrometal neither corrected nor clarified information submitted in the original questionnaire response. The omitted information was not in support of previously submitted information but pertained to additional sales independent of existing data. Furthermore, while Congress and the CIT have granted the Department considerable latitude in its verification procedures, this discretion is granted because of the impracticability of examining all of a company's information at verification, not to require the Department to verify any and all new information provided at verification.

Comment 4

Eletrometal states that the Department should not have cancelled verification simply because respondent disclosed additional home market sales at the start of verification. Eletrometal states that even if the Department refused to accept the sales information that it presented at the start of verification, the Department was unjustified in cancelling the entire verification. Respondent also argues that the Department would have been able to verify the great majority of home market sales that it reported and that the Department could have chosen to apply BIA only to those sales that had been omitted from Eletrometal's questionnaire response.

Eletrometal argues that the Department's decision to cancel verification is inconsistent with its prior practice. It cites Bicycle Speedometers from Japan (58 FR 42,289) (August 9, 1993,) and Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina (54 FR 13,913) (April 6, 1989) (Argentine Tubing), in which the Department discovered unreported sales during the verifications.

Petitioners argue that as late as the issuance of the Department's preliminary determination, Eletrometal's responses were seriously deficient. Petitioners also state that in an effort to provide Eletrometal every opportunity to comply with its requests, the Department indicated it would

verify Eletrometal's responses. Petitioners further state that when it became clear at verification that the responses were not complete, the Department properly terminated verification. Petitioners also refute Eletrometal's interpretation of the Department's prior practice.

DOC Position

We agree with petitioners. The Department provided ample opportunity for Eletrometal to properly and fully report its sales data. While the Department may well have been able to verify some of respondent's data, Eletrometal's omission of a significant amount of data casts doubts over the completeness and the reliability of Eletrometal's home market sales database and areas of its response affected by the database.

With regard to the Department's prior practice concerning unreported sales at verification, the cases cited by Eletrometal are not contrary to the position taken by the Department in this case. The verification in Bicycle Speedometers from Japan took place in the context of an administrative review of an order which had been previously verified. Thus, the Department already had an understanding of the overall extent of respondent's sales. Furthermore, the volume of unreported sales involved in that verification was not specified.

Respondent's reliance on Argentine Tubing is also misplaced. Although the Department's analysts did continue verification after the respondent submitted a new home market sales listing at the verification site, the analysts did so only "after warning [respondent] that the Department was not likely to accept such a massive revision this late in an investigation." Argentine Tubing at 13914. In fact, the Department did reject this new database, and relied totally on BIA at the final determination, noting the "[w]hile the Department allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is well-established Department policy not to accept new responses after the preliminary determination because at that point in an investigation there is insufficient time for the Department to analyze and verify properly the new information." Id. at 13915.

If anything, Argentine Tubing is a case study in the futility of attempting the verification of substantial late home market database changes with the attendant impact on product matches, difmers, etc., not a policy statement that verification must be continued under such conditions.

Comment 5

Eletrometal states that prior to the start of verification, it disclosed inventory carrying costs. Eletrometal states that if these inventory carrying costs were added, they would decrease the home market price.

Petitioners argue that Eletrometal's claim regarding inventory carrying costs is irrelevant because all of Eletrometal's U.S. sales are purchase price sales, and the Department's purchase price methodology does not involve any treatment of inventory carrying costs. Petitioners also state that any addition to home market price would increase, not decrease, the home market price and its margin of dumping.

DOC Position

This issue is moot since the Department is using an assigned BIA margin rather than a calculated margin in this investigation.

Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Piratini or Villares that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is 90 days prior to the date of publication of our preliminary determination in the Federal Register. We are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Eletrometal and all other manufacturers that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, which is the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the margins listed below on all entries of SSWR from Brazil. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Eletrometal—Metais Especiais S.A.	24.83
Acos Finos Piratini SA	28.90
Acos Villares SA	28.50
All Others	25.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSWR from Brazil entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-31670 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-427-811]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3464.

Final Determination

We determine that certain stainless steel wire rods from France are being, or

are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination on July 28, 1993 (58 FR 41726, August 5, 1993) and the postponement of our final determination on August 18, 1993 (58 FR 44660, August 24, 1993), the following events have occurred:

On August 9, 1993, Al Tech Specialty Steel Corp., Armco Stainless & Alloys Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and the United Steelworkers of America, AFL-CIO/CLC (collectively petitioner) requested that a public hearing be held. On August 12 and 31, 1993, Imphy, S.A. (Imphy), Ugine-Savoie, Metalimphy Alloys Corp. (MAC) and Techalloy Company, Inc. (Techalloy) (collectively respondent) requested that a public hearing be held.

In September 1993, respondent submitted revised home market and U.S. sales listings, supplemental section D and E questionnaire response information, and corrections and/or revisions to its submissions. Respondent also attempted to submit additional sales in late October 1993.

We conducted verification of respondent's sales and cost questionnaire responses in France in late September and early October 1993, and in the United States in mid-October 1993. In November 1993, respondent submitted revised sales listings to correct for errors discovered at verification.

Case and rebuttal briefs were submitted by petitioner and respondent on November 17 and 24, 1993, respectively. A public hearing was held on November 29, 1993.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Such or Similar Comparisons

We have determined that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Grade; (2) diameter; (3) further manufacturing. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of SSWR from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP for some U.S. sales on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated. We accepted all of respondent's classifications of purchase price sales (see Comment #1 in the Interested Party Comments section of this notice). We excluded certain U.S. sales with zero prices or zero quantities because these sales constituted an insignificant portion of total U.S. sales.

In addition, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For purchase price and ESP sales, we made deductions, where appropriate, for discounts and the following movement charges: foreign brokerage, foreign inland freight, marine insurance, ocean freight, U.S. brokerage, U.S. duty, and U.S. inland freight. We added amounts for billing adjustments and freight revenue.

For both purchase price and ESP sales, we re-calculated credit for those sales that had missing payment or shipment dates. As best information available (BIA), we used the date of the final determination for the missing payment dates, and the date of sale for the missing shipment dates (see Comment #8 in the Interested Party Comments section of this notice). In addition, we added an additional amount to brokerage charges to account for an understatement of this expense discovered at verification (see Comment #6 in the Interested Party Comments section of this notice). Furthermore, we have reclassified inventory carrying costs as credit expenses for consignment sales (see Comment #5 in the Interested Party Comments section of this notice).

For ESP sales only, we deducted commissions, direct U.S. selling expenses, including credit expenses, warranty expenses, and warehousing, other direct non-U.S. selling expenses, indirect selling expenses, inventory carrying costs, and premiums for product liability insurance. For further manufacturing sales, we deducted the amount of general and administrative (G&A) expenses included in indirect selling expenses, since these G&A expenses were included in respondent's cost of production. (See Comment #15 of the Interested Party Comments section of this notice.)

In addition, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported product, including a proportional amount of any profit. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured product. We then allocated the total profit proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. In determining the costs incurred to produce the further manufactured products, we included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general, selling and administrative expenses, and (4) interest expenses. We adjusted respondent's further manufacturing cost data for certain G&A expenses which respondent had excluded in its

response. This adjustment was specific to each further manufacturing facility. For those sales of further manufactured merchandise where respondent did not specify the facility of further manufacture, we made this adjustment by using the highest G&A rate applied to any facility as BIA.

For price-to-price comparisons only, we made an adjustment to U.S. price for the value-added tax (VAT) paid on the comparison sale in France. In *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93-194 (CIT October 7, 1993), the Court of International Trade (CIT) rejected our revised implementation of the Act's instructions on taxes (our implementation was demonstrated in the preliminary determination in this investigation) and prohibited us from applying a purely tax neutral margin calculation methodology. Accordingly, we have again changed our practice, as instructed by the CIT, and adjusted U.S. price for tax by multiplying the home market tax rate by the U.S. price at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

In this investigation, the tax levied on the subject merchandise in the home market is 18.6 percent. We calculated the appropriate tax adjustment to be 18.6 percent of U.S. price net of adjustments reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax), and added this amount to the U.S. price. We also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses and charges that were deducted from the tax base). We deducted this amount from the net U.S. price after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

Respondent reported additional sales to the Department on October 15, 25 and 28, 1993. These sales were submitted too late to be included in our analysis. (See Comment #2 in the Interested Party Comments section of this notice.) We also discovered that the cost of further manufacturing data did not include costs associated with certain further manufactured sales of MAC. Consequently, we were unable to adjust the prices of these sales for their further manufacturing costs. As BIA, we have assigned these sales the higher of either: (1) the average of all margins alleged in the petition for the relevant class or kind of merchandise; or (2) the highest non-aberrant calculated margin for any other sale of merchandise.

Foreign Market Value

We compared the volume of home market sales of SSWR to the volume of third country sales in accordance with 19 CFR 353.48(a) to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV. We found that the home market was viable for sales of SSWR.

We used the Department's related party test to determine whether sales to related customers were made on an arm's-length basis. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. We did not include in our price-to-price comparisons any sales to related customers that we determined were not at arm's-length.

Cost of Production

Petitioner alleges that respondent's home market sales of SSWR were made at prices below cost of production (COP). On the basis of petitioner's allegations, we gathered data on production costs. We compared the weighted-average home market prices to the COP.

If over 90 percent of respondent's sales of a given model were at prices equal to or greater than the COP, we did not disregard any below-cost sales because we determined that respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of respondent's sales of a given model were at prices equal to or greater than the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV), if those sales were made over an extended period of time. We disregarded below-cost sales because the respondent failed to demonstrate, as requested by the Department in the COP questionnaire, that those below-cost sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of respondent's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, and interest expenses. We compared home market selling prices, net of movement charges and discounts and rebates, to each product's COP.

Price-to-Price Comparisons

For those products for which there are an adequate number of sales at prices equal to or greater than the COP, we based FMV on home market prices. For the subject merchandise, we calculated FMV based on delivered prices, inclusive of packing and VAT, to unrelated customers in the home market and to related customers, sales to which are at arm's-length under the related party test. We deducted inland freight, inland insurance, discounts and rebates from these prices. We added home market interest revenue to these prices. We also deducted home market packing costs and added U.S. packing costs. We re-calculated credit for those sales that had missing payment or shipment dates. As BIA, we used the date of the final determination for the missing payment dates, and the date of sale for the missing shipment dates.

For comparisons involving both purchase price and ESP, we included in FMV the amount of the VAT collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses, charges and offsets that were deducted from the tax base). We deducted this amount from the FMV after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the

creation of a dumping margin even when pre-tax dumping is zero.

For purchase price comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments for credit expenses and warranties, where appropriate. We deducted home market indirect selling expenses from FMV, capped by the amount of the U.S. commission. In addition, we re-calculated a re-adjustment of the amount of tax on the U.S. direct selling expenses added to FMV by applying the tax rate to those expenses. We also added this re-adjustment to FMV.

For ESP comparisons, we deducted home market indirect selling expenses from FMV, capped by the sum of U.S. indirect selling expenses and the U.S. commission amount. Although respondent reported related party commissions in the home market, respondent has not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We included the respondent's reported general expenses in CV since these expenses were greater than the statutory minimum of ten percent of the cost of manufacture (COM). We re-calculated the weighted-average profit from the adjusted home market net sales prices and reported COPs. Since this amount was greater than the statutory minimum of eight percent of the COM, we used the re-calculated profit for CV.

For purchase price comparisons, we made circumstance-of-sale adjustments for differences in credit and warranty expenses, where appropriate. We deducted home market indirect selling expenses from FMV capped by the amount of the U.S. commission. For ESP comparisons, we deducted home market indirect selling expenses capped by the sum of U.S. indirect selling expenses and the U.S. commission amount. Although respondent reported related party commissions in the home market, respondent has not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Final Determination of Critical Circumstances

We find that critical circumstances do not exist with respect to imports of SSWR from France, in accordance with section 735(a)(3) of the Act. To determine whether or not there have been massive imports of SSWR, we compared the export volume for the five months subsequent to the filing of the petition to that for the five months prior to the filing of the petition. We found that exports of this merchandise from respondent during the period subsequent to receipt of the petition had decreased. Unless we find that imports of the subject merchandise were massive, we do not need to determine whether there is a history of dumping in the United States or elsewhere or whether there is knowledge that the exporter was selling the merchandise at less than its fair value.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: In the preliminary determination, the Department treated certain U.S. sales as purchase price sales. We treated these sales as purchase price sales because respondent claimed that they were sales of merchandise that was produced to specification, sold prior to importation, and was not available for sale to other customers (see the July 16, 1993, memorandum from team to Richard Moreland).

Petitioner argues that the Department should reclassify these sales as ESP transactions. First, petitioner claims that although the sales in question were made prior to importation, respondent nonetheless warehoused or "inventoried" the merchandise before it shipped it to its customers. Second, petitioner argues that direct shipments to the unrelated buyer are not in the normal commercial channel of sale for respondent and that most sales of SSWR from France are inventoried by MAC. Third, petitioner argues that MAC's sales activities extend well beyond a communication link or processor of sales-related documents. Consequently, petitioner argues that the sales in question, along with sales that are not warehoused in the United States and are shipped directly from France to the U.S. customer, should be classified as ESP sales.

Respondent maintains that the Department found no evidence of significant U.S. market activity by MAC at verification. Respondent argues that there is no merit to petitioner's assertions that warehousing by MAC after importation precludes the finding that such sales are purchase price sales. Respondent contends that its sales are always made-to-order, are always sold prior to importation, and are never available for sale to other customers or out of pre-existing inventory.

DOC Position: We agree with respondent and have treated these sales as purchase price sales based on the use of the three purchase price/ESP criteria set forth in the Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland (56 FR 56363, November 4, 1991). In that case, the Department stated that where the terms of sale are set prior to the date of importation, the Department would examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. As a result, we classify a sale as purchase price if the following criteria are met.

The first criterion is that the merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent. The second criterion is that this arrangement is the customary commercial channel for sales of this merchandise between the parties involved.

First, we should note that not all sales classified as purchase price sales were warehoused by the U.S. subsidiary. Instead, they were shipped directly from France to the unrelated customer.

For the remaining sales that respondent classified as purchase price, the merchandise is warehoused by the related U.S. selling agent but not inventoried. The term "inventory", as it is commonly used in business, implies that the merchandise is in storage and

is available for sale. We determined at verification that, with regard to the sales in question, the merchandise is not available for sale to any customer. Instead, the merchandise is considered as being warehoused, as it is awaiting delivery to a specific customer. Consequently, petitioner's arguments concerning the merchandise being inventoried, and that this is the customary commercial channel for sales of the subject merchandise, are not applicable.

The third criterion is that the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. No information submitted on the record, or found at verification, shows that MAC advertises or provides in-house technical services, although it does indicate that MAC participates in sales negotiations and takes title to the merchandise. At verification, the team tried to determine the extent to which MAC sets the terms of sale. Based on information gathered at verification, we have determined that MAC does not have the flexibility to set the price or terms of sale and acts only as processor of sales-related documentation. Therefore, we have determined that these sales are purchase price sales and have treated them as such.

Comment 2: On October 15 and 25, 1993, respondent submitted sales that it, until those dates, had omitted from its response. One of the sales submitted on October 15 was a sample transaction.

Petitioner argues that the Department should use BIA to derive dumping margins for all U.S. sales first reported on October 25, 1993. Petitioner claims that these sales were submitted untimely and that respondent had several opportunities to report these sales in a timely manner in revisions made to its sales database. As BIA, petitioner states that the Department should use "the higher of the average margin in the petition for the relevant class or kind of merchandise, or the highest non-aberrant calculated margin," as was done in the Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products Investigations from France (58 FR 37125, July 9, 1993) (Carbon Steel Products from France).

Respondent maintains that there is no reason to exclude these sales in the final determination. Respondent points out that the sales in question represent a very minor portion of the U.S. database and were reported as soon as they were discovered. Respondent maintains that it was faced with a formidable task of reporting subject sales, and these particular sales were omitted in prior submissions due to an isolated computer error.

Respondent maintains that it has cooperated fully with the Department's investigation. Respondent states that the Department fully verified the volume and expenses associated with the additional sales reported. Respondent further states that if the Department decides that BIA is warranted for these sales, the most appropriate BIA would be to exclude these sales from the Department's analysis. Alternatively, respondent states that the Department should use a weighted-average margin from all of the other sales as BIA.

DOC Position: We agree with petitioner and have applied BIA margins to these unreported sales (see United States Price section of this notice). We have determined that these sales constitute a significant portion of total U.S. sales. According to 19 CFR 353.31(a)(1)(i), submissions of factual information must be made no later than seven days before the scheduled date on which verification is to commence. Here, respondent did not meet this deadline. As BIA, we assigned these sales the higher of either: (1) The average of all margins alleged in the petition for the relevant class or kind of merchandise; or (2) The highest non-aberrant calculated margin for any other sale of merchandise. This use of BIA is consistent with that used in Carbon Steel Products from France, where the facts of the case were similar.

Comment 3: Petitioner argues that the Department, as BIA, should disallow any difference in merchandise (difmer) adjustments claimed by respondent that reduce foreign market value, or resort to the next most costly home market product grouping for comparison to U.S. sales where dissimilar sales must be compared. Petitioner states that there is no evidence on the record to demonstrate that respondent's difmer adjustments relate only to physical characteristics of the merchandise. Petitioner asserts that respondent has stated that it incorporates non-physical characteristics into its product coding system and has failed to state or to prove that the difmers exclude cost differences resulting from non-physical differences in the products.

Respondent argues that it adhered to the Department's methodology for making difmer adjustments and has demonstrated that the cost differentials which were the basis for the difmer adjustments relate to physical differences in the merchandise. Respondent states that the Department's questionnaire instructed respondent to provide information on physical differences between the U.S. and home market merchandise, as well as differences in costs of materials, labor and variable production overhead for producing the merchandise. Respondent states that difmer adjustments for similar products were based on the variable costs for producing the merchandise. Respondent further states that its product codes, which were relied upon in identifying identical and similar matches, include the production process and end-use of the merchandise. Respondent argues that there can be no separation between production process and end-use from physical characteristics and that the production process and end-use are directly related to and result in physical differences in the products.

DOC Position: We agree with respondent. The Department verified that the matching of U.S. and home market products was, in fact, done pursuant to the guidelines established in Appendix V of the Department's questionnaire. At Ugine-Savoie, we verified that certain Ugine-Savoie products contained non-metallic physical properties which distinguished them from similar products with the same metallic composition. At respondent's company, we verified that certain products had different chemical properties, including metallic properties, which were more specific and inclusive than the basic criteria established in Appendix V of the questionnaire. These physical characteristics, such as the precise percentage of aluminum, were reflected in the product code precisely because the end-use for the wire rod would require specific physical composition of the product (e.g., percentages of nickel, copper, aluminum, etc. determine whether the rod is best suited for future cold-heating, fine wire drawing, welding, etc.).

The accounting team verified that the costs reported were based on the processes used for specific heats. The specific processes of a heat would depend on the physical characteristics desired for the finished product and, in some cases, the size of orders and the corresponding capacity of the production sites; some costs then might relate to a process (such as which particular furnace was used) based on aspects not absolutely related to the exact physical characteristics of the finished product. Considering the volume and complexity of the heats processed during the POI and the nature of the respondent's accounting system, the reliance on heat-specific costs was a reasonable measure; based on the facts specific to this case, requiring

respondent to retroactively calculate and eliminate any processing costs which related to the specific size or timing of a heat would represent an unreasonable burden on respondent.

We therefore used the reported difmer adjustments in calculating the dumping margin for purposes of the final determination.

Comment 4: Petitioner asserts that in accordance with the decision of the appellate court in *Zenith Electronics Corp.* v. *United States*, the Department should eliminate its circumstance of sale adjustment for VAT without any further adjustments to USP. Petitioner claims that the Department's current practice of adding to USP the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation is contrary to the holding of the appellate court in the 1993 *Zenith* decision and has been rejected by the CIT in several other cases. Petitioner believes that the statute requires the adjustment to be based on the amount of tax that would have been applied to the U.S. sale.

Respondent argues that the Department properly adjusted for VAT on the U.S. side. Respondent contends that the Department's methodology is not precluded by statute or recent court holdings. Respondent states that the *Zenith* decision requires the Department to increase USP for the amount, instead of the rate, of the ad valorem tax and that the statute does not permit the Department to make a circumstance-of-sale adjustment for any residual distortions in the dumping margin caused by the adjustment of USP. Respondent further argues that the *Zenith* decision acknowledged that the Department has the authority and the ability to make tax-neutral assessments by adding the amount of home market taxes to USP.

DOC Position: On October 7, 1993, the CIT, in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decisions, and has applied this new methodology in making its final determination in this investigation. From now on, the Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991).

However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*. (See the "Fair Value Comparisons" section of this notice.)

Comment 5: Petitioner asserts that respondent understated the direct credit expenses incurred on U.S. consignment sales and that the Department should correct for this understatement. Petitioner states that respondent's classification of costs incurred during the consignment inventory period as inventory carrying costs and therefore as indirect selling expenses is inconsistent with the position taken by respondent's parent company in the investigation of Carbon Steel Products from France. Petitioner contends that in that investigation, respondent argued that the credit period for home market consignment sales began at the time the merchandise left the mill and not when the end customer was invoiced by respondent's customer. Petitioner states that the Department accepted that methodology in that case and should therefore calculate direct credit costs by adding the inventory carrying costs and the direct credit costs reported by respondent for each of its consignment sales.

Respondent maintains that expenses attributable to the Techalloy consignment sales were properly reflected. Respondent argues that the sale to its customer is not consummated until the consigned inventory has been withdrawn from the warehouse of respondent's customer and respondent's customer has then been invoiced. Respondent further argues that it is not the Department's practice to treat carrying costs on consignment sales as a direct selling expense where respondent is invoiced at the time the customer withdraws the merchandise from the warehouse.

DOC Position: We agree with that costs incurred during the consignment inventory period are not inventory carrying costs but are direct credit expenses. During the period that the merchandise remained in respondent's customer's consignment inventory, the merchandise was not available for sale to any other of respondent's customers. Since it was not available for sale, we have determined that the expense incurred by respondent while it remained in its customer's inventory is a direct expense. The maintenance of consignment inventory on the respondent's customer's site was a condition of the sale.

This approach is consistent with the Department's determination in Carbon

Steel Products from France. As petitioner correctly notes, in that investigation the Department determined that the credit period for home market consignment sales began at the time the merchandise left the producing mill en route to its consignment customer's inventory, and not when the final customer was invoiced (respondent invoiced its consignment customer when the consignment customer withdrew the material from its warehouse and invoiced its customer).

Comment 6: Petitioner argues that the Department should use the highest unreported expense amount uncovered during verification as BIA to correct for respondent's understatement of its foreign and U.S. brokerage charges. Petitioner asserts that the Department should increase the U.S. and foreign brokerage charges for all of respondent's U.S. sales.

Respondent states that the minor foreign brokerage discrepancies noted by petitioner apply only to sales of Ugine-Savoie products, and therefore the Department should not inflate all of the expenses of all of the U.S. sales reported by respondent. Furthermore, respondent states that the U.S. brokerage expenses were generally tiny and were offset by an overstatement of the shipment expenses incurred on its U.S. sales. Therefore, respondent contends that petitioner's argument should be rejected.

DOC Position: We agree with petitioner, in part. At verification, Ugine-Savoie company officials explained that their computer system systematically failed to pick up certain brokerage expenses (see November 9, 1993, verification report from William H. Crow II to David L. Binder at pages 36, 39, and 44). Respondent had not previously reported these expenses in its response. Therefore, we have used the averages of the missing brokerage charges examined during verification, and increased the charge reported under U.S. brokerage for Ugine-Savoie sales only by the average per-unit omission specific to each type of sale (e.g., purchase price, ESP, further manufactured) for use in the final determination.

Comment 7: Petitioner contends that information obtained at verification demonstrates that respondent significantly underreported the actual commission expenses it incurred on its U.S. sales. Petitioner argues that the Department should calculate a commission expense for all of respondent's U.S. sales.

Respondent states that it accurately reported the commissions paid on U.S. sales. Respondent contends that the suggestion of a defect in the listing of commissions in the verification report is an error in that report which respondent addressed in its case brief. Therefore, respondent contends that petitioner's argument should be rejected.

DOC Position: We agree with respondent. The verification report's suggestion of an error in the listing of commissions was incorrect. We did not find any deficiencies in respondent's reporting of commissions. (See memorandum to the file from John Beck dated December 20, 1993.)

Comment 8: Petitioner states that in calculating imputed credit on sales for which respondent has not yet received payment, the Department, as BIA, should use as the payment date the scheduled date of the final determination. Petitioner states that for all U.S. sales where payment was not received as of the questionnaire response submission date, respondent should not be allowed to calculate imputed credit based on the customer's normal payment terms.

Respondent argues that there is no basis for selecting the date of the final determination as the date of payment for these sales. Respondent states that it has made updated payment information as requested by the Department. Respondent further states that for those sales still left unpaid, its practice of imputing credit expense based upon the normal payment terms plus the customer's average days of late payment is reasonable.

DOC Position: We agree with petitioner. For sales where the customer had not paid as of the time of verification, we re-calculated credit expenses using the date of the final determination as the date of payment. This is consistent with how we treated unreported dates of payment in the Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium, (58 FR 37083, July 9, 1993).

Comment 9: Respondent argues that the Department should not exclude sales to related customers in calculating FMV. According to respondent, these sales to related parties were made at arm's-length prices. Respondent also argues that the Department has no basis to apply the "arm's-length test" in this case because, this test is arbitrary and capricious. Respondent maintains that the test only proves that different purchasers may pay different prices. Further, respondent states that the test is faulty because it does not properly account for variables which may affect prices, such the size of the individual sale, the total volume of purchases by customers, and the fact that the volume purchased by a particular customer may affect the price to that customer.

Petitioner argues that the Department properly excluded sales to related parties in calculating FMV because there is no evidence that such sales were made at arm's-length prices. Petitioner notes that the Department has been given ample flexibility to devise methodologies to calculate dumping margins, is expected to follow the same methodology used in prior cases, and has relied on the related party test as a reasonable means to implement its regulations pertaining to related party sales. Petitioner states that the related party test is a reasonable means of implementing the Department's regulations and is not arbitrary.

DOC Position: We agree with petitioner and have used the related party test and excluded sales that were not found to be at arm's-length based on this test. As we stated in the Carbon Steel Products from France investigation, the Department's view is that the related party test fully conforms to 19 CFR 353.45(a), which provides that the Department should calculate FMV using sales to related parties only if it is satisfied that the prices of those sales are comparable to the prices of the subject merchandise sold to unrelated customers. Such instructions give the Department substantial latitude in defining "comparability." The results of the test in this investigation show that respondent's related party sales were not made at arm's-length prices.

Comment 10: Respondent contends that at the preliminary determination, the Department should not have excluded sales to related customers in calculating profit for purposes of computing CV. Respondent contends that the questionnaire provides that CV is to include home market profit from sales of the class or kind of merchandise. Respondent states that in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of the Antidumping Duty Order (58 FR 39729, July 26, 1993), the Department rejected a narrow formulation of profit and instead based it on all home market sales, even those to related parties. Therefore, respondent urges the Department to use its home market related party sales for purposes of the final determination.

Petitioner maintains that the exclusion of sales to related parties in

calculating profit for CV purposes was appropriate at the preliminary determination. Petitioner argues that the Department's regulations do not allow for the calculation of FMV based on related party sales where the price to the related parties is not comparable to the price to unrelated parties. For this reason, petitioner believes that sales which are excluded based on the related party test should also be excluded from determining profit for CV. Petitioner argues that selling price is a key factor in determining profits. Petitioner further states that profit reflects a value component rather than a cost component. Petitioner notes that the statute gives the Department authority to disregard related party transactions in calculating CV where any value element does not fairly reflect the amount usually reflected in sales in the market under consideration.

DOC Position: We agree with petitioner and have excluded all home market sales to related parties that fail the arm's-length test in calculating profit for CV purposes. We have determined that if sales to related parties are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV. This is consistent with our treatment of related party sales found not to have been made at arm's-length in the Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products Investigations from Korea (58 FR 37176, July 9, 1993). In that case, we excluded sales that were made to related parties in calculating profit for CV. While in AFBs the Department may have used related-party sales found not to have been at arm's-length when calculating profit for CV, we have reconsidered this approach in this case and have determined that it is more appropriate to exclude them.

Comment 11: Petitioner states that the Department should correct for certain errors in respondent's U.S. sales listing found at verification. These errors included omission of certain U.S. brokerage and handling charges, packing costs, warranty expenses, indirect selling expenses, foreign brokerage and handling charges, and foreign inland freight charges.

Respondent agrees that these errors should be corrected.

DOC Position: We agree with petitioner and respondent and have corrected for the errors made in the respondent's U.S. sales listing.

Comment 12: Petitioner states that the Department should continue to adjust respondent's further manufacturing costs to include expenses omitted by respondent. Specifically, petitioner states that the non-recurring costs associated with plant closure, hazardous waste facility fees, and write-off of slow moving inventory are included in the U.S. financial statements and, therefore, they should be included in the further manufacturing G&A costs.

Respondent argues that the Department should not have included these costs in calculating the further manufacturing costs. Respondent contends that it properly omitted amounts noted in its financial statements regarding a hazardous waste facility fee assessment, a plant closure, and slow moving inventory because these items have nothing to do with increased value attributable to the further manufacture of the merchandise under investigation.

Respondent asserts that the hazardous waste fee is only an accrual for a potential liability for period prior to the POI and also prior to the current ownership of the company. Moreover, respondent claims that it may receive reimbursement of the fees in the future.

Respondent maintains that the amount attributable to the write-off of slow moving inventory is included in the financial statements as a footnote only and describes the write-off policy of the ultimate parent company and does not reflect a cost in the U.S. financial statements.

DOC Position: We agree with petitioner in part and respondent in part. We included the plant closure costs and the hazardous waste fees in the calculation of the further manufacturing costs because these items are included in the financial statements and reflect costs incurred during the POI. Even though the damages occurred prior to the POI, and the respondent may receive reimbursement in the future, the liability is currently payable, and recognized in the current period in the financial statements. This is consistent with what the Department did in the Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany (58 FR 37136, July 9, 1993). The Department did not include the slow-moving inventory write-off since it is not reflected in the U.S. income statement of the further manufacturer.

Comment 13: Petitioner argues that the Department should use BIA to calculate respondent's interest expense. Petitioner argues that we should use BIA because during verification, the Department discovered that respondent had deducted both short-term and long-term interest income when calculating its net interest expense. As BIA, petitioner recommends applying Usinor-Sacilor's (Imphy's and Ugine-Savoie's parent company) average long-term interest rate as stated in the footnotes to the financial statements to total debt.

Respondent maintains that it is not possible for Usinor-Sacilor to separate interest income from interest expense from the consolidating companies. The consolidating companies only report net interest to Usinor-Sacilor for consolidation.

DOC Position: We agree with petitioner in part. We increased interest expense by the estimated amount of long-term interest income that is included as an offset to interest expense. The Department normally allows only short-term interest income as an offset to financing expense. This is consistent with the methodology the Department applied in the Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea, (58 FR 11029, 11035, February 23, 1993). To estimate long-term interest income, we used the amount of assets which would generate long-term interest income, derived from Usinor-Sacilor's 1992 consolidated financial statements, multiplied by the 1992 French average annual long-term interest income rate published in the OECD Financial Statistics Monthly (January 1993).

Comment 14: Petitioner argues that the Department should correct respondent's alleged understatement of Ugine-Savoie's electricity expense. Respondent reduced Ugine-Savoie's electricity expense for income generated by the sale of electricity to an unrelated party. Petitioner contends that the cost of production calculations should be based on the actual cost of the inputs used to manufacture the merchandise under investigation and not reduced by unrelated income.

Respondent claims that it did not understate Ugine-Savoie's electricity expense. Respondent maintains that it gets reimbursed for the electricity that it sells to an unrelated company. Respondent argues that the Department's practice has been to reduce costs actually incurred where the respondent can demonstrate the extent to which the costs are unrelated to the production or sale of the subject merchandise.

DOC Position: We agree with petitioner. For cost of production and CV, we increased the electricity costs for the amount of the reimbursement in excess of the cost of the electricity. We based the calculation of cost of

production on the actual costs of the inputs used to manufacture the merchandise under investigation. We do not reduce those costs by income unrelated to the production and sale of the subject merchandise. This is consistent with what the Department did in Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review, (54 FR 13917, April 6, 1989). In that case, the respondent reported royalty income unrelated to televisions, and rents received from related parties for the lease of equipment and buildings. Because none of these categories was related to sales of the product under review or current operations, the Department excluded the income from production costs. We did not make this adjustment to the cost of production reported for further manufactured products because the data was not presented in a way to allow us to do so and any adjustment would be insignificant. As BIA, we accepted this portion of the further manufactured cost data as reported.

Comment 15: Petitioner asserts that in the preliminary determination, the Department properly included in the cost of further manufacturing 100 percent of respondent's G&A expenses instead of accepting respondent's allocation of a portion of its G&A expenses to indirect selling expenses. Petitioner argues that the Department should continue to include all of respondent's G&A expenses in the cost of further manufacturing, since respondent did not produce a breakdown, or identify these indirect selling expenses.

Respondent argues that it properly allocated a relative share of G&A costs to selling expenses since the G&A expenses supported both the selling function and the further manufacturing function. Respondent maintains that by attributing 100 percent of the G&A to further manufacturing, the Department erroneously inflated the further processing costs.

DOC Position: We agree with petitioner and have included in the cost of further manufacturing the total G&A costs without allocating any of these costs to indirect selling expenses. Respondent provided no detail of the G&A cost items that it wanted to reclassify as indirect selling expenses. Respondent had the opportunity to provide such detail in its response to the Department's questionnaire and at verification. It failed to do so. Consequently, without such detail, we have no way of knowing whether respondent accurately allocated the costs.

Comment 16: Respondent contends that the Department should not have used BIA for sales where there was no reported Techalloy plant code factor in the computer database for the preliminary determination. This identifying factor was necessary in order to assign the appropriate plant-specific G&A to those sales. For all sales of further manufactured merchandise where a specific Techalloy plant code was not specified, the Department applied a G&A adjustment factor representing the highest percentage adjustment that had been applied to any particular Techalloy facility as BIA applicable to the unidentified facility.

The sales without a plant code factor represent sales by MAC and United Stainless and Alloys (a division of MAC). The respondent asserts that these sales should not be adjusted by the BIA factor.

DOC Position: We agree with respondent. The Department used BIA for the adjustment at the preliminary determination because respondent had not provided the Department with the appropriate data needed to make respondent's claimed adjustment. Subsequently, respondent submitted the appropriate information on its further manufacturing computer tape. We verified this information and have used it in the final determination. Therefore, the use of BIA in this particular instance is no longer warranted.

Comment 17: Respondent contends that its calculation of value-added costs was appropriate. Respondent explains that major elements of respondent's value-added costs, such as labor and electricity, are recorded at actual cost on a product-by-product basis only at the end of the year. For this reason, respondent calculated value-added costs on an annual basis. Respondent argues that this approach comports with the Department's practice of using annual costs where they are a more accurate measure of actual cost.

Petitioner argues that the Department should revise respondent's fabrication costs to reflect costs incurred during the POI because respondent used fabrication costs based on average actual costs for the fiscal year, as opposed to costs specific to the POI. To do this, petitioner suggests that the Department use BIA to adjust for fabrication costs for respondent from an annual basis to the POI. Petitioner suggests that the Department should increase the cost of manufacture of SSWR manufactured by respondent by a percentage identified in the cost verification report, where the Department stated that respondent's failure to submit costs based on the POI decreased the submitted costs by a specific amount. (See November 9, 1993, verification report of COP and CV for Imphy S.A. and Ugine-Savoie at page 1.)

DOC Position: We agree with respondent and for the purpose of the final determination, we did not adjust certain fabrication costs in the cost of production calculation. The costs reflected in respondent's monthly reports do not reflect costs actually incurred because, for example, for electricity an annual payment may be required depending on the annual electricity used. In respondent's normal cost accounting system these certain costs are not adjusted to actual until the end of the fiscal year. Consequently, it would have been very difficult for respondent to isolate costs for the POI. Accordingly, for the final determination, we accepted the fabrication costs submitted by Ugine-Savoie. This is consistent with the Department's approach in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom (58 FR 6207, January 27, 1993).

Comment 18: Respondent maintains that its depreciation methodology is reasonable. Respondent explains that its basis for allocating depreciation to product lines is derived from a theoretical study performed in 1986, and that the results of this study are used in the company's normal accounting system. Respondent also notes that there was no deviation from the normal method employed by the company to calculate depreciation used in the submission. In addition, respondent points out that the submitted depreciation expense is based on total actual expense.

Petitioner argues that the Department should calculate respondent's depreciation costs based on the cost and estimated useful lives of the assets that respondent used to manufacture stainless steel wire rod. Petitioner claims that the theoretical study performed in 1986 on depreciation was done based on replacement costs, as opposed to actual costs. Further, petitioner argues, the study is not appropriate for application to this investigation because the methodology proposed in the study and applied by respondent does not reflect the actual value of the assets used to produce the merchandise under investigation.

DOC Position: While we agree with petitioner that the use of a 1986 study which uses estimated replacement costs and estimated yields is not reflective of

actual depreciation costs for the subject merchandise, this allocation methodology is used by respondent in its normal accounting system. Without a more accurate alternative, we accepted respondent's methodology.

Comment 19: Respondent expresses concern about a statement in the Verification of Cost of Production and Constructed Value report of Imphy S.A. and Ugine-Savoie at page 2 regarding the "Financial Link Account." The report states that ". . . expenses in this account were not identifiable as they resulted from the consolidation." Respondent argues that expenses included in this account do not relate to the subject merchandise, and therefore, should not be included in the calculation of COP and CV. Respondent emphasizes that it demonstrated at verification that the submitted G&A expenses reconciled to the income statements. Further, respondent argues, the submitted G&A expenses included an allocation of the actual management expenses incurred by the Usinor-Sacilor Group, and that respondent demonstrated the reconciliation of the actual management expenses to the accounts of the management group.

DOC Position: We disagree with respondent. We included the amounts in the financial link account in the calculation of the interest and general and administrative rates. At verification, respondent indicated that these amounts relate to the expense category where they are reported in the income statement but could not be matched in the consolidation process. The financial statements for all Usinor-Sacilor Group companies are consolidated at the end of the year. On elimination of intercompany transactions during the consolidation process, there is not always a perfect match. These non-matching eliminations are then put into the financial link account. Since these costs could not be specifically identified or reconciled, it is possible that they relate to the subject merchandise. It is the Department's practice to include all costs relevant to the subject merchandise in the calculation of COP and CV. Therefore we included these additional costs in the calculation of the interest and G&A rates.

Comment 20: Petitioner argues that the Department should adjust respondent's COP to properly account for restructuring costs and for amortization of goodwill expense. Petitioner contends that these costs were included in respondent's financial statements, but excluded from the submission.

Respondent argues that the Department reviewed the calculation of the cost of manufacture and general expenses at verification, and found that all appropriate costs had been included. Respondent also points out that there is no amortization of goodwill in Imphy's 1992 financial statement. Thus, there is no basis for the Department to adjust respondents' cost of production for restructuring or goodwill.

DOC Position: We agree with respondent. At verification we found the costs of restructuring that are included in the financial statements were properly included in G&A expenses. We also determined that the amortization of intangible assets was properly included in the COP.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from France that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Imphy and Ugine-Savoie	24.39
All others	24.39

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-31629 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DS-P