

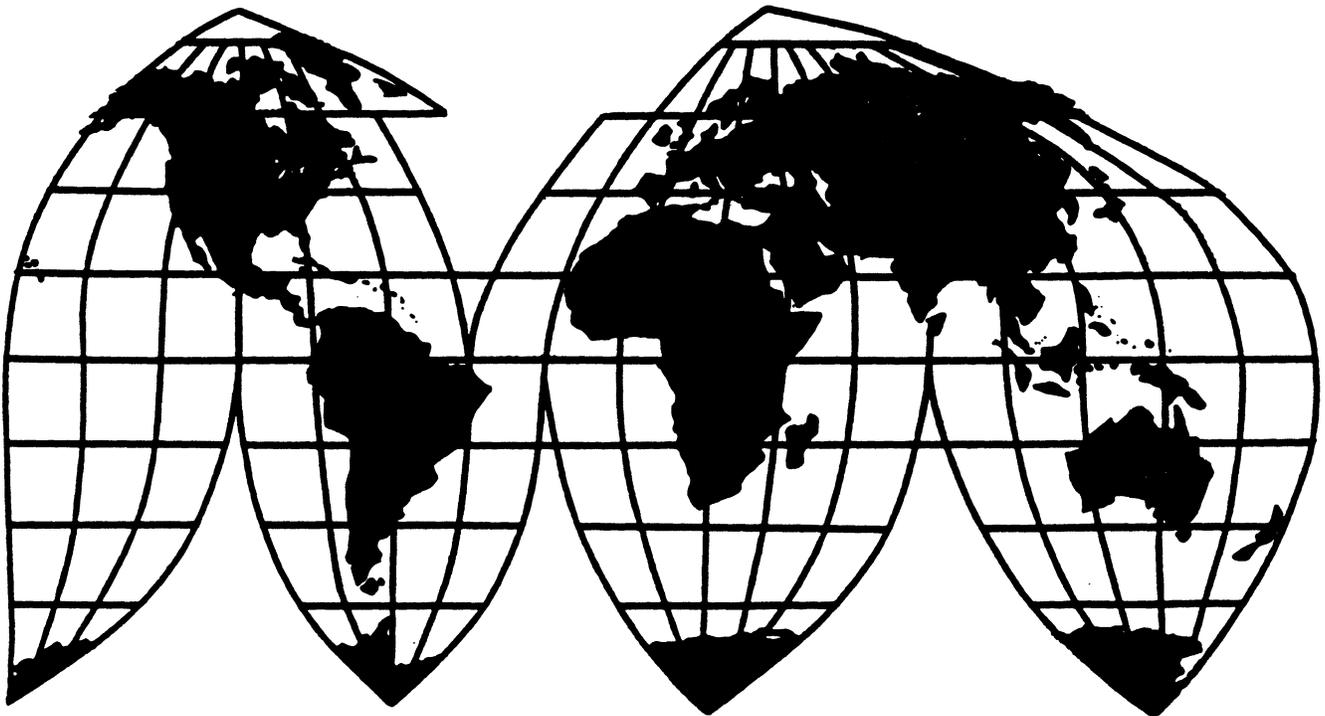
Certain Steel Wire Rod From Belgium and Germany

Investigations Nos. 701-TA-359 (Preliminary)
and
731-TA-686-687 (Preliminary)

Publication 2760

March 1994

U.S. International Trade Commission



U.S. International Trade Commission

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PREFACE

On March 3, 1994, the U.S. International Trade Commission approved a waiver of its rules to allow for the consolidation of the staff report in Investigations Nos. 731-TA-646-648 (Final), Certain Steel Wire Rod from Brazil, Canada, and Japan; and Investigations Nos. 701-TA-359 (Preliminary) and 731-TA-686-687 (Preliminary), Certain Steel Wire Rod from Belgium and Germany. Therefore, for information obtained in the investigations of certain steel wire rod from Belgium and Germany, please refer to the Commission report entitled "Certain Steel Wire Rod from Brazil and Japan: Investigations Nos. 731-TA-646 and 648 (Final)," USITC Publication 2761, March 1994.

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DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-359 (Preliminary)
and 731-TA-686-687 (Preliminary)

CERTAIN STEEL WIRE ROD FROM BELGIUM AND GERMANY

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Belgium of certain steel wire rod,³ provided for in subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Further, the Commission determines,⁴ pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany of certain steel wire rod, that are alleged to be subsidized by the Government of Germany and sold in the United States at LTFV.

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 Vice Chairman Watson and Commissioner Crawford dissenting.

³ For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

- steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorus plus sulfur less than or equal to 0.04 percent, and nitrogen less than or equal to 0.006 percent (termed "1080 tire cord" quality wire rod);
- free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium;
- stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and
- wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73 percent carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth (termed valve spring quality wire rod).

⁴ Chairman Newquist dissenting.

Background

On February 14, 1994, a petition was filed with the Commission and the Department of Commerce by Connecticut Steel Corp., Wallingford, CT; Georgetown Steel Corp., Georgetown, SC; North Star Steel Texas, Inc., Beaumont, TX; Co-Steel Raritan River Steel Co., Perth Amboy, NJ; Keystone Steel & Wire Corp., Peoria, IL; and Northwestern Steel & Wire Co., Sterling, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain steel wire rod from Germany and LTFV imports from Belgium and Germany. Accordingly, effective February 14, 1994, the Commission instituted countervailing duty investigation No. 701-TA-359 (Preliminary) and antidumping investigations Nos. 731-TA-686-687 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 February 22, 1994 (59 F.R. 8483). The conference was held in Washington, DC, on March 4, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

**VIEWS OF VICE CHAIRMAN WATSON, COMMISSIONER CRAWFORD
AND COMMISSIONER NUZUM¹**

Based on the record in these preliminary investigations, we determine that there is no reasonable indication that the industry in the United States producing certain steel wire rod is materially injured or threatened with material injury by reason of imports of certain carbon and alloy steel wire rod from Germany that are allegedly subsidized and that are allegedly sold in the United States at LTFV ("LTFV"). Vice Chairman Watson and Commissioner Crawford determine that there is no reasonable indication that the industry in the United States producing certain carbon and alloy steel wire rod is threatened with material injury by reason of rod imports from Belgium that are allegedly sold at LTFV. Commissioner Nuzum determines that there is a reasonable indication that the industry in the United States producing certain carbon and alloy steel wire rod is threatened with material injury by reason of imports of the subject merchandise from Belgium that are allegedly sold at less than fair value.²

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary countervailing and antidumping duty investigations requires the Commission to determine, based upon the best information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly LTFV imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."⁴ The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is sufficiently reasonable."⁵

¹ The Commission's analysis of its finding of a reasonable indication of injury with respect to imports of certain steel wire rod from Belgium may be found in the Separate and Dissenting Views of Chairman Newquist, Views of Commissioner Rohr, and Additional Views of Commissioner Nuzum, *infra*.

Vice Chairman Watson and Commissioner Crawford find that there is no reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports from Belgium. *See* the Dissenting Views of Vice Chairman Watson and Commissioner Crawford, *infra*.

Chairman Newquist finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of allegedly subsidized and LTFV imports from Germany. *See* Separate and Dissenting Views of Chairman Newquist, *infra*.

² 19 U.S.C. §§ 1671b(a), 1673b(a). Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

³ 19 U.S.C. §§ 1671b(a), 1673b(a). *See also American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986); *Calabrian Corp. v. U.S. Int'l Trade Comm'n*, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

⁴ *American Lamb Co. v. United States*, 785 F.2d at 1001. *See also Torrington Co. v. United States*, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992).

⁵ *American Lamb Co. v. United States*, 785 F.2d at 1004.

II. LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of 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."⁶ 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."⁷

The Department of Commerce ("Commerce") has defined the article subject to these investigations as:

hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

- steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006% (termed "1080 tire cord" quality wire rod);
- free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and
- wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 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, e.g., 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 analyzing like product issues, the Commission considers a number of factors, including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and (6) where appropriate, price. Calabrian Corp. v. U.S. Int'l Trade Comm'n, 794 F. Supp. at 382 n.4. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington Co. v. United States, 747 F. Supp. at 748-49.

seams no more than 0.075 mm in depth (termed valve spring quality wire rod).⁸

B. Like Product Issues

In the recent final investigations involving certain steel wire rod from Brazil and Japan,⁹ we found a single like product consisting of certain carbon and alloy steel wire rod. The Commission stated:

We note that, in the recent past, we were not persuaded that unique specifications, processes and end uses mandate a finding of separate like products. We believe that these investigations also present a continuum of products reflecting a spectrum of qualities, grades, chemistries, sizes, and other features, which are reflected in the various industry specifications and the many specifications for specific end uses. Accordingly, we continue to find that there is one like product, consisting of certain hot-rolled carbon and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter, and excluding the specific types of certain steel wire rod excluded from the scope of Commerce's investigations.¹⁰

We readopt our analysis and finding on like product from the Brazil and Japan Final Determinations. Accordingly, we determine that there is one like product, consisting of certain hot-rolled carbon and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter, and excluding the specific types of certain steel wire rod excluded from the scope of Commerce's investigations.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Producers

In light of our like product determination, we reaffirm our determination in the Brazil and Japan Final Determinations that there is a single domestic industry comprising the producers of certain carbon and alloy steel wire rod.¹¹

⁸ See 59 Fed. Reg. 11773 (Mar. 14, 1994). Commerce further notes that "[t]he products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS)."

⁹ See 731-TA-646 and 648 (Final), USITC Pub. 2761 (Mar. 1994) (hereinafter "Brazil and Japan Final Determinations"). At the time of the vote in these investigations, steel wire rod imports from Brazil, Canada, Japan, Belgium, and Germany were all subject to investigation, even though the petition pertaining to the latter two countries was filed later than the petition for the former countries. See, e.g., Ferrosilicon from the People's Republic of China, Inv. No. 731-TA-567 (Final), USITC Pub. 2606, at 12, 22 (Mar. 1993) (cumulating imports from Brazil and Egypt, subject to preliminary investigations, with those from China, Kazakhstan, Russia, Ukraine, and Venezuela, subject to final investigations). The record for the Brazil, Japan, Belgium, and Germany investigations is the same.

¹⁰ USITC Pub. 2761, at I-8 - I-9 (footnotes omitted).

¹¹ See USITC Pub. 2761, at I-8 - I-9.

B. Related Parties

Under section 771(4)(B) of the Act, producers who are themselves importers of LTFV or subsidized merchandise are considered related parties and may be excluded from the domestic industry in "appropriate circumstances."¹² The rationale for excluding related parties is the concern that the overall industry data may be skewed by inclusion of the related parties who are shielded from any injury that might be caused by the unfair imports. Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.¹³

In the Brazil and Japan Final Determinations, we determined not to exclude two domestic producers related to a Canadian producer, which is also an importer of record.¹⁴ We found that the data do not indicate that these producers were shielded from the effects of unfairly traded imports and that inclusion of such data would not have a skewing effect on the industry's aggregate data. We hereby readopt that analysis and finding and determine not to exclude the two domestic producers that are related parties.

IV. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized or LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These factors 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 and conditions of competition that are distinctive to the affected industry."¹⁵ In evaluating the condition of the domestic industry, we look at the domestic industry as a whole.¹⁶

We hereby incorporate the discussion of our consideration of the factors indicating the state of the domestic steel wire rod industry from the Brazil and Japan Final Determinations.¹⁷

¹² 19 U.S.C. § 1677(4)(B). Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case. See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude related parties include:

- (1) the percentage of domestic production attributable to related producers;
- (2) the reasons why the domestic producers have chosen to import the product under investigation -- to benefit from the unfair trade practice, or to enable them to continue production and compete in the domestic market; and
- (3) the position of the related producers vis-a-vis the rest of the domestic industry, i.e. whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See Torrington Co. v. United States, 790 F. Supp. at 1168.

¹³ See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1168.

¹⁴ USITC Pub. 2761, at I-10 - I-11; see CR at I-49; PR at I-24.

¹⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹⁶ See, e.g., Welded Stainless Steel Pipe from Malaysia, Inv. No. 731-TA-644 (Final), USITC Pub. 2744, at I-9 n.29 (Mar. 1994).

¹⁷ See USITC Pub. 2761, at I-10 - I-13.

V. CUMULATION¹⁸

In determining whether there is a reasonable indication of material injury by reason of allegedly subsidized or LTFV imports, the Commission is required to "cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market."¹⁹ Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.²⁰ We first examine whether there is a reasonable overlap in competition between the domestic and imported products, and among the subject imported products.

With regard to whether the subject imports compete with each other and the domestic like product, the Commission generally has considered 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 geographic 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.²¹

No single factor is determinative and the list of factors is not exclusive. Only a "reasonable overlap" of competition is required; the Commission does not have to find that all imports compete with all other imports and all domestic like products.²²

A. Reasonable Overlap in Competition

In the Brazil and Japan Final Determinations, we found that a reasonable overlap of competition exists between the domestic product and subject imports from Brazil, Canada, Belgium, and Germany, and among those subject imports. We also determined that a reasonable overlap of competition exists between the domestic product and subject rod imports from Canada, Japan, Belgium, and Germany, as well as among those subject imports. In addition, we found that a reasonable overlap of competition does not exist between subject imports from Brazil and Japan, and therefore found it inappropriate to cumulate all five countries. In these preliminary investigations, we find it appropriate to cumulate subject imports from Brazil, Canada, Belgium, and Germany, and to cumulate subject imports from Canada, Japan, Belgium, and Germany, as we did in the Brazil and Japan Final Determinations.²³

¹⁸ Commissioner Nuzum does not join this section of the opinion. See her Additional Views.

¹⁹ 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1101 (Fed. Cir. 1990).

²⁰ 19 U.S.C. § 1677(7)(C)(v).

²¹ See generally, e.g., Fundicao Tupy S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

²² Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989); Granges Metallverken AB v. United States, 716 F. Supp. 17, 21, 22 (Ct. Int'l Trade 1989).

²³ See USITC Pub. 2761, at I-13 - I-17.

B. Negligibility

The statute provides that the Commission is not required to cumulate in any case in which it determines that imports of the merchandise subject to investigation "are negligible and have no discernable adverse impact on the domestic industry."²⁴ In determining whether imports are negligible, the Commission shall consider all relevant economic factors, including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.²⁵

The negligible imports exception is to be applied narrowly and is not to be used to subvert the purpose and general applicability of the mandatory cumulation provision of the statute.²⁶

In the Brazil and Japan Final Determinations, we found that imports from Japan, Belgium and Germany were not negligible.²⁷ We continue to adopt this finding for the purposes of these preliminary investigations. Thus, in making our determination with respect to the investigations of subject imports from Belgium and Germany, we cumulate imports from Brazil, Canada, Belgium, and Germany, and also cumulate imports from Japan, Canada, Belgium, and Germany.²⁸

VI. NO REASONABLE INDICATION OF MATERIAL INJURY BY IMPORTS FROM BELGIUM AND GERMANY²⁹

A. Legal Standard

The Commission is required to make a preliminary determination of whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized or LTFV imports.³⁰ In making our determination, the Act provides that the Commission:

- (i) shall 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

²⁴ 19 U.S.C. § 1677(7)(C)(v).

²⁵ 19 U.S.C. § 1677(7)(C)(v).

²⁶ See H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

²⁷ See USITC Pub. 2761, at I-17 - I-18.

²⁸ As stated above, we do not find a reasonable overlap of competition between imports from Brazil and Japan.

²⁹ Commissioner Nuzum does not join this section of the opinion. See her Additional Views.

³⁰ 19 U.S.C. §§ 1671b(a), 1673b(a).

(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; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.³¹

The Commission may consider alternative causes of injury, but it is not to weigh causes.³² The statutory language regarding causation of material injury by reason of LTFV imports is interpreted differently by different Commissioners.³³

B. Subject Imports

For the reasons discussed in the Brazil and Japan Final Determinations in analyzing the two groups of cumulated imports,³⁴ we find that there is no reasonable indication that the domestic steel wire rod industry is materially injured by reason of the cumulated subject imports.³⁵

VII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY IMPORTS FROM GERMANY

A. Legal Standard

In assessing whether there is a reasonable indication that a domestic industry is threatened with material injury by reason of allegedly subsidized or LTFV imports from two or more countries, the Commission has the discretion to cumulate the volume and price effects of such imports if they compete with each other and with the like product of the domestic industry in the United States market.³⁶

³¹ 19 U.S.C. § 1677(7)(B).

³² See, e.g., Citrusuco Paulista, S.A. v. United States, 704 F. Supp.1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, at 74. Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

³³ See Defrost Timers from Japan, Inv. No. 731-TA-643 (Final), USITC Pub. 2470, at I-10 nn.47-49 (Feb. 1994).

³⁴ See USITC Pub. 2761, at I-19 - I-25.

³⁵ Vice Chairman Watson notes that cumulating subject imports from all five countries would not change his negative determinations. See USITC Pub. 2761, at I-16 n.96.

³⁶ 19 U.S.C. § 1677(7)(F)(iv). In considering whether imports compete with each other and with the domestic like product, the Commission has generally considered 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;

(continued...)

We have determined not to cumulate imports from Belgium and Germany with each other or with other subject imports. As pertains to our declining to cumulate imports from Belgium and Germany with other subject imports, we readopt our reasons as stated in the Brazil and Japan Final Determinations.³⁷ The volumes³⁸ and market shares³⁹ of subject imports from Belgium and Germany increased at vastly different rates during the period of investigation, and the margins of underselling were quite dissimilar.⁴⁰ We also note that the sole known Belgian steel wire rod producer did not become operative until August 1992,⁴¹ while at least two of the three known German producers were operational in 1990.⁴² Accordingly, we also decline to cumulate these imports with each other.⁴³

B. Subject Imports

We further determine that there is no threat of material injury by reason of allegedly subsidized or LTFV imports from Germany. Under the statute, the Commission is required to consider 10 factors in its threat analysis,⁴⁴ only eight of which are factually relevant to these investigations. In making our determination, we considered information pertaining to the nature of the subsidy; whether increases in production capacity or existing unused

³⁶ (...continued)

(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.

See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845, at 8 n.29 (May 1986). While no single factor is determinative and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for its analysis of this issue. See Wieland Werke, AG v. United States, 718 F. Supp. at 52; see also Granges Metallverken AB v. United States, 716 F. Supp. at 19; Florex v. United States, 705 F. Supp. 582, 592 (Ct. Int'l Trade 1989).

³⁷ See USITC Pub. 2761, at I-24 & nn.175-76.

³⁸ U.S. shipments of rod imports from Belgium increased more than ten times between 1990 and 1992, while U.S. shipments of rod imports from Germany increased less than four times. Subject imports from Belgium increased over 20 times between interim periods, while the increase in subject imports from Germany between interim period was slightly more than fourfold. See CR at I-89 at Table 23.

³⁹ The market share of subject imports from Germany, although quite small throughout the period of investigation, doubled between 1990 and 1992, and tripled between interim periods. However, the market share of subject imports from Belgium was an insignificant figure until interim period 1993, but remained small. CR at I-90, Table 23.

⁴⁰ Although we are aware that the Commission was only able to make pricing comparisons for subject imports from Belgium in two quarters, the margins of underselling for rod imports from Belgium range from *** below to *** above domestic prices and the corresponding range for Germany is from *** below to *** above domestic prices. CR at I-123, Table 30.

⁴¹ CR at I-77; PR at I-38.

⁴² See CR at I-83, Table 20.

⁴³ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

⁴⁴ See 19 U.S.C. § 1677(7)(F)(i).

capacity in the exporting country are likely to result in a significant increase in imports of the merchandise to the United States; whether there were rapid increases in United States market penetration and the likelihood that the penetration will increase to an injurious level; the probability that subject imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; whether there has been a substantial increase in inventories of the subject merchandise in the United States; whether there is underutilized capacity for producing the merchandise in the exporting country; whether there are any other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury; and the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁴⁵

A finding of threat of material injury must be based on evidence of a threat that is real and actual injury that is imminent. A finding of threat of material injury cannot be based on "mere conjecture or supposition."⁴⁶

As we did in the Brazil and Japan Final Determinations,⁴⁷ we note that, as pertains to threat, evidence from the most recent portion of the period of investigation is the most probative for our analysis. As discussed in that opinion, the evidence from the interim period, combined with the fourth-quarter 1993 financial data, showed a definite improvement in the financial condition of the domestic industry.⁴⁸ We again point out that the domestic producers were unable to satisfy the increased demand resulting from the increased consumption throughout the period of investigation of certain steel wire rod.⁴⁹

Petitioners allege that Commerce has previously determined that assistance received by one German producer constituted a countervailable subsidy in the amount of 17.23 percent for 1992 and that the programs granting this aid continue to convey a countervailable bounty or grant in the amount of at least 27.60 percent.⁵⁰ However, nothing in the petition indicates that the alleged bounty or grant is in the nature of an export subsidy.

German steel wire rod capacity declined between 1990 and 1992, and continued to decline between interim periods. The projected increase in capacity for 1993 would result in an actual capacity below comparable levels for all years from 1990 to 1992. German capacity is anticipated to remain steady in 1994.⁵¹ Although the capacity utilization rates fluctuated between *** and *** percent during the period of investigation, one of the three known German steel wire rod producers has shut down one rod mill and a rod and bar mill to eliminate obsolete and excess capacity, and has modernized another rod mill, enabling it to reduce production.⁵² In addition, Germany has a number of other major export markets,

⁴⁵ 19 U.S.C. § 1677(7)(F)(I), (II), (III), (IV), (V), (VI), (VII), and (X). Because these investigations do not involve an agricultural product, Factor IX is inapplicable. Product shifting, Factor VII, is not an issue because there is no evidence that foreign manufacturers of certain steel wire rod produce any other products currently under investigation or subject to an order. In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii). There is no evidence of such dumping findings or remedies concerning certain steel wire rod from Belgium and Germany.

⁴⁶ See 19 U.S.C. § 1677(7)(F)(ii). Commissioner Nuzum notes that she is satisfied that the record clearly and convincingly supports the Commission's finding, and that no likelihood exists that any contrary evidence would arise in any final investigation.

⁴⁷ See USITC Pub. 2761, at I-26.

⁴⁸ See USITC Pub. 2761, at I-26; CR at I-63, Table 11; I-68, Table 13.

⁴⁹ See CR at I-25, Table 2.

⁵⁰ Petition for the Imposition of Antidumping and Countervailing Duties at 138, Common Volume (Feb. 11, 1994).

⁵¹ CR at I-83, Table 20.

⁵² CR at I-82; PR at I-39; CR at I-83, Table 20.

which in the aggregate surpass by far the importance of the U.S. market.⁵³ In view of announced investments by U.S. producers,⁵⁴ future impacts from imports from Germany do not appear likely to affect existing development and production efforts negatively.

The share of U.S. consumption held by imports from Germany increased throughout the period of investigation,⁵⁵ but may be attributable to the very high consumer demand in the United States and the inability of the domestic producers to satisfy this demand in a timely fashion.⁵⁶ Having found that there have been no significant price suppressing or depressing effects of even cumulated subject imports, we further find no evidence that imports from Germany alone will have any such price effects in the future. Finally, there were no end-of-period inventories of subject German imports in the United States throughout the period of investigation.⁵⁷ We thus find no increase in production capacity or underutilized capacity that is likely to be used for increased exports to the United States. We have identified no other adverse trends supporting an affirmative threat determination.

Based upon our analysis of the declining German capacity, lack of significant excess capacity, absence of inventories, and lack of evidence of any likely price suppressing or depressing effects, we do not find a reasonable indication of threat of material injury by reason of imports of certain steel wire rod from Germany.

Conclusion

In view of the high operating levels and strong financial position of the domestic industry and the absence of significant adverse volume or price effects, among other reasons, as noted in the Brazil and Japan Final Determinations and readopted in this determination, we find that there is no reasonable indication that the domestic industry producing certain steel wire rod is experiencing present material injury by reason of allegedly LTFV imports from Belgium or Germany, or by reason of allegedly subsidized imports from Germany. Vice Chairman Watson and Commissioner Crawford find that there is no reasonable indication that the domestic industry is threatened by reason of allegedly LTFV imports from Belgium. Commissioner Nuzum finds a reasonable indication that the domestic industry is threatened by reason of allegedly LTFV imports from Belgium. We do not, however, find any reasonable indication that the domestic industry producing certain steel wire rod is threatened with material injury by reason of allegedly subsidized or LTFV imports from Germany.

⁵³ CR at I-82; PR at I-39; CR at I-83, Table 20.

⁵⁴ See CR at I-51 - I-52; PR at I-25.

⁵⁵ CR at I-90, Table 23.

⁵⁶ CR at I-82; PR at I-39.

⁵⁷ CR at I-83, Table 20.

VIEWS OF COMMISSIONER DAVID B. ROHR

I determine that there is a reasonable indication that the industry in the United States producing certain steel wire rod is threatened with material injury by reason of imports of certain carbon and alloy steel wire rod from Belgium that allegedly are sold in the United States at less than fair value ("LTFV"). I also determine that there is no reasonable indication that the industry in the United States producing certain steel wire rod is materially injured or threatened with material injury by reason of imports of the subject merchandise from Germany that are allegedly subsidized and sold at LTFV.¹

LIKE PRODUCT

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, I begin as always by defining the "like product"² and the "domestic industry."³ I begin by noting that the Department of Commerce ("Commerce") has defined the article subject to these investigations as:

hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter....⁴

This is the same article that was subject to investigation in our recently decided investigations involving imports from Brazil and Japan. In those investigations, I found a single like product consisting of certain carbon and alloy steel wire rod. I readopt my finding from that determination.

DOMESTIC INDUSTRY

In light of my like product determination, I reaffirm my decision in the Brazil and Japan investigation that there is a single domestic industry comprising the producers of certain carbon and alloy steel wire rod.⁵ In the Brazil and Japan investigations, I determined not to exclude two domestic producers related to a Canadian producer, which is also an importer of record.⁶ I hereby readopt my finding and determine not to exclude the two domestic producers that are related parties.

¹ 19 U.S.C. §§ 1671b(a), 1673b(a). Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

² 19 U.S.C. § 1677(10). 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. My 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. I typically consider a number of factors, including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and (6) where appropriate, price. No single factor is dispositive. I may consider any other factors I decide are relevant to a particular investigation. I look for clear dividing lines among possible like products, and disregard minor variations.

³ 19 U.S.C. § 1677(4)(A). 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 59 Fed. Reg. 11773 (March 14, 1994).

⁵ USITC Pub. 2761, at I-30.

⁶ USITC Pub. 2761, at I-30; see CR at I-49; PR at I-24.

CONDITION OF THE DOMESTIC INDUSTRY

I am readopting my assessment of the condition of the domestic industry contained in my views in the Brazil and Japan final investigations.⁷ I conclude that the industry is not currently experiencing material injury. I therefore proceed immediately to my consideration of whether there is a reasonable indication that the imports present a threat of material injury to the domestic industry.

REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY IMPORTS FROM BELGIUM

For purposes of these views, I adopt my views regarding the vulnerability of the domestic industry contained in my recent determination in the investigations of wire rod imports from Brazil and Japan.⁸ I also readopt my views concerning any cumulative assessment of the imports.⁹ I note that the Belgian imports did not enter the United States until late in the period of investigation and were at very small volumes even at the end of the period of investigation.¹⁰

I am making an affirmative determination in this investigation because I find I am required to do so under the standard that is applicable to preliminary investigations. This standard requires that I find both that there is no reasonable indication that the imports pose a threat to the domestic industry and that there is no likelihood that contrary evidence will arise in any final investigation.¹¹ At the present time the Commission has little information about the Belgian imports because the foreign industry did not respond to the Commission's requests for information. We therefore know only that Belgian imports were able to increase from approximately 1000 to 23,000 tons in interim 1993.¹² We have no information on Belgian capacity. We have no information about Belgian home market shipments and other export markets. We have little information about inventories. We have little information about prices. I cannot find in such a situation, where the little evidence we have suggests an ability to rapidly increase sales to the United States, that there is no reasonable indication that the imports pose a threat to the domestic industry or that there is no likelihood of evidence establishing such a threat being obtained in any final investigation.

NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY IMPORTS FROM GERMANY

For purposes of this determination, I am adopting the views I expressed in the recent Commission investigation of Brazilian and Japanese imports with respect to the vulnerability of the industry and the cumulative assessment of imports.¹³ I determine that there is no threat of material injury by reason of allegedly subsidized or LTFV imports from Germany. The Commission is required explicitly to consider 10 factors in its threat analysis,¹⁴ only eight of which are factually relevant to these investigations.

In making my determination, I considered information pertaining to the nature of the subsidy; whether increases in production capacity or existing unused capacity in the exporting country are likely to result in a significant increase in imports of the merchandise to the United States; whether there were rapid increases in United States market penetration and the likelihood that the penetration will increase to an injurious level; the probability that subject

⁷ USITC Pub 2761, at I-30-33.

⁸ USITC Pub. 2761, at I-34.

⁹ USITC Pub. 2761, at I-33.

¹⁰ CR at I-89, Table 23; CR at I-123, Table 30.

¹¹ *American Lamb Co. v. United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986).

¹² CR at I-89; Table 23.

¹³ USITC Pub. 2761, at I-34.

¹⁴ See 19 U.S.C. § 1677(7)(F)(i).

imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; whether there has been a substantial increase in inventories of the subject merchandise in the United States; whether there is underutilized capacity for producing the merchandise in the exporting country; whether there any other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury; and the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁵

I note that, as pertains to threat, evidence from the most recent portion of the period of investigation is an important part of my analysis. As discussed in my prior views in the Brazil and Japan investigations, the information from the interim period, combined with the fourth-quarter 1993 financial data, showed a definite improvement in the financial condition of the domestic industry.¹⁶

With respect to the nature of the subsidies being alleged, I note that nothing in the petition indicates that the alleged bounty or grant is in the nature of an export subsidy.

German steel wire rod capacity declined between 1990 and 1992, and continued to decline between interim periods. The projected capacity for 1993 is less than the actual capacity for all years from 1990 to 1992, and is anticipated to remain steady in 1994.¹⁷ Although the capacity utilization rates fluctuated significantly during the period of investigation, one of the three known German steel wire rod producers has shut down one rod mill and a rod and bar mill to eliminate obsolete and excess capacity, and has modernized another rod mill, enabling it to tighten production.¹⁸ In addition, Germany has a number of other major export markets, which in the aggregate surpass by far the importance of the U.S. market.¹⁹

The share of U.S. consumption held by imports from Germany increased throughout the period of investigation,²⁰ but until the interim 1993 period was at extremely small levels. I find no evidence that imports from Germany alone will have any price suppressing or depressing effects. Further, there were no end-of-period inventories of subject German imports in the United States after 1990.²¹ I find no increase in production capacity or underutilized capacity that is likely to be used for increased exports to the United States.

Based upon my analysis of the relatively small levels of German imports, declining German capacity, lack of significant excess capacity, absence of inventories, and lack of evidence of any likely price suppressing or depressing effects, I do not find a reasonable indication of threat of material injury by reason of imports of certain steel wire rod from Germany.

¹⁵ 19 U.S.C. § 1677(7)(F)(I), (II), (III), (IV), (V), (VI), (VII), and (X). Because these investigations do not involve an agricultural product, Factor IX is inapplicable. Product shifting, Factor VII, is not an issue because there is no evidence that foreign manufacturers of certain steel wire rod produce any other products currently under investigation or subject to an order. In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii). There is no evidence of such dumping findings or remedies concerning certain steel wire rod from Belgium and Germany.

¹⁶ See USITC Pub. 2761, at I-32-33; CR at I-63, Table 11; I-68, Table 13.

¹⁷ CR at I-83, Table 20.

¹⁸ CR at I-82; PR at I-39; CR at I-83, Table 20.

¹⁹ CR at I-82; PR at I-39; CR at I-83, Table 20.

²⁰ CR at I-90, Table 23.

²¹ CR at I-76, Table 17.

ADDITIONAL VIEWS OF COMMISSIONER JANET A. NUZUM

In these two preliminary investigations, I make an affirmative determination with respect to the steel wire rod imports from Belgium, and a negative determination with respect to steel wire rod imports from Germany. Much of the analysis and rationale underlying my recent negative determinations in the final investigations of steel wire rod imports from Brazil and Japan¹ also applies to my negative determination here with respect to imports from Germany. My one affirmative determination in these investigations, with respect to imports from Belgium, is driven primarily by the lack of information on the foreign industry that is necessary for a thorough analysis of threat.

My findings and analysis with respect to the definition of like product, the domestic industry and related parties are presented jointly with Vice Chairman Watson and Commissioner Crawford. These additional views address cumulation, my negative present injury analysis for imports from Belgium and from Germany, and my affirmative threat analysis for imports from Belgium. My negative threat analysis for imports from Germany is presented jointly with Vice Chairman Watson and Commissioner Crawford.

I. CUMULATION

In determining whether there is a reasonable indication of material injury by reason of LTFV imports, the Commission is required to "cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market."² Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.³

With regard to whether the subject imports compete with each other and the domestic like product, the Commission generally has considered 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;⁴
- (2) the presence of sales or offers to sell in the same geographic markets of imports from different countries and the domestic like product;

¹ Views of Vice Chairman Watson, Commissioner Crawford and Commissioner Nuzum in Certain Steel Wire Rod from Brazil and Japan, Invs. Nos. 731-TA-646-648 (Final) (Brazil and Japan Final Determinations).

² 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1101 (Fed. Cir. 1990).

As of the time of my determination in these preliminary investigations, imports of certain steel wire rod from Belgium, Brazil, Canada, Germany and Japan were all subject to investigation, even though the petition pertaining to the countries at issue in the preliminary investigations was filed later than the petition for the other countries. See, e.g., Ferrosilicon from the People's Republic of China, Inv. No. 731-TA-567 (Final), USITC Pub. 2606, at 12, 22 (Mar. 1993) (cumulating imports from Brazil and Egypt, subject to preliminary investigations, with those from China, Kazakhstan, Russia, Ukraine and Venezuela, subject to final investigations).

³ 19 U.S.C. § 1677(7)(C)(v).

⁴ The application of the "fungibility" factor in assessing competition presents special difficulties in cases such as these involving a myriad of products within a single like product. See Brazil and Japan Final Determinations at I-13.

(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.

No single factor is determinative and the list of factors is not exclusive. Only a "reasonable overlap" of competition is required; the Commission does not have to find that all imports compete with all other imports and all domestic like products.⁵

A. Reasonable Overlap in Competition

The Commission's investigation of alleged lost sales and revenues revealed customers who purchased wire rod from domestic, Belgian, Brazilian, Canadian and German suppliers.⁶ Although the volume of imports from Belgium was relatively small, these imports competed head-to-head with imports from other subject countries.⁷ For example, imports of industrial quality wire rod were reported from Belgium in 1993.⁸ Industrial quality rod has less stringent specifications than other types of steel wire rod;⁹ thus, it would appear that industrial quality rod from different sources has a greater degree of fungibility. Other significant suppliers of industrial quality rod to the U.S. market during the period examined include domestic, Brazilian, Canadian and German firms.¹⁰ The record also shows that there were shipments of high-carbon and CHQ rod from Belgium, Germany and Japan.¹¹ I note the frequency with which individual purchasers of Belgian wire rod sourced wire rod from either domestic producers and/or more than one subject country.¹² Overall, the record suggests a reasonable degree of fungibility between specific wire rod products from these five countries and between the Belgian product and corresponding U.S. product.

With respect to the German product, I note that imports were reported in four of the six product categories for which pricing data were obtained.¹³ More specifically, there were imports from Germany of industrial quality, high-carbon quality and CHQ rod.¹⁴ Also as noted above, domestic, Belgian, Brazilian and Canadian firms also supplied industrial rod to the U.S. market.¹⁵ The record shows that there were shipments of high-carbon and CHQ rod from Belgium, Germany and Japan.¹⁶ One purchaser of tire quality rod obtains rod from Japan, Canada and Germany.¹⁷ Some purchasers of tire quality rod for small filament applications, which are highly critical, obtained rod from Germany, Canada and Japan.¹⁸ At least one purchaser stated that its purchases of German wire rod were directly related to its

⁵ Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989); Granges Metallverken AB v. United States, 716 F. Supp. 17, 21, 22 (Ct. Int'l Trade 1989).

⁶ CR at I-130 - I-134, I-136 - I-137; PR at II-59.

⁷ See CR at I-123, Table 30.

⁸ Id.

⁹ CR at I-93; PR at II-48.

¹⁰ See CR at I-123, Table 30, and I-30, Table 3 (relates to 1992 only).

¹¹ CR at I-29 n.35; PR at II-16 n.34; CR at I-30, Table 3.

¹² See Post-Conference Brief of American Wire Producers Association at 7-8; CR at I-129 to I-141; PR at II-59; Post-Conference Brief of American Wire Producers Association at Ex. 2 (Mar. 9, 1994).

¹³ CR at I-123, Table 30.

¹⁴ CR at I-30, Table 3.

¹⁵ See CR at I-123, Table 30; CR at I-30, Table 3 (relates to 1992 only).

¹⁶ CR at I-29 n.35; PR at II-16 n.34; CR at I-30, Table 3.

¹⁷ Prehearing Brief of Michelin Tire Corporation at 9 (Feb. 8, 1994); Post-Conference Brief of Michelin Tire Corporation at 7-8.

¹⁸ See Post-Conference Brief of Amercord Inc. at 3 (Mar. 9, 1994); Post-Conference Brief of Michelin Tire Corporation at 5 (Mar. 9, 1994); see also CR at I-29 n.35; PR at II-16 n. 34.

inability to obtain Japanese and Canadian wire rod.¹⁹ I note the frequency with which individual purchasers of German wire rod reported sourcing wire rod from either domestic producers and/or more than one subject country.²⁰ Overall, the record therefore also suggests a reasonable degree of fungibility between specific wire rod products from these five countries and between the German product and corresponding U.S. product.

Other factors also support cumulation for present injury. For example, domestic sales of wire rod were nationwide. Imports from most of the countries shared common ports-of-entry during the period examined.²¹ Evidence discussed above regarding individual purchasers sourcing product from multiple subject countries is another indication of the broad geographic overlap of the imports from various sources with each other and with the like product. Also, the channels of distribution for all subject imports and the domestic like product are the same or similar: the vast majority of sales are to end users, with a small number made to distributors.²² Finally, the subject imports from Belgium and Germany were simultaneously present in the market during the period of investigation, as were the imports from Brazil, Canada and Japan. Belgian and German wire rod entered the market in particularly significant quantities in 1993; during that time imports from the other three countries subject to investigation were also present.²³

I therefore find a reasonable overlap of competition between the imports from Belgium and the imports from Brazil, Canada, Germany and Japan, sufficient to cumulate these five countries for purposes of my present injury analysis of the effects of LTFV imports from Belgium. Similarly, I find a reasonable overlap of competition between the imports from Germany and the imports from Belgium, Brazil, Canada and Japan sufficient to cumulate these same five countries in my present injury analysis with respect to imports from Germany.

B. Negligibility

The statute provides that the Commission is not required to cumulate in any case in which it determines that imports of the merchandise subject to investigation "are negligible and have no discernable adverse impact on the domestic industry."²⁴ In determining whether imports are negligible, the Commission considers all relevant economic factors, including whether:

- (I) the volume and market share of the imports are negligible;
- (II) sales transactions involving the imports are isolated and sporadic; and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.²⁵

¹⁹ Post-Conference Brief of Michelin Tire Corporation at 7-8. See also CR at I-35, Table 4.

²⁰ See Post-Conference Brief of American Wire Producers Association at 7-8; CR at I-129 - I-141; PR at II-59; Post-Conference Brief of American Wire Producers Association at Ex. 2 (Mar. 9, 1994).

²¹ See INV-R-036 (Mar. 16, 1994). I note, however, that it appears that there were no Belgian imports in the western or northeast regions of the United States, nor imports from Canada in the southern region. Id. This fact alone is insufficient to support a finding that there is no reasonable overlap of competition. See Wieland Werke, AG v. United States, 718 F. Supp. at 52.

²² CR at I-49 - I-50; PR at II-24.

²³ See CR at I-86, Table 22.

²⁴ 19 U.S.C. § 1677(7)(C)(v).

²⁵ 19 U.S.C. § 1677(7)(C)(v).

The negligible imports exception is to be applied narrowly and is not to be used to subvert the purpose and general applicability of the mandatory cumulation provision of the statute.²⁶ Petitioners argue that there is no factual basis for any negligibility findings, while respondents argue that imports from Belgium and Germany were negligible.

Wire rod imports from Belgium increased dramatically, albeit from a small base, throughout the period of investigation. The volume of imports from Belgium in 1992 was over 10 times the amount that entered the market in 1990, and about 20 times as much Belgian rod entered the United States in interim 1993 as in interim 1992 period.²⁷ I do not find that imports from Belgium were sporadic or isolated, as alleged by respondents.²⁸ I also note that the primary Belgian wire rod producer is owned by an Italian group, which also owns a major German wire rod exporter.²⁹ In view of all the above, I find that imports of Belgian rod are not negligible.

The volume of German rod imports more than tripled from 1990 to 1992, and increased by almost four times between interim periods.³⁰ German market share rose steadily between 1990 and 1992, and more than tripled between interim periods.³¹ Respondents concede that these imports do not appear to be sporadic.³² As the majority stated in explaining its finding with respect to Japanese rod imports, the trend of increasing imports from Germany indicates that we should not determine that they are negligible.³³

Based therefore on my analysis of the evidence in the record, I have considered the cumulated volume and price effects of imports of certain steel wire rod from Belgium, Brazil, Canada, Germany and Japan in making my preliminary present injury determinations with respect to both Belgium and Germany.³⁴

II. VOLUME OF THE LTFV IMPORTS

The volume of the cumulated imports generally followed trends in consumption during the period examined, but import volumes expanded overall at a somewhat greater rate. Imports decreased from 565,571 short tons (tons) in 1990 to 534,118 tons in 1991, and then rose strongly to 753,499 tons in 1992. The cumulated imports showed continued growth in 1993, reaching 615,648 tons in the first three quarters, compared with 570,701 tons in interim 1992.³⁵ The market share of these imports exhibited a similar trend, falling from 9.8 percent in 1990 to 9.5 percent in 1991, then increasing to 12.5 percent in 1992. The subject import market share in interim 1993, 12.6 percent, was 0.1 percentage points above the full-year 1992 level and 0.3 percentage points above the interim 1992 level.³⁶

Subject import volumes and market share declined in a stagnant market (1990 to 1991), and rose in an expanding market (1991 to 1992 and interim 1992 compared with

²⁶ See H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

²⁷ CR at I-89, Table 23.

²⁸ See INV-R-036.

²⁹ See Petition for the Imposition of Antidumping and Countervailing Duties, Common Volume, at 29-30 (Feb. 11, 1994). See also Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Invs. Nos. 731-TA-486-494 (Preliminary), USITC Pub. 2359, at 29 n.94 (Feb. 1991) (such a close relationship may be a "relevant economic factor" in applying the negligible imports exception).

³⁰ CR at I-89, Table 23.

³¹ CR at I-90, Table 23.

³² Canadian Respondents' Posthearing Brief at 43.

³³ See Brazil and Japan Final Determinations at I-23 - I-24.

³⁴ In considering the cumulated imports from these five countries, I note that the volume and price effects will be somewhat overstated due to the fact that some of the imports from two of the cumulated countries (specifically, Brazil and Japan) do not compete head-to-head with each other. I have taken this fact into account in my analysis.

³⁵ CR at I-89, Table 23.

³⁶ Id.

interim 1993). In contrast, the domestic producers' U.S. shipments actually rose marginally from 1990 to 1991, as well as rising in response to increased demand in 1992 and interim 1993. U.S. market share peaked in 1991 with consumption at its low for the period. The domestic industry did not share equally in the increased demand during 1991-92, as evidenced by the fact that imports rose more rapidly than did domestic shipments.³⁷ During January-September 1993, however, U.S. producers captured the maximum share of the market they could given existing capacity. They were unable to achieve higher levels of shipments or greater market share due to capacity constraints.³⁸ Indeed, the record indicates that purchasers sought greater volumes of domestic product than U.S. producers could deliver.³⁹

I do not find that the levels of, or increases in, the volume or market share of the subject imports were significant. I base this conclusion on the overall small increase in import market share, the steady increase in the volume of U.S. producers' U.S. shipments, and the evidence that U.S. producers captured the maximum share of the market practicable during the 9-month interim period of 1993, the most recent period for which we have data.

III. PRICE EFFECTS OF THE LTFV IMPORTS

In evaluating the effect of LTFV imports on prices, the Commission considers whether there has been significant price underselling of imports and whether the imports depress prices to a significant degree, or prevent, to a significant degree, price increases that otherwise would have occurred.⁴⁰

Domestic prices for steel wire rod generally declined from 1990 through most of 1992, but increased substantially in the first three quarters of 1993.⁴¹ Indeed, prices recovered to near all-time highs for the period examined.⁴² Rod prices closely followed the trend in scrap prices during the period examined.⁴³ As evidenced by the increased prices in 1993, there was no price depression in that year. Petitioners claimed, however, that domestic prices were suppressed by LTFV imports despite these price increases, and that their profit margins did not necessarily rise because of the large increases in purchase prices for scrap, which accounts for a substantial percentage of the total cost of wire rod.⁴⁴ Yet, overall, it appears that domestic producers' five price increases for steel wire rod in 1993 exceeded overall cost increases and resulted in an increased operating income margin for the interim 1993 period.⁴⁵

The pricing data gathered in this investigation reflect a mixed pattern of overselling and underselling. On a cumulated basis, instances and margins of overselling exceeded instances and margins of underselling.⁴⁶ The instances of underselling were, however, more prevalent in 1992 and interim 1993. It appears that some of the underselling during the interim 1993 period reflects the delays in delivery of the imports.⁴⁷ As noted above,

³⁷ Id.

³⁸ See CR at I-51, Table 6; CR at I-54 - 55; PR at II-25 -26. I also note that plant production disruptions reportedly reduced output potential by some 60,000 tons during the first half of 1993. CR at I-53 - I-54; PR at II-25.

³⁹ E.g., CR at I-103 - 104; PR at II-52 - 53.

⁴⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁴¹ CR at I-96; PR at II-45.

⁴² See CR at I-123, Table 30.

⁴³ CR at I-99 & Figure 2.

⁴⁴ CR at I-98 - I-99; PR at II-49 - II-50.

⁴⁵ See CR at I-68, Table 13. I note that these improvements in operating income margins continued into the fourth quarter of 1993. See id.

⁴⁶ See CR at I-123, Table 30.

⁴⁷ There are generally longer lead times in delivery for imported rod as compared to domestic rod. See CR at I-100 - I-101; PR at II-50 - II-51. In addition, prices are generally set with quarterly agreements, which are entered into four to six weeks before the end of a quarter and cover a firm's

(continued...)

underselling during 1993 did not keep domestic prices from rebounding in excess of cost increases.⁴⁷ I therefore find, notwithstanding evidence of underselling, that such underselling was not significant.

I find that the subject imports did not have significant adverse price effects on domestic prices during the period examined. I base this conclusion primarily on the domestic industry's ability to implement price increases well in excess of overall cost increases during interim 1993.

IV. IMPACT ON THE DOMESTIC INDUSTRY

I incorporate by reference the discussion of the condition of the domestic industry presented in the Brazil and Japan Final Determinations.⁴⁸ I find no reasonable indication of a present adverse impact on the domestic industry by the cumulated subject imports. While the imports increased in volume over the period of investigation, and while their market shares also increased,⁴⁹ for the most part these increases did not displace the domestic product. Specifically in the most recent period for which data are available, the domestic industry was unable to supply its customers with the quantity of steel wire rod demanded. Moreover, the pricing data obtained in these investigations also fail to show evidence of declining or suppressed prices in the most recent period, and do not indicate significant underselling by the cumulated subject imports.

The domestic industry is proceeding to increase capacity, including the capacity to produce such specialized products as high-end CHQ wire rod,⁵¹ and is making progress in meeting the qualification requirements of purchasers in order to sell other specialized products such as tire cord quality rod.⁵² Finally, the evidence obtained indicating the domestic industry's significantly improved financial performance in 1993⁵³ supports my finding of no reasonable indication of material injury to the domestic industry by the subject imports.

V. REASONABLE INDICATION OF A THREAT OF MATERIAL INJURY BY REASON OF IMPORTS FROM BELGIUM

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission cannot base such a determination on mere conjecture or supposition.⁵⁴ The legal standard applicable to a threat determination in this investigation requires that the Commission determine, based on the best information available, whether there is a reasonable

⁴⁷ (...continued)
requirements for the following quarter. Economic Memorandum at 12; see also Hearing Tr. at 282 (noting long lag times between order and delivery).

⁴⁸ See CR at I-123, Table 30.

⁴⁹ See Brazil and Japan Final Determinations at I-12 - I-17.

⁵⁰ See INV-R-036 at Tables 2 & 3.

⁵¹ Capacity for wire rod production is expected to increase between 1993 and 1995 with the entrance of two new rod mills. In January 1994, one company began production of high-end CHQ wire rod. In 1992, a joint venture including a Japanese firm announced plans for a rod mill originally due to begin production in 1994, but now delayed until 1995. Economic Memorandum at 22. The same joint venture is upgrading its bar mill at a cost of approximately \$70 million. CR at I-51; PR at II-25. Further, another company is planning to build a 1 million ton rod and bar mill to supply CHQ and welding quality rod, at an estimated cost of \$180-\$200 million. Economic Memorandum at 22 & n.29.

⁵² CR at I-105 - I-106; PR at II-52.

⁵³ See CR at I-68, Table 13. Almost all producers shared in the increases in both unit sales values and profitability during the fourth quarter of 1993. CR at I-67; PR at II-34.

⁵⁴ 19 U.S.C. § 1677(7)(F)(ii).

indication of threat of material injury by reason of the allegedly LTFV imports. Our reviewing courts have indicated that in applying this standard the Commission may weigh the evidence to determine whether the record as a whole contains clear and convincing evidence that there is no threat of material injury, and whether there is no likelihood that any contrary evidence will arise in a final investigation.⁵⁵ The Commission must consider ten factors in its threat analysis.⁵⁶

The one identified Belgian producer did not respond to the Commission's request for data.⁵⁷ The record therefore does not contain information regarding the productive capacity of the Belgian producer. Official import statistics indicate small levels of imports of wire rod from Belgium during 1990-91.⁵⁸ The U.S. Embassy in Brussels reported that the Belgian plant became operational in August 1992,⁵⁹ thus suggesting an increase in capacity at that time. Without either capacity or production information, it is not possible to quantify unused or underutilized capacity. Based on information that the plant currently operates only on night shifts and weekends,⁶⁰ however, it certainly appears that existing capacity is far from fully utilized. The increase in Belgian exports of wire rod to the United States⁶¹ so soon after the establishment of the plant suggests that an increase in Belgian capacity and/or existing unused/underutilized capacity is likely to result in further increased exports to the United States.

Imports from Belgium increased rapidly towards the end of the period examined.⁶² Although the volume and market share of these imports remained small, we have no information regarding the potential volume and market share of future imports. It is difficult to judge, therefore, whether such volumes are or are not likely to reach injurious levels.

It is similarly difficult to judge, based on this record, whether there is a probability that imports of wire rod from Belgium will have a depressing or suppressing effect on domestic prices of the merchandise. I do not find that either the cumulated imports or the imports from Belgium alone had a significant price depressing or suppressing effect during the period 1991-93. There is no hard evidence suggesting a probability of future depressing or suppressing price effects. However, given the lack of information on Belgian capacity, production and capacity utilization, I am reluctant to draw any conclusion about future price effects.

Another factor we must consider is any substantial increase in inventories of subject imports in the United States. Inventories of wire rod are not generally held as the product is produced in response to customer order and shipped upon production.⁶³ Thus, for this particular industry, inventory indicators are not significant, and I have accordingly not placed much weight on this factor. I have not identified any other demonstrable adverse trends with respect to imports from Belgium.

While the existing evidence with regard to threat is mixed, the limited nature of the evidence supporting a negative threat finding does not rise to the level of "clear and convincing." The amount of missing information is substantial and I therefore cannot conclude that there is no likelihood that any contrary information would arise in a final investigation. Accordingly, I make an affirmative preliminary determination that the domestic industry producing certain steel wire rod is threatened with material injury by reason of the subject imports from Belgium.

⁵⁵ American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986).

⁵⁶ Id. § 1677(F)(i)(I-X). Since the investigation with regard to Belgium does not involve either an alleged subsidy or an agricultural product, factors I and IX of the statute are not applicable.

⁵⁷ CR at I-77; PR at II-38.

⁵⁸ CR at I-85 - I-87 and Table 22.

⁵⁹ CR at I-77; PR at II-38.

⁶⁰ Id.

⁶¹ See CR at I-86, Table 22.

⁶² Id.

⁶³ CR at I-57 (relating to domestic inventories), and I-75 - I-76 (relating to Japanese inventories). PR at II-28 and II-37 - II-38.

SEPARATE AND DISSENTING VIEWS OF CHAIRMAN NEWQUIST

Like my colleagues, I find that there is a reasonable indication that the domestic industry producing certain steel wire rod is threatened with material injury by reason of imports of this product from Belgium which are allegedly sold in the United States at less-than-fair-value ("LTFV").¹ Unlike my colleagues, however, I also find that there is a reasonable indication that this industry is threatened with material injury by reason of imports from Germany which are allegedly subsidized and sold in the United States at LTFV.

In these preliminary investigations, the majority incorporates and adopts by reference much of its opinion in Certain Steel Wire Rod from Brazil and Japan.² I too adopt and incorporate by reference my dissenting views in those final investigations. My opinion there fully explains my views of the condition of the industry, cumulation, and threat of material injury. The only aspect of that opinion requiring discussion here is the standard for preliminary investigations, *i.e.*, there need be only a "reasonable indication" that imports from Belgium and Germany threaten material injury. In my view, my opinion in those final investigations makes clear that this standard is met in these preliminary investigations.

Accordingly, for the reasons discussed in my dissenting views in Certain Steel Wire Rod from Brazil and Japan, I determine that there is a reasonable indication that the domestic industry producing steel wire rod is threatened with material injury by reason of imports from Belgium which are allegedly sold in the United States at less-than-fair-value and imports from Germany which are allegedly subsidized and sold in the United States at less-than-fair-value.

¹ I concur with the majority's discussion of like product and domestic industry, and generally concur with its discussion of the condition of the domestic industry.

² Invs. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 (March 1994). All four of these investigations were voted on in the same Commission meeting on March 17, 1994.

DISSENTING VIEWS OF VICE CHAIRMAN WATSON AND COMMISSIONER CRAWFORD

In assessing whether there is a reasonable indication that a domestic industry is threatened with material injury by reason of allegedly subsidized or LTFV imports, the Commission has the discretion to cumulate the volume and price effects of such imports if they compete with each other and with the like product of the domestic industry in the United States market.¹ For the reasons we have set forth in the Brazil and Japan Final Determinations regarding threat of material injury, we decline to cumulate imports from Germany and Belgium with other LTFV imports.² We also find it to be inappropriate to cumulate LTFV imports from Germany and Belgium with each other.³

NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY IMPORTS FROM BELGIUM

In reaching our negative determination herein, we have considered all of the relevant statutory threat factors.⁴

The petition listed one Belgian company, Forges de Thy-Marcinelle, as producing steel wire rod.⁵ Although that company did not respond to the Commission's request for data, the United States embassy in Brussels did provide certain information which we find sufficient to support a negative determination in these preliminary investigations. Forges de Thy-Marcinelle's plant became operational in August of 1992.⁶ Shipments to the United States were almost nonexistent until the interim period when Belgium gained a .5% share of the U.S. market in terms of quantity and a .4% share in terms of value.⁷ Imports of Belgian steel wire rod have continued into 1994 although the record does not appear to contain evidence that production and shipment levels will rise in 1994 as compared with 1993.⁸

It is true that the Commission does not know the exact level of current capacity of Thy-Marcinelle's plant. We note that even if the current level of LTFV imports from Belgium were to increase five fold in 1994 as compared with 1993, that level would not be significant. Giving petitioners the benefit of the doubt in these preliminary investigations, if we were to assume that a rapid increase in U.S. market penetration of 500% by the LTFV Belgian imports was projected to take place in 1994, we find that such market penetration would not reach injurious levels in the imminent future.⁹ In reaching this conclusion, we have considered the same factors and conditions of competition that we discussed in our

¹ 19 U.S.C. Section 1677 (7)(F)(iv).

² See, Views of Vice Chairman Watson, Commissioner Crawford and Commissioner Nuzum (Final Investigations Nos. 731-TA-646-647) at USITC No. 2761 (Brazil and Japan Final Determinations).

³ See, Views of Vice Chairman Watson, Commissioner Crawford and Commissioner Nuzum (Preliminary Investigations Nos. 731-TA-686-687, 701-TA-359) at USITC Pub. 2761.

⁴ See, 19 U.S.C. Section 1677(7)(F)(i).

⁵ CR at I-77; PR at II-38.

⁶ *Id.* The company has approximately 240 employees, all of whom work exclusively on night shifts and weekends to enable the company to benefit from reduced electricity rates. Although Forges de Thy-Marcinelle reportedly operated below capacity during 1992 due to low steel prices, its capacity utilization rates have improved since then.

⁷ CR at C-3, Table C-1.

⁸ CR at I-77; PR at II-38. One Belgium importer reported deliveries of *** short tons of steel wire rod between October 1993 and April 1994. The United States embassy in Brussels indicated that Forges de Thy-Marcinelle's primary customers are in Belgium, France, Germany and Italy.

⁹ A rise of 500% in Belgian import levels would result in a market share of approximately 2.5% of apparent consumption assuming U.S. consumption remains constant.

Brazil and Japan final determinations regarding the impact of subject imports on the domestic industry.¹⁰

The Commission was able to make price comparisons in only two instances.¹¹ These data do not indicate a likelihood of imminent price suppression or depression. The record also indicates that there were no reported end-of-period inventories of LTFV imports from Belgium held by U.S. importers.¹² There are no other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury. Moreover, LTFV imports from Belgium do not appear to be having any actual or potential negative effects on the existing development and production efforts of the domestic industry.

¹⁰ See, Brazil and Japan Final Determinations at I-12-16, I-31-32.

¹¹ CR at I-121; PR at II-57.

¹² CR at I-76, Table 17.

