

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Investigations Nos. 701-TA-368-371 (Final)**

**CERTAIN STEEL WIRE ROD FROM CANADA, GERMANY, TRINIDAD & TOBAGO, AND  
VENEZUELA**

## VIEWS OF THE COMMISSION

Based on the record in these countervailing duty investigations,<sup>1</sup> we find that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of certain steel wire rod from Canada, Trinidad and Tobago, and Venezuela that have been found by the Department of Commerce (“Commerce”) to be subsidized.<sup>2</sup> We further find that subsidized imports of certain steel wire rod from Germany are negligible, and thus do not make an injury determination with respect to subsidized imports from Germany.<sup>3</sup>

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>4</sup> In turn, the Act defines “domestic 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.”<sup>5</sup>

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of “like” or “most similar in characteristics and uses”

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<sup>1</sup>Various respondents have asked us to strike petitioners’ final comments from the record in these investigations on the grounds that they are not limited to comments on new information released by the Commission after the deadline for posthearing briefs as set forth in Commission rule 207.30, 19 C.F.R. § 207.30 (1997). When the Commission adopted rule 207.30, it specifically stated that responses to new factual information contained in other parties’ posthearing briefs and affidavits attached thereto is an appropriate use of final comments. The Commission also stated that while comments not directed to new factual information were “strongly discouraged,” only “new factual information” contained in final comments would be disregarded. 61 Fed. Reg. 37818, 37827 (July 22, 1996). Accordingly, we deny respondents’ request to strike. We note, however, that petitioners’ final comments are largely a reiteration of arguments made in their briefs.

<sup>2</sup>Material retardation of the establishment of an industry is not an issue in these investigations.

<sup>3</sup>Commissioner Crawford concurs in the majority’s finding with respect to subject imports from Germany and the negative determination with respect to subject imports from Trinidad and Tobago, but finds that an industry in the United States is materially injured by reason of subsidized imports from Canada and Venezuela. *See Dissenting Views of Commissioner Carol T. Crawford*. She joins sections I, II, III, IV, V(B) and VI(B)(2) of these views.

<sup>4</sup>19 U.S.C. § 1677(4)(A).

<sup>5</sup>19 U.S.C. § 1677(10).

on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise being subsidized, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Domestic Like Product Issues**

In its final determinations, the Department of Commerce defined the scope of merchandise subject to investigation as:

certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.0 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for a) stainless steel; b) tool steel; c) high nickel steel; d) ball bearing steel; e) free machining steel that contains by weight 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; or f) concrete reinforcing bars and rods.<sup>10</sup>

Commerce also excluded the following products from the scope of these investigations:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal

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<sup>6</sup>*See, e.g., Nippon Steel Corp. v. United States*, 19 CIT \_\_\_, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See id.* at 11 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

<sup>7</sup>*See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).*

<sup>8</sup>*Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

<sup>9</sup>*Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>10</sup>62 *Fed. Reg.* 54972 (October 22, 1997) (Canada); 62 *Fed. Reg.* 54990 (October 22, 1997) (Germany); 62 *Fed. Reg.* 55003 (October 22, 1997) (Trinidad and Tobago); and 62 *Fed. Reg.* 55014 (October 22, 1997) (Venezuela) (countervailing duty investigations).

to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorus plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. These products are commonly referred to as “Tire Cord Wire Rod.”

- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. These products are commonly referred to as “Valve Spring Quality Wire Rod.”<sup>11</sup>

The imported products covered by these investigations may generally be described as semifinished steel products produced by casting and hot rolling steel billets into irregularly wound coils which are then generally drawn into wire or made into small parts by downstream processors.<sup>12</sup>

In the preliminary phase of these investigations, the Commission found a single domestic like product, “certain steel wire rod,” consisting of all products within the scope description (including coiled bar, cold heading quality (“CHQ”) rod, and class-3 pipe wrap wire rod), plus tire cord wire rod.<sup>13</sup> In the final phase, respondents Saarlustahl and MGF reassert their argument that the Commission should find two like products, special quality and industrial quality wire rod, or, alternatively, CHQ and all other wire rod.<sup>14</sup> Petitioners argue that the Commission should adopt a single domestic like product coextensive with Commerce’s scope, which excludes tire cord wire rod.<sup>15</sup> In the following sections, we consider two domestic like product issues: (1) whether industrial quality and special quality wire rod are separate like products (including the related question whether CHQ is a separate like product from all other steel wire rod); and (2) whether the domestic like product includes tire cord wire rod.

**1. Whether “Industrial (Standard) Quality” and “Special (High) Quality” Steel Wire Rod Are Separate Like Products**

In the preliminary determinations we applied our six-factor analysis to the issues raised by

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<sup>11</sup>*Id.* Commerce’s notices also specify that “[t]he products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.”

<sup>12</sup>Confidential Report (“CR”) at I-4, Public Report (“PR”) at I-3.

<sup>13</sup>Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 and 731-TA-763-766 (Preliminary), USITC Pub. 3037 at 6 (April 1997) (“Prelim. Det.”). Vice Chairman Bragg determined that the like product did not include tire cord wire rod.

<sup>14</sup>Saarlustahl Prehearing Brief at 1-9; Saarlustahl Posthearing Brief at 8-10; MGF Prehearing Brief at 3-6; MGF Posthearing Brief at Appendix 1.

<sup>15</sup>Petitioners’ Prehearing Brief at 3-5. Also excluded from the scope is valve spring quality wire rod. However, because there is no known domestic production of this product, its exclusion does not raise a like product issue.

Saarstahl and MGF, and concluded that industrial quality and special quality steel wire rod should not be considered separate like products. Likewise we concluded that CHQ wire rod should not be considered a separate like product from all other forms of steel wire rod.<sup>16</sup> In the final phase, Saorstahl has proposed a chemical definition of industrial quality wire rod which it contends establishes a clear dividing line between industrial quality and special quality wire rod.<sup>17</sup> Similarly, MGF has put forth its internal specifications for CHQ wire rod as a “clear dividing line” establishing that product as a separate domestic like product.<sup>18</sup> However, the record does not show that industrial quality and special quality are universally recognized terms in the industry.<sup>19</sup> Additionally, because MGF has proposed a definition of CHQ wire rod which it has refined from Industrial Fasteners Institute specifications for CHQ wire rod, we find that MGF has merely defined a subset of all materials which may be considered CHQ rod, and has not identified a clear dividing line.<sup>20</sup> Therefore, based on the lack of persuasive new information on this issue in the final determination, we again find that the like product encompasses both industrial quality and special quality wire rod as well as CHQ wire rod.

## **2. Whether the Like Product Includes Tire Cord Wire Rod**<sup>21</sup>

As stated previously, the Commission must accept the determination of Commerce as to the scope of the imported merchandise that is subsidized or sold at LTFV; however, the Commission determines what domestic product is like the imported articles Commerce has identified. The statute requires us to identify a product which is “like” the merchandise subject to the scope of the investigation, or in the absence of such a product, to identify a product which is “most similar in characteristics and uses” to the imported merchandise.<sup>22</sup>

The Commission is not required to limit the “like product” to only the merchandise which

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<sup>16</sup>Prelim. Det. at 6-8.

<sup>17</sup>Saarstahl Prehearing Brief at 1-9.

<sup>18</sup>MGF Prehearing Brief at 3-6.

<sup>19</sup>CR at I-5, n.12, PR at I-4, n.12.

<sup>20</sup>MGF Prehearing Brief at 5.

<sup>21</sup>Vice Chairman Bragg does not join this discussion. In making a like product determination, Vice Chairman Bragg first attempts to identify a domestic product that is “like” the merchandise subject to the scope of the investigation as identified by Commerce, and only in the absence of a product that is “like” the subject merchandise does she attempt to identify a product that is “most similar in characteristics and uses.” In these investigations, Vice Chairman Bragg finds a product that is “like” the product subject to Commerce’s scope and does not find it necessary to proceed to the question of whether tire cord wire rod should be included within the like product. Nonetheless, the majority’s inclusion of tire cord wire rod in the like product does not significantly affect the data used in these investigations, and she therefore joins the majority’s discussion of other issues in these investigations.

<sup>22</sup>19 U.S.C. § 1677(10).

Commerce includes or excludes from its scope.<sup>23</sup> In a case such as the present one, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.<sup>24</sup> Accordingly, here we apply our traditional six factor test.

*Physical Characteristics and Uses.* Tire cord steel wire rod is a high-carbon product that the downstream purchaser bunches or cables together to form a cord that is used for tread reinforcement in steel reinforcement pneumatic tires. High-tensile tire cord is produced with 1080 grade rod, while regular-tensile cord is produced with 1070 grade rod. All tire cord wire rod is produced to fairly exacting specifications for chemistry, surface imperfections, cleanliness, and other characteristics.<sup>25</sup> While this product is produced under stringent standards, it is by no means unique in terms of the demanding quality restrictions. As discussed above, CHQ steel wire rod is an example of another product which must meet exacting standards, and yet is included within the like product.

*Interchangeability.* Tire cord wire rod is the only suitable input for the production of tire cord. However, at least one purchaser uses tire cord wire rod to produce both tire cord and tire bead.<sup>26</sup> Tire bead is normally produced with tire bead wire rod, a product which is included within the scope.<sup>27</sup>

*Channels of Distribution.* Like all steel wire rod, tire cord wire rod is sold by the manufacturer directly to the wire producer. Some tire manufacturers buy direct from the rod producer and draw their own wire, while others purchase tire cord wire from independent wire producers.<sup>28</sup>

*Common Manufacturing Facilities, Employees and Methods.* The two domestic producers that

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<sup>23</sup>As the Federal Circuit has held, “[b]oth the Court of International Trade and this court have long recognized that for injury determinations the “class or kind” and “like product” determinations required by the statute need not be consistent. . . . Commerce’s designation of the class or kind of merchandise sold at LTFV does not control the Commission’s definition of the industry injured in its sales of like products.” Hosiden Corp. v. Advanced Display Manufacturers of America, 85 F.3d 1561, 1564-5 (Fed. Cir. 1996) (citing Torrington Co. v. United States, 747 F. Supp. 744, 748 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). Indeed, the Commission has rejected “a construction of the controlling statute that would reduce the Commission’s like product/domestic industry determinations to rubber-stamping petitioner’s definitions as adopted by Commerce,” by in effect limiting the Commission’s definition of like product to an artificial body of articles exactly “like” the body of articles within the scope of investigation. Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, Inv. Nos. 701-TA-293-295 (Preliminary), USITC Pub. 2113 at 7-8 (August 1988); Minivans from Japan, Inv. No. 731-TA-522 (Preliminary), USITC Pub. 2402 at 11 (July 1991).

<sup>24</sup>Minivans, USITC Pub. 2402 at 11-17.

<sup>25</sup>CR at I-7-I-8, PR at I-5-I-6.

<sup>26</sup>Transcript of Preliminary Staff Conference (March 19, 1997) (“Conf. Tr.”) at 77-78.

<sup>27</sup>Commissioner Crawford considers interchangeability in her analysis of the like product. She is careful to distinguish substitutability, which she considers in her analysis of material injury by reason of subsidized or less than fair value subject imports.

<sup>28</sup>CR at I-7, PR at I-5.

currently manufacture tire cord wire rod do so using the same equipment and employees that produce all other steel wire rod.<sup>29</sup> At the preliminary conference, witnesses for petitioner GSI, the largest domestic producer of tire cord wire rod, testified that, although process controls must be carefully monitored for the production of tire cord wire rod, “the mill doesn’t know that it is working on tire cord billet.” Once a satisfactory set of process controls is developed to meet the customer’s specifications, it is not difficult to switch production back and forth between tire cord wire rod and other wire rod products.<sup>30</sup>

*Producer and Customer Perceptions.* Producers and consumers view tire cord as a discrete product meeting certain specifications.<sup>31</sup> The same is also true, however, for multiple steel wire rod products that are produced to specifications for particular end uses.

*Price.* A purchaser of tire cord wire rod testified that it is consistently priced significantly higher than other high quality specialty wire rod products. He also testified, however, that prices for tire cord wire rod tend to follow the same trend as prices for other steel wire rod.<sup>32</sup>

*Conclusion.* We conclude that the record does not establish a clear dividing line between tire cord wire rod and other steel wire rod. Although tire cord wire rod must be produced to exacting specifications, so must a number of other high-end products, and there is no evidence that the specifications for tire cord wire rod are any more exacting than (as opposed to merely different from) those for other products. Tire cord wire rod is sometimes used interchangeably with tire bead wire rod, which is within the scope. It is sold through the same channels of distribution and produced in the same facilities as other steel wire rod products, and its price, while higher than for other products, moves in tandem with prices for other steel wire rod products. Accordingly, we conclude that the domestic like product in these investigations includes tire cord wire rod.<sup>33</sup>

### **C. Domestic Industry and Related Parties**

The Commission is directed to consider the impact of the subject imports on the domestic industry, defined as “the producers as a [w]hole of a domestic like product.”<sup>34</sup> Based on our domestic like product definition, we define the corresponding domestic industry as all domestic producers of certain steel wire rod.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B). In these investigations, two domestic producers

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<sup>29</sup>Conf. Tr. at 79-80.

<sup>30</sup>Conf. Tr. 79-80.

<sup>31</sup>Conf. Tr. at 139-41.

<sup>32</sup>Conf. Tr. at 141.

<sup>33</sup>The domestic industry data to which we refer in these views does not include domestic production of tire cord wire rod. However, the total volume of domestically-produced tire cord wire rod is under \*\*\* percent of total domestic production of certain steel wire rod, such that its absence does not significantly skew our domestic industry data. CR at I-4, PR at I-3

<sup>34</sup>19 U.S.C. § 1677(4)(A).

of certain steel wire rod, Atlantic Steel Industries, Inc. (“Atlantic”) and Laclede Steel Company (“Laclede”) are wholly or partially owned by Ivaco, Inc., a Canadian company that also owns Canadian producer Ivaco Rolling Mills. Atlantic and Laclede are therefore related parties.<sup>35</sup> Accordingly, the Commission must consider whether appropriate circumstances exist to exclude them from the domestic industry.<sup>36</sup>

In 1996, Atlantic accounted for \*\*\* percent of domestic production of certain steel wire rod.<sup>37</sup> The financial data obtained in these preliminary investigations indicate that Atlantic Steel had \*\*\*.<sup>38</sup> Additionally, \*\*\*.<sup>39</sup> Thus, Atlantic does not seem to have received any significant financial benefit from the imports.

Laclede is the only domestic producer \*\*\*.<sup>40</sup> In 1996, Laclede accounted for \*\*\* percent of domestic production of certain steel wire rod, although that percentage was greater in earlier years.<sup>41</sup> Laclede ceased production of certain steel wire rod in April of 1996, citing \*\*\*.<sup>42</sup> Laclede’s direct imports and purchases of subject merchandise \*\*\*. Financial data obtained in these investigations show that Laclede performed \*\*\*, indicating that it received no significant financial benefit from its imports.<sup>43</sup>

Because neither of the related parties was a significant importer of the subject merchandise relative to its domestic production and neither appears to have derived a significant benefit from its use of imports vis-a-vis the rest of the domestic industry, we find that appropriate circumstances do not exist to exclude

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<sup>35</sup>Table III-1, CR at III-2, PR at III-2. Although Ivaco \*\*\* Laclede, in the preliminary determination the Commission concluded that record evidence supported the conclusion that Ivaco controlled Laclede. Prelim. Det. at 13. No evidence has come to light in the final phase that causes us to reconsider this conclusion.

<sup>36</sup>19 U.S.C. § 1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the related party will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for related producers; and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). *See also Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997) at 10 n.26.

<sup>37</sup>Table III-1, CR at III-2, PR at III-2.

<sup>38</sup>Table VI-3, CR at VI-9-VI-11, PR at VI-5.

<sup>39</sup>Although during the preliminary phase available data indicated that \*\*\*, more current information reveals \*\*\*. CR at III-1, PR at III-1.

<sup>40</sup>CR at III-1, PR at III-1.

<sup>41</sup>Table III-1, CR at III-2, PR at III-2.

<sup>42</sup>CR at III-2, PR at III-2.

<sup>43</sup>Table VI-3, CR at VI-9-VI-11, PR at VI-5.

any producers from the domestic industry.

## II. CONDITION OF THE DOMESTIC INDUSTRY <sup>44</sup>

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of subsidized imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>45</sup> 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 dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>46</sup>

We note several conditions of competition pertinent to our analysis of the domestic steel wire rod industry. First, we must decide whether to apply the statutory captive production provision for purposes of these determinations.<sup>47 48</sup> In our preliminary determinations, we found that 13 percent of domestic

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<sup>44</sup>Commissioner Crawford joins her colleagues in this investigation in a discussion of the “condition of the industry” even though she does not make her determination based on industry trends. Rather she views the discussion as a factual recitation of the data collected concerning the statutory impact factors.

<sup>45</sup>19 U.S.C. § 1677(7)(C)(iii).

<sup>46</sup>*Id.*

<sup>47</sup>19 U.S.C. § 1677(7)(C)(iv) sets forth the factors to be considered by the Commission in determining whether the captive production provision is applicable. If the threshold criteria are present, *i.e.*, domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, then the Commission shall determine whether:

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product;

(II) the domestic like product is the predominant material input in the production of that downstream article; and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article .

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19 U.S.C. § 1677(7)(C)(iv). If the Commission finds that these criteria are satisfied, it must “focus primarily on the merchant market for the domestic like product” in examining market share and the domestic industry’s financial condition.

<sup>48</sup>Commissioner Newquist takes no position on whether each of the provision’s “factors” or “tests”  
(continued...)

producers' total shipments of certain steel wire rod were internally consumed in the production of downstream products, an average of 80 percent was sold on the merchant market, and the remaining 7 percent was sold to related wire and wire products producers.<sup>49</sup> We found that the domestic industry sold a significant amount of its production of the domestic like product on the merchant market, but concluded that we did not need to reach the question of whether the domestic industry also internally transferred a significant amount of that production because the third statutory criterion was not satisfied in these investigations. In particular, the third criterion of the captive production provision requires that the domestic like product sold in the merchant market generally not be used in the production of the same downstream articles for which it is internally consumed. The evidence from both domestic producers and purchasers indicated that the domestic industry sells the same products on the merchant market as it consumes internally and that domestic wire rod producers' captive and related wire drawing operations compete with independent wire producers for sales of the same downstream products.<sup>50</sup> No party has challenged our preliminary determination that the captive production provision does not apply in these investigations nor have we obtained any contrary information in the final phase.<sup>51</sup> Accordingly, we reaffirm our preliminary conclusion that the captive production provision does not apply in these investigations.

Second, as petitioners acknowledge, domestic demand for certain steel wire rod exceeded domestic supply throughout the period of investigation. Thus, purchasers must rely on imports to some degree to satisfy demand.<sup>52</sup>

Third, the U.S. market for certain steel wire rod has experienced numerous supply disruptions during the period of investigation. These disruptions included both planned production outages as domestic producers modernized their facilities, as well as unplanned outages due to equipment failure, adverse weather conditions, and other causes. Reported domestic production lost to such outages were 31,000 short tons in 1994, 283,000 short tons in 1995, 314,700 short tons in 1996, and 101,600 short tons in interim (January-June) 1997.<sup>53</sup>

Finally, domestic producers generally sell steel wire rod through a quarterly negotiation process. Each quarter, domestic producers ask their customers to predict the grades and amounts of rod they will need in the following quarter and negotiate prices on the basis of those tentative orders. Domestic

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<sup>48</sup>(...continued)

are satisfied. He concurs, however, that in these investigations it is appropriate to assess the domestic industry as a whole.

<sup>49</sup>Prelim. Det. at 14.

<sup>50</sup>*Id.*

<sup>51</sup>See CR at VI-1, PR at VI-1; AWP A Prehearing Brief at 38.

<sup>52</sup>Petitioners' Prehearing Brief at 7; Conf. Tr. at 260-62; Table III-2, CR at III-4, PR at III-3; Table IV-2, CR at IV-3, PR at IV-3.

<sup>53</sup>Table III-2, CR at III-4, PR at III-3; CR at III-3, PR at III-1.

producers use the quarterly order book to set their rolling schedule for the following quarter.<sup>54</sup> Standard industry practice, however, permits purchasers to cancel or change their orders without penalty at least up until the time the rods are rolled and perhaps even until they are shipped.<sup>55</sup> Because a producer's rolling schedule cannot always be changed on short notice to meet changing purchaser needs, it is not unusual for producers to face gaps in their rolling schedule or for purchasers to find that a producer is at times unable to supply their short term needs for specific grades of rod.<sup>56</sup> As a consequence of this industry practice, domestic supply and demand are frequently not in equilibrium.<sup>57</sup>

The quantity of apparent U.S. consumption of certain steel wire rod rose from 7,282,940 short tons in 1994 to 7,464,394 short tons in 1995 and 7,472,788 short tons in 1996, for a total increase of 2.6 percent. Apparent consumption was 3,997,916 short tons in interim 1997 compared with 3,722,370 short tons in interim 1996.<sup>58</sup> During the same period, U.S. producers' share of consumption by quantity fell from 75.5 percent in 1994 to 72.1 percent in 1995 and 71.8 percent in 1996. U.S. producers' share of the quantity of consumption was 74.0 percent in interim 1997 compared with 73.9 percent in interim 1996.<sup>59</sup> U.S. producers' share of consumption by value fell from 74.2 percent in 1994 to 71.5 percent in 1995 and 70.1 percent in 1996, and was 72.8 percent in interim 1997 compared with 72.0 percent in interim 1996.<sup>60</sup>

Because, as noted above, production outages are a common occurrence in the steel wire rod industry, we obtained capacity data for the domestic industry net of production outages. These data show that the domestic industry's capacity to produce certain steel wire rod fell from 6,236,196 short tons in 1994 to 6,091,460 short tons in 1995 and 5,989,518 short tons in 1996, and was 3,256,301 short tons in interim 1997, compared with 3,004,486 short tons in interim 1996.<sup>61</sup> The industry's production volume fell from 5,526,397 short tons in 1994 to 5,521,393 short tons in 1995, and 5,375,712 short tons in 1996, and

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<sup>54</sup>CR at V-7-V-8, PR at V-6.

<sup>55</sup>Petitioners' Posthearing Brief at 8-9; Transcript of Commission Hearing (Oct. 16, 1997) ("Hearing Tr.") at 408, 415; CR at V-8, PR at V-7.

<sup>56</sup>Hearing Tr. at 409; CR at V-8, PR at V-7; Petitioners' Posthearing Brief, Appendix E at 3.

<sup>57</sup>While respondents asserted an additional condition of competition, that domestic producers favor their captive and related wire drawers over independent wire producers in times of short supply, the record evidence on this issue was mixed, and we have not relied on the existence of such a condition of competition in reaching these determinations.

<sup>58</sup>Table IV-2, CR at IV-3, PR at IV-3.

<sup>59</sup>*Id.*

<sup>60</sup>Table IV-2, CR at IV-3, PR at IV-3.

<sup>61</sup>We note that our capacity data are somewhat understated, since they do not include North Star's new 500,000-ton facility in Kingman, AZ. That facility, however, produced little steel wire rod during the period of investigation. We also note that some of the decline in the domestic industry's production capacity during the period is the temporary result of ongoing or recently completed plant modernizations, as well as \*\*\*. Some of the decline, however, is also due to Laclede's exit from the domestic industry in 1996. Capacity increases in interim 1997 reflect new and modernized capacity coming on line. CR at III-3, PR at III-1; CR at VI-7, PR at VI-4.

was 2,934,450 short tons in interim 1997 compared with 2,768,073 short tons in interim 1996. Capacity utilization was 88.6 percent in 1994, 90.6 percent in 1995, 89.8 percent in 1996, and 90.1 percent in interim 1997 compared with 92.1 percent in interim 1996.<sup>62</sup>

The domestic industry's total U.S. shipments of certain steel wire rod, by volume, fell from 5,495,673 short tons in 1994 to 5,380,579 short tons in 1995 and 5,361,834 short tons in 1996, for an overall decline of 2.4 percent. Producers' U.S. shipments were 2,957,970 short tons in interim 1997 compared with 2,752,337 short tons in interim 1996, a difference of 7.5 percent. The industry's total U.S. shipments by value rose from \$1,907,489,000 in 1994 to \$1,949,791,000 in 1995, then fell to \$1,823,128,000 in 1996. The value of U.S. shipments was \$ 1,011,823,000 in interim 1997, compared with \$933,144,000 in interim 1996.<sup>63</sup> The quantity of domestic producers' end-of-period inventories rose from 203,338 short tons in 1994 to 296,102 short tons in 1995 and 451,836 short tons in 1996. Inventories were 342,605 short tons in interim 1997 compared with 457,926 short tons in interim 1996. Although domestic producers' inventories increased over the period of investigation, we note that domestic producers' inventories were small relative to domestic shipments throughout the period, reflecting the fact that most steel wire rod is produced to customer order, and that most of the reported inventories were completed customer orders that had not yet been shipped.<sup>64</sup>

The average number of production and related workers employed by the domestic industry producing certain steel wire rod fell from 3,122 in 1994 to 3,106 in 1995 and 3,103 in 1996, for a total decline of 0.6 percent. The average number of PRWs was 3,022 in interim 1997 compared with 3,133 in interim 1996, a difference of 3.5 percent. Hours worked declined from 6,811 in 1994 to 6,596 in 1995 and 6,971 in 1996, and were 3,233 in interim 1997 compared with 3,498 in interim 1996. Wages paid rose from \$131,119,000 in 1994 to \$136,161,000 in 1995 and \$137,270,000 in 1996, and were \$66,772,000 in interim 1997 compared with \$70,334,000 in interim 1996. Productivity remained steady at 0.7 tons/hour in 1994, 1995 and 1996 and was 0.8 tons/hour in interim 1997 compared with 0.7 tons/hour in interim 1996.<sup>65</sup>

The domestic industry's net sales of certain steel wire rod by volume fell from 5,823,630 short tons in 1994 to 5,629,518 short tons in 1995, then rose to 5,751,958 short tons in 1996, an overall decline of 1.2 percent. Net sales by quantity were 3,084,695 short tons in interim 1997 compared with 2,901,352 short tons in interim 1996, a difference of 6.3 percent. Net sales value rose from \$2,063,977,000 in 1994 to \$2,068,738,000 in 1995 then fell to \$2,001,689,000 in 1996, an overall decline of 3 percent. Net sales value was \$1,088,833,000 in interim 1997 compared with \$1,004,320,000 in interim 1996, a difference of 8.4 percent. The domestic industry's gross profits fell from \$ 201,323,000 in 1994 to \$195,407,000 in 1995 and \$ 63,203,000 in 1996, a total decline of 68.6 percent. Gross profits were \$54,855,000 in interim 1997 compared with \$19,546,000 in interim 1996, a difference of 180.6 percent. Operating income followed the same pattern, declining from \$128,731,000 in 1994 to \$126,950,000 in 1995, with an operating loss of \$9,913,000 in 1996. Operating income was \$16,937,000 in interim 1997 compared with an operating loss of \$13,605,000 in interim 1996. The industry's operating income margin fell from 6.2

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<sup>62</sup>Table III-2, CR at III-4, PR at III-3.

<sup>63</sup>Table III-2, CR at III-4, PR at III-3.

<sup>64</sup>Table III-2, CR at III-4, PR at III-3; CR at II-2 n.1, PR at II-2, n.1; Memorandum INV-U-083 (Nov. 18, 1997).

<sup>65</sup>Table III-2, CR at III-4, PR at III-3.

percent in 1994 to 6.1 percent in 1995 and negative 0.5 percent in 1996 and was 1.6 percent in interim 1997 compared with negative 1.4 percent in interim 1996. Unit COGS rose from \$320 per short ton in 1994 to \$333 per short ton in 1995 and \$337 per short ton in 1996, for an overall increase of 5.4 percent. Unit COGS was \$335 per short ton in interim 1997 compared with \$339 per short ton in interim 1996, a difference of 1.2 percent. Unit SG&A expenses remained steady at \$12 per short ton from 1994 to 1995, rose to \$13 per short ton in 1996, an increase of 2.0 percent, and were \$12 per short ton in interim 1997 compared with \$11 per short ton in interim 1996, a difference of 7.6 percent.<sup>66</sup>

The value of U.S. producers' fixed assets increased from 1994 to 1996, and were higher in interim 1997 than in interim 1996, both in terms of original cost and book value, reflecting new or upgraded facilities brought on line or under construction during the period of investigation. The industry's capital expenditures declined from \$177,428,000 in 1994 to \$135,902,000 in 1995 and \$88,023,000 in 1996, and were \$40,785,000 in interim 1997 compared with \$30,818,000 in interim 1996. As discussed further below, however, our data on industry-wide capital expenditures reflect significant omissions and we therefore give little weight to the apparent declining trend. Domestic producers reported minimal research and development expenses, and those declined somewhat over the period.<sup>67 68</sup>

### III. NEGLIGIBLE IMPORTS

If imports from a subject country corresponding to a domestic like product account for less than three percent of all such merchandise imported into the United States during the most recent 12 months preceding the filing of the petition for which data are available, the statute provides that, barring certain exceptional circumstances, the Commission is to find such imports "negligible."<sup>69</sup> By operation of law, a finding of negligibility terminates the investigation with respect to such imports without an injury determination.<sup>70</sup>

In these investigations, the issue of negligibility arises only with respect to subject imports from Germany. In its final determination, Commerce found that German producers Brandenburg and Walzdraht

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<sup>66</sup>Tables VI-1 and VI-2, CR at VI-2-VI-3, PR at VI-2-VI-3.

<sup>67</sup>Table VI-5, CR at VI-12, PR at VI-7; CR at VI-10 and VI-12, PR at VI-5.

<sup>68</sup>Based on the foregoing, Commissioner Newquist determines that the domestic industry producing certain steel wire rod is not experiencing material injury. Commissioner Newquist notes that the industry's performance during the period of investigation, on the whole, was much more robust than it was during the period last investigated. See Certain Steel Wire Rod from Brazil and Japan, Inv. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 (March 1994). Indeed, in those investigations, Commissioner Newquist determined that the domestic industry was vulnerable to the continuing adverse effects of dumped imports.

Because Commissioner Newquist finds that the domestic industry is not experiencing material injury, he proceeds directly to the discussion of threat. He joins the following discussion of negligibility and, to the extent relevant to the threat analysis, he generally concurs with the discussion of cumulation.

<sup>69</sup>19 U.S.C. § 1677(24).

<sup>70</sup>19 U.S.C. § 1671d(b).

received *de minimis* subsidies during the relevant period.<sup>71</sup> In 1996, the most recent twelve month period preceding the filing of the petition for which data are available, imports from Germany, excluding those from Brandenburg and Walzdraht, accounted for \*\*\* percent of total imports by volume.<sup>72</sup> Accordingly, we find that the statutory standard is met and that subsidized imports of certain steel wire rod from Germany are negligible.<sup>73</sup>

We further determine that none of the statutory exceptions to negligibility applies to subsidized imports of certain steel wire rod from Germany. Because there is only one subject country satisfying the negligibility criteria of § 1677(24)(A)(i), the seven percent standard for aggregating negligible imports under § 1677(24)(A)(ii) is not applicable. Further, we do not find, pursuant to § 1677(24)(A)(iv), that imports of subsidized merchandise from Germany will imminently account for more than 3 percent of the volume of total imports of certain steel wire rod. Imports from Germany (excluding those from Brandenburg and Walzdraht) fell from \*\*\* percent of total imports (by volume) in 1994 to \*\*\* percent in 1995, then rose to \*\*\* percent in 1996. Such imports were \*\*\* percent of the total in interim 1997

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<sup>71</sup>62 *Fed. Reg.* 54972 (Oct. 22, 1997).

<sup>72</sup>Table IV-1, CR at IV-2. We reject petitioner's argument that the Commission must continue to consider imports from the companies as to which Commerce found *de minimis* subsidies to be subsidized until Commerce's deadline for making ministerial changes. As required by 19 U.S.C. § 1677m(g), we make these injury determinations on the basis of information provided by Commerce as of the date our record closed. No ministerial corrections were received by that date. Accordingly, for purposes of this negligibility determination, we have excluded from our data imports from those foreign producers that Commerce excluded from its final subsidy determinations. *See Polyvinyl Alcohol from China, Japan, and Taiwan*, Inv. Nos. 731-TA-726, 727 and 729 (Final), USITC Pub. 2960 at 17-18 and IV-4 (May 1996).

<sup>73</sup>In so concluding, we reject petitioners' contention that the statute requires the Commission to make its negligibility determination on the basis of cumulated subsidized and allegedly dumped imports from Germany. Petitioners' interpretation is at odds with the plain language of the statute, which directs the Commission to make its negligibility determination only with respect to the merchandise as to which Commerce has made a final affirmative subsidy determination. 19 U.S.C. § 1671d(b)(1). It is also incompatible with the statute's inclusion of different thresholds for negligibility in antidumping and countervailing duty cases involving developing countries. 19 U.S.C. § 1677(24)(B). Moreover, the Uruguay Round Agreements Act (P.L. 103-465, approved Dec. 8, 1994) expressly removed consideration of negligibility from the Commission's cumulation analysis. The statute now provides that the Commission must terminate an investigation without an injury determination if the subject imports are negligible. A parallel exception to the cumulation provision states that imports that are the subject of a terminated investigation shall not be cumulated. Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA") at 179, 185, 187. By moving the consideration of negligibility out of the Commission's consideration of cumulation and making it a freestanding provision, Congress intended the Commission to consider negligibility before considering cumulation. In our view, the statutory prohibition on cumulation of negligible imports applies equally to cross-cumulation of dumped and subsidized imports from the same country. Therefore, the question whether allegedly dumped imports from Germany are negligible is not relevant to our negligibility determination for purposes of the countervailing duty investigation.

compared with \*\*\* percent in interim 1996.<sup>74</sup> During the period of investigation, the subsidized German producers operated at between \*\*\* and \*\*\* percent capacity utilization and the share of their total production being exported to the United States was quite small.<sup>75</sup> \*\*\*.<sup>76</sup> Although subsidized imports from Germany were higher in interim 1997 than in interim 1996, we find no record evidence demonstrating that such imports will imminently exceed the 3 percent threshold.<sup>77</sup> Accordingly, we decline to find that non-negligible imports of subsidized wire rod from Germany are imminent.<sup>78</sup>

#### IV. CUMULATION<sup>79</sup>

##### A. In General

Section 771(7)(G)(i) requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.<sup>80</sup>

In assessing whether imports compete with each other and with the domestic like product,<sup>81</sup> 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

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<sup>74</sup>Table IV-1, CR at IV-2, PR at IV-2.

<sup>75</sup>Table VII-3, CR at VII-4. PR at VII-2.

<sup>76</sup>CR at VII-3, PR at VII-1.

<sup>77</sup>In the questionnaires, purchasers were asked for information on imports on order for delivery after June 30, 1997. The only reported order for any significant volume from a subsidized German producer was an order by \*\*\*. Questionnaire Response of \*\*\*. The volume of that order is equivalent to only about \*\*\* percent of the total volume of subsidized imports from Germany that entered the United States in interim 1997.

<sup>78</sup>Compare Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Prelim.), USITC Pub. 2976 at 12-13 (July 1996); Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-43 (Final), USITC Pub. 3016 at 19 (Feb. 1997).

<sup>79</sup>Because he has found that the domestic industry is not materially injured and does not reach the issue of causation, Commissioner Newquist joins this section solely for purposes of his threat analysis.

<sup>80</sup>19 U.S.C. § 1677(7)(G)(i).

<sup>81</sup>The SAA to the URAA expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA at 848 *citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd* 859 F.2d 915 (Fed. Cir. 1988).

requirements and other quality related questions;<sup>82 83</sup>

(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.<sup>84</sup>

Although 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 determining whether the imports compete with each other and with the domestic like product.<sup>85</sup> Only a "reasonable overlap" of competition is required.<sup>86</sup>

The statute contains four exceptions to cumulation, two of which do not apply in these investigations.<sup>87</sup> In accordance with our negligibility finding, the investigation of subsidized imports from Germany is terminated, and thus subsidized imports from Germany may not be cumulated pursuant to 19

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<sup>82</sup>Commissioner Newquist notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be "like" and then turn around and find that, for purposes of cumulation, there is no "reasonable overlap of competition" based on some roving standard of substitutability. *See* Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. 2664 (August 1993).

<sup>83</sup>Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. *E.g.* U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int'l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210, n.9 (Ct. Int'l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int'l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude that subject imports compete with each other and that subject imports compete with the domestic like product. Therefore, she concurs in cumulating subject imports from Canada, Germany, Trinidad and Tobago and Venezuela.

<sup>84</sup>*See* 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), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>85</sup>*See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>86</sup>*See* Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>87</sup>These exceptions concern imports from Israel and countries as to which Commerce has made preliminary negative determinations. 19 U.S.C. § 1677(7)(G)(ii).

U.S.C. § 1677(7)(G)(ii)(II).<sup>88</sup> The fourth exception, which also applies in one of these investigations, provides that imports from a beneficiary country under the Caribbean Basin Economic Recovery Act (“CBERA”) may only be cumulated with imports from another CBERA-beneficiary country for purposes of determining material injury by reason of imports from the CBERA-beneficiary country or countries.<sup>89</sup> Imports from Trinidad and Tobago fall under this exception. However, for purposes of determining whether the domestic industry is materially injured by reason of imports from other countries subject to investigation, the imports from the CBERA-beneficiary country or countries must be cumulated with other subject imports if the statutory prerequisites for cumulation are satisfied.<sup>90</sup>

## **B. Discussion**

The petitions in these countervailing duty investigations, as well as the petitions in the companion antidumping investigations of certain steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela, were all filed on the same day. Accordingly, we address two issues: (1) whether there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product, and (2) whether the Commission is required to cross-cumulate subsidized and allegedly dumped imports for purposes of its determinations in these countervailing duty investigations.

### **1. Reasonable Overlap of Competition**

In the preliminary determinations, we concluded that, in accordance with 19 U.S.C. § 1677(7)(G)(ii)(III), we could not cumulate imports from Trinidad and Tobago with imports from any other subject country for purposes of our determinations with respect to Trinidad and Tobago. We further found a reasonable overlap of competition between subject imports from Canada, Germany, Trinidad and Tobago, and Venezuela and cumulated imports from all four subject countries for purposes of our determinations with respect to Canada, Germany and Venezuela.<sup>91</sup>

We found the subject imports to be fungible with each other and with the domestic like product over a range of steel wire rod products accounting for a significant majority of domestic consumption. We based this conclusion on: (1) the fact that basic IQ rod represented a significant share of U.S. sales by all subject countries and the domestic industry; (2) overlap in the categories of rod produced as measured either by shipments data by type or reported pricing data by product category; (3) producer and importer questionnaire responses indicating interchangeability; and (4) respondents’ and purchasers’ admissions that the niche products which are not available from domestic producers represent a small volume of U.S. steel

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<sup>88</sup>As discussed below, however, we must cumulate allegedly dumped imports from Germany for purposes of our determinations with respect to Canada and Venezuela.

<sup>89</sup>19 U.S.C. § 1677(7)(G)(ii)(III).

<sup>90</sup>H.R. Conf. Rep. No. 650, 101st Cong., 2d Sess. (1990), *reprinted in* 1990 U.S.C.C.A.N. 928, 1025.

<sup>91</sup>Prelim. Det. at 19.

wire rod consumption.<sup>92</sup>

We rejected claims that Canadian and Venezuelan imports are geographically isolated from each other (and, in the case of Canada, from imports from Trinidad and Tobago), finding sufficient geographic overlap among the subject imports and the domestic like product to warrant cumulation. We relied on data showing significant overlap in the geographic regions in which the ports of entry for imports from each of the subject countries were located. We also relied on questionnaire responses indicating that several importers sold steel wire rod from multiple subject countries nationwide.<sup>93</sup> We further found that, although selling practices differed somewhat from country to country and mill to mill, most steel wire rod is sold directly by the manufacturer to end users, such that the domestic product and the subject imports are sold in the same channels of distribution.<sup>94</sup> Finally, we found that all subject imports and the domestic like product were simultaneously present in the U.S. market during the period of investigation. In so concluding, we rejected the argument of Venezuelan producer Sidor that imports from Venezuela were sporadic, noting that Venezuelan imports entered the United States in 28 out of 36 months between January 1994 and December 1996.<sup>95</sup>

In the final phase investigations, no party disputes our preliminary conclusion that imports from Trinidad and Tobago should not be cumulated with imports from other subject countries for purposes of our determination with respect to Trinidad and Tobago.<sup>96</sup> Petitioners again contend that subject imports from all four countries should be cumulated for purposes of our determinations with respect to Canada and Venezuela.<sup>97</sup> Canadian respondents argue that we should not cumulate imports from Canada with other subject imports, due to lack of geographic overlap of competition, as evidenced by the different ports of entry through which such imports enter the United States.<sup>98</sup>

Evidence obtained in the final phase of these investigations lends additional support to our preliminary conclusion that the domestic like product and the subject imports from all four countries are fungible to a significant degree. Specifically, a majority of purchasers indicated that domestic steel wire rod is interchangeable with the subject imports, that the domestic like product and the subject imports from each of the four countries are comparable with respect to a series of price and non-price factors that affect purchasing decisions, and that the subject imports from each of the four countries are interchangeable with

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<sup>92</sup>Prelim. Det. at 19-21.

<sup>93</sup>Prelim. Det. at 21.

<sup>94</sup>Prelim. Det. at 22.

<sup>95</sup>Prelim. Det. at 22.

<sup>96</sup>As noted above, because Trinidad and Tobago is a CBERA-beneficiary country, we may not cumulate the subject imports from Trinidad and Tobago with those of any other subject country for purposes of making our injury determination with respect to Trinidad and Tobago. We must, however, cumulate those imports in considering the impact of imports from Canada and Venezuela, if otherwise required by the statute.

<sup>97</sup>Petitioners' Prehearing Brief at 19-22.

<sup>98</sup>Canadian Respondents' Prehearing Brief at I-3-I-4; Quebec Posthearing Brief at 3-4, 7-10; Sidor's Prehearing Brief at 1.

each other.<sup>99</sup> No new information calls into question our conclusions in the preliminary determinations on geographic overlap, channels of distribution, and simultaneous presence.<sup>100</sup> Indeed, with the exception of Canadian respondents, all other respondents have largely abandoned the objections to cumulation they raised in the preliminary phase.

Canadian respondents have not offered any new evidence in the final phase to support their argument on lack of geographic overlap; rather, they refer to the same data from the preliminary report upon which the Commission relied in reaching the opposite conclusion. Moreover, to accept Canadian respondents' contention, the record would have to show that imports that enter the United States across the Canadian border in Vermont or New York State do not compete in the same geographic region as imports entering the ports of Boston, Providence, or New York. Questionnaire data indicate instead that over 38 percent of subject imports are shipped more than 100 miles from the port of entry.<sup>101</sup> Consequently, we do not find respondents' contentions on lack of geographic overlap to be supported by the record.

## 2. Cross-Cumulation

We conclude that we are legally required to cross-cumulate subsidized and allegedly dumped imports from the same country in these investigations. In Bingham & Taylor v. United States,<sup>102</sup> the Federal Circuit held that cross-cumulation of dumped and subsidized imports is mandatory whenever the statutory cumulation factors are otherwise satisfied. The court found that the statutory term "subject to investigation" contained in former section 1677(7)(C)(iv) did not expressly require cross-cumulation, but was broad enough to encompass both dumped and subsidized imports. To support its finding, the court relied on legislative history indicating that Congress wanted to establish a uniform practice of cumulation covering the broad category of "simultaneous unfair imports from different countries." It also relied on the fact that the statutory standards for both cumulation and material injury are exactly the same in dumping and subsidy cases, indicating the complementary role of the determinations in the statutory scheme.

We disagree with Quebec's assertion that Congress overruled Bingham & Taylor and expressly prohibited cross-cumulation in the URAA. Current section 1677(7)(G)(i) requires the Commission to cumulate imports from *all countries* with respect to which petitions are filed (or investigations self-initiated) *under sections 702 or 732* on the same day. Although the URAA does not expressly mention cross-cumulation, the new statutory language, like the language addressed by the Bingham & Taylor court, is broad enough to encompass cross-cumulation. Both the legislative history relied upon by the court in Bingham & Taylor (in particular, Congress's concern that the Commission address on a cumulated basis all unfairly traded imports that might be having a "hammering effect" on the domestic industry) and the parallel statutory scheme relied on by that court were not changed by the URAA. Indeed, the only explicit reference to cross-cumulation in the legislative history of the URAA indicates Congress's intent to preserve

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<sup>99</sup>Table II-2, CR at II-11, PR at II-8; Tables II-3-II-6, CR at II-13-II-18, PR at II-10-II-14; Table II-7, CR at II-20, PR at II-15.

<sup>100</sup>*See generally* CR at I-6-I-7, PR at I-5; CR at IV-1, PR at IV-1; Tables V-3-V-8, CR at V-12-V-17, PR at V-9.

<sup>101</sup>Table V-1, CR at V-2, PR at V-3.

<sup>102</sup>815 F.2d 1482 (Fed. Cir. 1987).

prior practice.<sup>103</sup> In any event, Congress cannot reasonably be understood to have prohibited something as important and controversial as cross-cumulation by means of a subtle wording change.<sup>104</sup> Accordingly, we believe the statute is better interpreted as consistent with mandatory cross-cumulation than as an implied repeal of that requirement.<sup>105</sup>

Finally, we disagree with Quebec's argument that the Commission cannot cross-cumulate because there have been no final determinations of dumping. The SAA addresses this situation directly, providing that in staggered final determinations, the Commission will consider "either the margins published in Commerce's final determination, or if no final determination has been made, in its preliminary determination."<sup>106</sup> Section 1677(35), to which Quebec refers, does not expressly or impliedly limit the Commission's ability to cumulate allegedly dumped imports in a CVD case to situations in which a final dumping margin is available.

### 3. Conclusion

For the reasons indicated in the preceding discussion, we reaffirm our preliminary conclusion that the mandatory cumulation factors are satisfied with respect to subject imports from all four countries. For purposes of our determination with respect to Trinidad and Tobago, we consider both subsidized and allegedly dumped imports from Trinidad and Tobago, but do not cumulate such imports with subject imports from any other country. For purposes of our determinations with respect to Canada and Venezuela, we cumulate the following imports: subsidized and allegedly LTFV imports from Canada, subsidized and allegedly LTFV imports from Venezuela, subsidized and allegedly LTFV imports from Trinidad and Tobago, and allegedly LTFV imports from Germany.

## V. **NO MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS**<sup>107 108</sup>

In the final phase of a countervailing duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the subsidized imports under

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<sup>103</sup>SAA at 273-74.

<sup>104</sup>See Sutherland Statutory Construction § 23.10 (5th ed. 1993).

<sup>105</sup>We also disagree with Quebec that U.S. adherence to the WTO Subsidies Agreement requires a different result. While Quebec interprets Article 15 of the Agreement as precluding cross-cumulation, there is no binding decision of the WTO addressing the issue of cross-cumulation. Moreover, the URAA makes it clear that, in the event of a conflict between U.S. law and the Subsidies Agreement, the Commission is bound to follow U.S. law. 19 U.S.C. § 3512; SAA at 14.

<sup>106</sup>SAA at 849.

<sup>107</sup>Commissioner Newquist does not join this section.

<sup>108</sup>Commissioner Crawford only joins in the discussion in subsection B of this section regarding Trinidad and Tobago; her determinations as to Canada and Venezuela are set forth in her Dissenting Views. For a complete statement of her analysis in these countervailing duty investigations see her Dissenting Views.

investigation.<sup>109</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>110</sup> Although the Commission considers causes of injury to the industry other than the subsidized imports, it is not to weigh causes.<sup>111</sup> For the reasons discussed below, we determine that the domestic industry producing certain steel wire rod is not materially injured by reason of cumulated subject imports from Canada, Germany, Trinidad and Tobago, and Venezuela, and that the domestic industry is not materially injured by reason of subject imports from Trinidad and Tobago alone.

**A. Determinations with Respect to Canada and Venezuela**<sup>112</sup>

**1. Volume of Subject Imports**

The volume of cumulated subject imports of certain steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela rose from 915,308 short tons in 1994 to 943,697 short tons in 1995 and to 1,312,952 short tons in 1996, an overall increase of 43.4 percent. Cumulated subject imports were 563,454 short tons in interim 1997 compared with 653,889 short tons in interim 1996, a decline of 13.8 percent. Measured by value, cumulated subject imports rose from \$326,983,000 in 1994 to \$354,893,000 in 1995 and to \$449,927,000 in 1996, an increase of 37.5 percent. Cumulated subject imports by value were \$199,916,000 in interim 1997, compared with 223,816,000 in interim 1996, a decline of 10.7 percent.<sup>113</sup> The cumulated market share of the subject imports remained steady at 12.6 percent from 1994 to 1995, rose to 17.6 percent in 1996, and was 14.1 percent in interim 1997 compared with 17.6 percent in interim 1996.<sup>114</sup> During the same period, U.S. producers' share of consumption by quantity fell from 75.5 percent in 1994 to 72.1 percent in 1995 and 71.8 percent in 1996. U.S. producers' share of the quantity of consumption was 74.0 percent in interim 1997 compared with 73.9 percent in interim 1996.<sup>115</sup> U.S. producers' share of consumption by value fell from 74.2 percent in 1994 to 71.5 percent in 1995 and 70.1

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<sup>109</sup>19 U.S.C. § 1671d(b). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

<sup>110</sup>19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

<sup>111</sup>*See, e.g., Gerald Metals, Inc. v. United States*, 937 F. Supp. 930, 936 (Ct. Int'l Trade 1996), *appeal pending*; *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

<sup>112</sup>Commissioner Crawford does not join this subsection. *See* her Dissenting Views.

<sup>113</sup>Table IV-1, CR at IV-2, PR at IV-2.

<sup>114</sup>Table IV-2, CR at IV-3, PR at IV-3.

<sup>115</sup>*Id.*

percent in 1996, and was 72.8 percent in interim 1997 compared with 72.0 percent in interim 1996.<sup>116</sup>

Despite the rising volume and market share of subject imports, and in particular the large increase in the volume of such imports between 1995 and 1996, based on the particular record in this investigation, we do not find the volume of imports or the increase in that volume to be significant, either in absolute terms or relative to production or consumption in the United States.<sup>117</sup> Although the domestic industry lost over 3 percentage points of market share between 1994 and 1995, subject imports' market share remained constant during that period. Between 1995 and 1996, when subject imports made their greatest gains in volume and market share, the domestic industry's market share remained virtually the same. Thus, subject imports captured sales and market share at the expense of non-subject imports rather than the domestic like product.<sup>118</sup> Moreover, as noted above, due both to absolute capacity constraints and planned and unplanned production outages during the period of investigation, the domestic industry was not able to satisfy all domestic demand for certain steel wire rod.<sup>119</sup> The total increase in the volume of cumulated subject imports between 1995 and 1996 was 369,255 short tons, while the amount of production the domestic industry lost to planned and unplanned outages during the same period was 314,700 short tons.<sup>120</sup> Thus, the vast majority of the increase in subject import volume during that period was largely serving demand beyond that which the domestic industry was able to satisfy. Finally, as discussed further in the following sections, petitioners' primary argument was that the large increase in subject import volumes lead to a decline in domestic prices. We note, however, that the large increase in the volume of subject imports which occurred in 1996 followed, rather than preceded, the declines in domestic steel wire rod prices which began in mid-1995.

## 2. Price Effects of Subject Imports

Prices of domestic steel wire rod generally rose in 1994 and the first half of 1995, fell from mid-1995 through early to mid-1996, and rose thereafter, although not recovering to their 1995 period highs by

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<sup>116</sup>*Id.*

<sup>117</sup>Chairman Miller finds that the absolute increase in the volume of subject imports over the period of investigation is significant, but concurs with the majority that the increase relative to consumption in the United States is not significant. As discussed in the following sections, she does not find that this significant volume of subject imports has had an adverse price effect or other adverse impact on the domestic industry, and consequently reaches a negative determination in these investigations.

<sup>118</sup>Table IV-2, CR at IV-3, PR at IV-3; Table IV-1, CR at IV-2, PR at IV-2.

<sup>119</sup>As noted above, the domestic industry's average of period capacity utilization, net of all production outages, ranged from about 87 to 92 percent over the period of investigation. Table III-2, CR at III-4, PR at III-3. While these capacity utilization figures might suggest some small ability on the part of the domestic industry to increase its market share, the use of annual averages masks the fact that individual domestic producers were frequently unable to supply all their customers' demands at various points over the period of investigation. *See, e.g.*, AWP Prehearing Brief at 11-17; Hearing Tr. at 285, 328-329. Thus, we are not convinced that the domestic industry could have increased its market share in a sustainable manner during any year of the POI.

<sup>120</sup>Table III-2, CR at III-4, PR at III-3.

the second quarter of 1997.<sup>121</sup> We do not find that the price decline for steel wire rod products that began in mid-1995 is attributable to the subject imports. As noted above, the presence of the subject imports in the domestic market changed little in 1995, when domestic prices began falling, and in fact subject import volumes increased most sharply during 1996, when domestic prices increased. Additionally, we note that margins of underselling remained relatively constant during the investigation period as a whole. Further, there is limited evidence of sales and revenues lost due to price competition with the subject imports. Based on these factors, we find no causal connection between prices for the subject imports and the declines in domestic producers' prices that occurred between mid-1995 and mid-96.

In the preliminary determinations, we found that price is an important factor in purchasing decisions in the U.S. market for certain steel wire rod, particularly with respect to sales of industrial quality rod and other lower-quality grades.<sup>122</sup> Data obtained from purchasers in the final phase of these investigations confirm that price is one of a number of important factors in purchasing decisions. The majority of purchasers reported that quality is the most important factor considered when choosing from whom to purchase steel wire rod. As might be expected in light of the frequency of supply disruptions in the market, purchasers also rated availability, reliability and the need for multiple sources of supply as very important.<sup>123</sup> Thus, the majority of responding purchasers reported that the lowest price does not necessarily win a sale and that they will purchase the same product from multiple suppliers at different prices in order to maintain alternate sources that meet their quality requirements.<sup>124</sup>

We do not find the frequency or the margins of underselling in these investigations to be significant. During the period of investigation, the cumulated subject imports undersold the domestic product in 132 out of 191 possible comparisons, or about 69 percent of the time.<sup>125</sup> Contrary to petitioners' contention, however, we do not find that the frequency of underselling was appreciably higher when prices were declining in the second half of 1995 and the first half of 1996 than earlier in the period.<sup>126</sup> Moreover, the margins by which the subject imports undersold the domestic product remained relatively constant over the period, fluctuating with no clear trend. Finally, we find that these modest margins of underselling reflect the price premium which domestic producers command in the U.S. market for certain steel wire rod. Purchasers reported that they are generally not willing to pay as much for imports as for the domestic product, for several reasons.<sup>127</sup> With the possible exception of imports from Canada, subject imports generally have significantly longer lead times and larger minimum order sizes than domestic

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<sup>121</sup>CR at V-11, PR at V-8; Tables V-3-V-8, CR at V-12-V-17, PR at V-9.

<sup>122</sup>Prelim. Det. at 25.

<sup>123</sup>CR at II-7-II-10, PR at II-5-II-7.

<sup>124</sup>CR at II-11, PR at II-7-II-8.

<sup>125</sup>Tables V-9-V-10, CR at V-24-V-25, PR at V-12; CR at V-23, PR at V-11-V-12.

<sup>126</sup>Between the third quarter of 1995 and the second quarter of 1996, subject imports undersold the domestic like product in 38 out of 54 comparisons, or about 70 percent of the time. During the four quarters of calendar year 1996, subject imports undersold the domestic like product in 45 out of 63 comparisons, or about 71 percent of the time. Tables V-9-V-10, CR at V-24-V-25, PR at V-12.

<sup>127</sup>CR at II-9 n.9, PR at II-6, n.9; Hearing Tr. at 385, 388-90.

shipments, and cannot be canceled once ordered. Thus, purchasers of imports have higher inventory costs and a higher risk of purchasing a product they may no longer need by the time it arrives.<sup>128</sup> Purchasers also reported that imports tend to have more quality problems with coil size, scale weight, mill trimming practices, surface quality, and breakage than the domestic product.<sup>129</sup> All of these factors add to the total cost of using imported rod in place of the domestic product and make purchasers, on average, willing to pay a premium for the domestic product. Our conclusions that price is not always the determining factor in making a sale and that underselling by the subject imports is not significant in these investigations are buttressed by the fact that we were able to confirm only a few of petitioners' extensive allegations of sales and revenues lost by domestic producers on the basis of price.<sup>130</sup>

As noted above, the decline in domestic prices that began in mid-1995 preceded the large increase in subject imports volumes that occurred in 1996 by about half a year.<sup>131</sup> Further, we find no correlation between subject import price trends and domestic price trends indicative of a causal relationship between subject import prices and declines in domestic steel wire rod prices between mid-1995 and mid-1996. Between the first quarter of 1994 and the fourth quarter of 1996, domestic prices for product 1 peaked in the second quarter of 1995, reached a period low in the first quarter of 1996, and generally rose thereafter. Prices for imports from Canada, Trinidad and Tobago, and Venezuela, peaked in the second, third, and second quarters of 1995, respectively, and reached period lows in the fourth quarter of 1995, the third quarter of 1996, and the fourth quarter of 1996.<sup>132</sup> For product 2, prices for the domestic product peaked in the second quarter of 1995 and reached a period low in the first quarter of 1996. Prices for imports from Canada, Germany, Trinidad and Tobago, and Venezuela, respectively, peaked in the third, fourth,<sup>133</sup> and second quarters of 1995 and the first quarter of 1996, and reached period lows in the second quarter of 1996, except that Venezuelan prices bottomed out in the second and third quarters of 1995.<sup>134</sup> These trends show that for products 1 and 2, the two highest volume products for which the Commission obtained pricing data, prices for subject imports generally followed price increases and decreases for the domestic like product. Price comparisons for products 3 and 4 also show domestic prices declining before or at the

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<sup>128</sup>Hearing Tr. at 390. We note that Canadian imports, which purchasers indicated are generally available on similar sales and cancellation terms as the domestic product, had a considerably more mixed pattern of over- and underselling than the other subject imports, providing further support for our conclusion that purchasers will pay a premium for the flexible terms that domestic (and Canadian) producers provide. Tables V-9-V-10, CR at V-24-V-25, PR at V-12.

<sup>129</sup>Hearing Tr. at 385, 388-390.

<sup>130</sup>Tables V-12-V-15, CR at V-27-V-31, PR at V-14.

<sup>131</sup>*See also* Memorandum INV-U-080 (Nov. 13, 1997).

<sup>132</sup>Table V-3, CR at V-12, PR at V-9. Insufficient data were reported to analyze price trends for product 1 from Germany.

<sup>133</sup>This peak, which extended over all of 1995, followed a prior decline at the beginning of 1994.

<sup>134</sup>Table V-4, CR at V-13, PR at V-9.

same time as subject import prices.<sup>135</sup> In light of the consistent pattern of underselling regardless of whether domestic steel wire rod prices were rising or falling, the lack of correlation between rising subject import volumes and market share in 1996 and the decline in domestic prices that began in mid-1995, and the fact that domestic prices generally fell before subject import prices in 1995, we do not find that the subject imports have depressed domestic prices for certain steel wire rod to a significant degree.<sup>136</sup>

Similarly, we do not find that subject imports prices suppressed domestic price increases that would otherwise have occurred to a significant degree. As noted above, the domestic industry's unit SG&A and unit COGS both increased modestly between 1995 and 1996, by 4.5 and 1.3 percent, respectively.<sup>137</sup> Although domestic producers were unable to raise prices to cover the entire cost increase in 1996, price increases in the latter half of the year did cover a significant portion of those cost increases.<sup>138</sup> We do not view the inability to cover the remaining costs to be evidence of significant price suppression. Moreover, in light of the absence of evidence supporting a correlation between subject import volumes or prices and declines in domestic steel wire rod prices during the period of investigation, we cannot conclude that subject import prices prevented, to a significant degree, domestic price increases that would otherwise have occurred.

### **3. Impact of Subject Imports**<sup>139</sup>

Between 1994 and 1995, the domestic industry experienced small declines in production and shipments, but maintained its profitability as a result of generally rising prices in the domestic market for

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<sup>135</sup>Tables V-5-V-6, CR at V-14-V-15, PR at V-9. Although comparisons for products 5 and 6 do not follow the same trend, they represent products for which the domestic industry reported relatively small volumes of sales. Meaningful comparisons of price highs and lows during the relevant period are not possible for product 7. Tables V-7-V-8, CR at V-16-V-17, PR at V-9.

<sup>136</sup>Further support for this conclusion can be found in the purchaser questionnaire responses, which overwhelmingly identified domestic producers as the price leaders in this market. *See generally* Purchaser Questionnaire Responses at 12.

<sup>137</sup>Tables VI-1 and VI-2, CR at VI-2-VI-3, PR at VI-2-VI-3.

<sup>138</sup>Between the second and fourth quarters of 1996, domestic producers' prices rose by 1.9 percent for product 1, 2.1 percent for product 2, 1.8 percent for product 3, 1.0 percent for product 4, and 0.3 percent for product 5, while their prices for product 6 declined by 0.2 percent. *See generally* Tables V-3-V-8, CR at V-12-V-17, PR at V-9. In addition, the domestic industry's per-unit net sales value increased from \$350 per short ton in the first half of 1996 to \$353 per short ton in the second half of 1996. Memorandum INV-U-084.

<sup>139</sup>As part of its consideration of the impact of imports in an antidumping duty investigation, the statute as amended by the URAA specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The statute, however, contains no comparable provision requiring the Commission to consider the nature or magnitude of the alleged subsidies in the context of its present material injury analysis in a countervailing duty investigation, and we have not done so here. SAA at 850.

steel wire rod.<sup>140</sup> Based on full-year data, the domestic industry's financial performance declined precipitously between 1995 and 1996, resulting in significant operating losses.<sup>141</sup> Because we have found no causal connection between subject import volumes or prices and the decline in domestic steel wire rod prices in 1995-96, however, we cannot conclude that the domestic industry's financial troubles are attributable to the subject imports. It is clear that, by the second half of 1996, as prices began recovering, so did the financial condition of the domestic industry, as well as virtually every other indicator of the condition of the domestic industry, despite the fact that subject import volumes continued to rise. This recovery continued into the first half of 1997, aided by further increases in domestic prices and rising apparent consumption.<sup>142</sup>

Moreover, record evidence contradicts petitioners' claim that the domestic industry's investments in plant modernizations and expansions declined over the period examined. The data contained in the report show capital expenditures declining from 1994 to 1996, then rising somewhat between the interim periods.<sup>143</sup> However, these figures do not include expenditures relating to North Star Steel's \$150 million bar and rod plant in Kingman, Arizona, and American Steel & Wire's \$115 million bar and rod plant in Cuyohoga Heights, Ohio, both of which came on line in 1996, or American Steel and Wire's \$200 million steel mill in Memphis, Tennessee, scheduled to open in late 1997, which will dedicate a portion of its billet production to American's bar and rod facility.<sup>144</sup> Also not included are recent expenditures of three producers that \*\*\*, a portion of which will benefit steel wire rod production, including Cascade Steel (\$80 million from 1992 to 1996), Bar Technologies (\$60 million between 1994 and 1996), and Ameristeel (\$97 million from 1995 through 1997).<sup>145</sup> By contrast, although domestic producers were asked to identify and document investment plans that were canceled or postponed because of competition from the subject imports, only Co-Steel Raritan reported \*\*\* and cancellation of a greenfield mill project under consideration.<sup>146</sup> Even Co-Steel, however, provided no documentation to support its assertion that subject imports were the cause of the delays and cancellation. Finally, despite the financial difficulties suffered by the industry in 1996, domestic producers continue to make major financial commitments to modernization and expansion projects. For example, \*\*\*, one of the petitioners that reported postponed investment plans,

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<sup>140</sup>Table III-2, CR at III-4, PR at III-3; Table VI-1, CR at VI-2, PR at VI-2; CR at VI-3, PR at VI-1; Table VI-4, CR at VI-11, PR at VI-6.

<sup>141</sup>Table VI-1, CR at VI-2, PR at VI-2.

<sup>142</sup>Memorandum INV-U-084 (Nov. 19, 1997); Table IV-2, CR at IV-3, PR at IV-3; Table III-2, CR at III-4, PR at III-3. Because the rising price trend and accompanying financial recovery of the domestic industry began in mid-1996, more than half a year before the petitions in these investigations were filed in February of 1997, we conclude that these trends are not related to the pendency of the investigation and that, consistent with 19 U.S.C. § 1677(7)(I), the post-petition information provision, we may give full weight to such trends.

<sup>143</sup>Table VI-5, CR at VI-12, PR at VI-7.

<sup>144</sup>CR at VI-10, PR at VI-5.

<sup>145</sup>CR at VI-12, PR at VI-5.

<sup>146</sup>CR at G-5, PR at G-3; Hearing Tr. at 337. \*\*\* also reported minor postponements.

announced \*\*\*.<sup>147</sup>

In light of the lack of significant volumes of subject imports<sup>148</sup> and significant price effects, the consistently high level of investments by the domestic industry, and the improving trend in the industry's financial condition that began well before the petition was filed, we do not find that the subject imports are presently having an adverse impact on the domestic industry.

## **B. Determination with Respect to Trinidad and Tobago**

### **1. Volume of Subject Imports**

The volume of U.S. imports of certain steel wire rod from Trinidad and Tobago rose from \*\*\* short tons in 1994 to \*\*\* short tons in 1995 and \*\*\* short tons in 1996, an overall increase of \*\*\* percent. The volume of imports from Trinidad and Tobago was \*\*\* short tons in interim 1997 compared with \*\*\* short tons in interim 1996. The value of imports from Trinidad and Tobago followed the same pattern, rising from \*\*\* in 1994 to \*\*\* in 1995 and \*\*\* in 1996. Imports from Trinidad and Tobago by value were \*\*\* in interim 1997 compared with \*\*\* in interim 1996.<sup>149</sup> The market share of subject imports from Trinidad and Tobago by volume remained steady at \*\*\* percent from 1994 to 1995, rose to \*\*\* percent in 1996, and was \*\*\* percent in interim 1997 compared with \*\*\* percent in interim 1996.<sup>150</sup>

Despite the rising volume and market share of subject imports from Trinidad and Tobago, and in particular the \*\*\* short ton increase in the volume of such imports between 1995 and 1996, we do not find the volume of imports from Trinidad and Tobago or the increase in that volume to be significant, either in absolute terms or relative to production or consumption in the United States.<sup>151</sup> Although the domestic industry lost over 3 percentage points of market share between 1994 and 1995, the market share of imports from Trinidad and Tobago remained exactly the same during that period. Between 1995 and 1996, when subject imports made their greatest gains in volume and market share, the domestic industry's market share remained virtually the same. Thus, subject imports from Trinidad and Tobago captured sales and market share at the expense of non-subject imports rather than the domestic like product.<sup>152</sup> As noted above, moreover, due both to absolute capacity constraints and planned and unplanned production outages, the domestic industry was not able to satisfy all domestic demand for certain steel wire rod during the period of investigation.<sup>153</sup> The total increase in the volume of imports from Trinidad and Tobago between 1995 and

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<sup>147</sup>AWPA Posthearing Brief at Exhibit 3.

<sup>148</sup>Chairman Miller reiterates the discussion in footnote 117, *supra*.

<sup>149</sup>Table IV-1, CR at IV-2, PR at IV-2.

<sup>150</sup>Table IV-2, CR at IV-3, PR at IV-3.

<sup>151</sup>Commissioner Crawford notes that whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effect and impact.

<sup>152</sup>Table IV-2, CR at IV-3, PR at IV-3; Table IV-1, CR at IV-2, PR at IV-2.

<sup>153</sup>As noted above, the domestic industry's average-of-period capacity utilization, net of all  
(continued...)

1996 was only \*\*\* short tons, while the amount of production the domestic industry lost to planned and unplanned outages during the same period was 314,700 short tons.<sup>154</sup> Thus, all of the increase in import volume from Trinidad and Tobago during that period was serving demand that the domestic industry would not have been able to satisfy. Finally, as discussed further in the following sections, petitioners' primary argument was that the large increase in the volume of subject from Trinidad and Tobago led to a decline in domestic prices. We note, however, that the increase in the volume of subject imports from Trinidad and Tobago which occurred in 1996 followed, rather than preceded, the declines in domestic steel wire rod prices which began in mid-1995.

## 2. Price Effects of Subject Imports

As noted above, prices of domestic steel wire rod generally rose in 1994 and the first half of 1995, fell from mid-1995 through early to mid-1996, and rose thereafter, although not recovering to their 1995 period highs by the second quarter of 1997.<sup>155</sup> Nevertheless, we do not find the requisite causal connection between the prices of subject imports from Trinidad and Tobago and the declines in domestic producers' prices that occurred between mid-1995 and mid-1996.

In the preliminary determinations, we found that price is an important factor in purchasing decisions in the U.S. market for certain steel wire rod, particularly with respect to sales of industrial quality rod and other lower-quality grades.<sup>156</sup> Data obtained from purchasers in the final phase of these investigations confirm that price is one of a number of important factors in purchasing decisions. The majority of purchasers reported that quality is the most important factor considered when choosing from whom to purchase steel wire rod. As might be expected in light of the frequency of supply disruptions in the market, purchasers also rated availability, reliability and the need for multiple sources of supply as very important.<sup>157</sup> Thus, the majority of responding purchasers reported that the lowest price does not necessarily win a sale and that they will purchase the same product from multiple suppliers at different

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<sup>153</sup>(...continued)

production outages, ranged from about 87 to 92 percent over the period of investigation. Table III-2, CR at III-4, PR at III-3. While these capacity utilization figures might suggest some small ability on the part of the domestic industry to increase its market share, the use of annual averages masks the fact that individual domestic producers were frequently unable to supply all their customers' demands at various points over the period of investigation. *See, e.g.*, AWP A Prehearing Brief at 11-17; Hearing Tr. at 285, 328-329. Thus, we are not convinced that the domestic industry could have increased its market share in a sustainable manner during any year of the POI.

<sup>154</sup>Table III-2, CR at III-4, PR at III-3.

<sup>155</sup>CR at V-11, PR at V-8; Tables V-3-V-8, CR at V-12-V-17, PR at V-9.

<sup>156</sup>Prelim. Det. at 25.

<sup>157</sup>CR at II-7-II-10, PR at II-5-II-7.

prices in order to maintain alternate sources that meet their quality requirements.<sup>158 159</sup>

We do not find either the frequency or the margins of underselling by subject imports from Trinidad and Tobago to be significant. During the period of investigation, the subject imports from Trinidad and Tobago undersold the domestic product in 49 out of 54 possible comparisons, more than 90 percent of the time.<sup>160</sup> Contrary to petitioners' contention, however, we do not find that the frequency of underselling was appreciably higher during the time when prices were declining in the second half of 1995 and the first half of 1996 than earlier in the period.<sup>161</sup> Moreover, the margins by which the subject imports undersold the domestic product remained relatively constant over the period. To the extent they exhibit any trend, underselling margins on products 1 and 2 from Trinidad and Tobago reached their lowest levels during the period of investigation between the third quarter of 1995 and the second quarter of 1996. Finally, as discussed above, we find that these modest margins of underselling reflect the price premium

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<sup>158</sup>CR at II-11, PR at II-7-II-8.

<sup>159</sup>Commissioner Crawford does not join the remainder of this subsection. To evaluate the effects of the subsidies on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were subsidized with what domestic prices would have been if the subject imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the subsidy margins for subject imports from Trinidad and Tobago are moderate. Thus, subject imports of steel wire rod from Trinidad and Tobago likely would have been priced higher had they been fairly traded. The degree of substitution between steel wire rod from Trinidad and Tobago, domestic steel wire rod, other subject imports and nonsubject imports is good. If subject imports of steel wire rod from Trinidad and Tobago had been priced higher, some of the demand would have shifted to the domestic industry. However, because of limited capacity in the domestic industry and the availability of alternative sources of supply (*e.g.* other subject imports and nonsubject imports), little demand would have shifted to the domestic industry. The evidence indicates that the majority of steel wire rod imported from Trinidad and Tobago consisted of Products 1 and 2, industrial quality steel wire rod. A large number of suppliers compete in this segment of the market. Tables V-3 and V-4, CR at V-12-V-13, PR at V-9. On the supply side, any attempt by an individual supplier in the domestic industry to increase its prices in response to any limited shift in demand that may have taken place would have been challenged by competitors, *i.e.* other subject imports and nonsubject imports. Under such supply and demand conditions, any effort by a domestic supplier to raise its prices significantly would have been beaten back by its competitors. Therefore, significant effects on domestic prices of steel wire rod cannot be attributed to the unfairly traded subject imports from Trinidad and Tobago. Consequently, Commissioner Crawford finds that subject imports from Trinidad and Tobago are not having significant effects on prices of domestic steel wire rod.

<sup>160</sup>Tables V-9-V-10, CR at V-24-V-25, PR at V-12; CR at V-23, PR at V-12.

<sup>161</sup>Imports from Trinidad and Tobago of products 1 and 2 undersold the domestic product in every comparison from first quarter 1994 through second quarter 1997. Table V-9, CR at V-24, PR at V-12. For product 3, imports from Trinidad and Tobago undersold the domestic product in 3 out of 5 possible comparisons through second quarter 1995 and 4 out of six possible comparisons during the rest of the period of investigation. Table V-10, CR at V-25, PR at V-12.

which domestic producers command in the U.S. market for certain steel wire rod.<sup>162</sup> Our conclusions that price is not always the determining factor in making a sale and that underselling by subject imports from Trinidad and Tobago is not significant in this investigation are buttressed, moreover, by the fact that we were unable to confirm a single lost sale or lost revenue allegation with respect to imports from Trinidad and Tobago.<sup>163</sup>

As noted above, the decline in domestic prices that began in mid-1995 preceded the increase in the volume of imports from Trinidad and Tobago that occurred in 1996 by about half a year.<sup>164</sup> Further, we find no correlation between price trends for subject imports from Trinidad and Tobago and domestic price trends indicative of a causal relationship between the prices of subject imports from Trinidad and Tobago and declines in domestic steel wire rod prices between mid-1995 and mid-1996. Between the first quarter of 1994 and the fourth quarter of 1996, domestic prices for product 1 peaked in the second quarter of 1995, reached a period low in the first quarter of 1996, and generally rose thereafter, while prices for imports from Trinidad and Tobago peaked in the third quarter of 1995 and reached a period low in the third quarter of 1996.<sup>165</sup> For product 2, prices for the domestic product peaked in the second quarter of 1995 and reached a period low in the first quarter of 1996, while prices for imports from Trinidad and Tobago also peaked in the second quarter of 1995 and reached a period low in the second quarter of 1996.<sup>166</sup> These trends show that for products 1 and 2, the two highest volume products imported from Trinidad and Tobago for which the Commission obtained pricing data, prices for subject imports from Trinidad and Tobago generally followed price increases and decreases for the domestic like product. Price comparisons for product 3 also show domestic prices declining before or at the same time as the prices of imports from Trinidad and Tobago.<sup>167</sup> In light of the consistent pattern of underselling regardless of whether domestic steel wire rod prices were rising or falling, the lack of correlation between rising subject import volumes and market share in 1996 and the decline in domestic prices that began in mid-1995, and the fact that domestic prices generally fell before subject import prices in 1995, we do not find that the subject imports from Trinidad and Tobago have depressed domestic prices for certain steel wire rod to a significant degree.<sup>168</sup>

Similarly, we do not find that the prices of subject imports from Trinidad and Tobago suppressed

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<sup>162</sup>See notes 127 - 129, *supra*.

<sup>163</sup>Tables V-12-V-15, CR at V-27-V-31, PR at V-14.

<sup>164</sup>See also Memorandum INV-U-080 (Nov. 13, 1997).

<sup>165</sup>Table V-3, CR at V-12, PR at V-9.

<sup>166</sup>Table V-4, CR at V-13, PR at V-9.

<sup>167</sup>Table V-5, CR at V-14, PR at V-9. Meaningful comparisons of peaks were not possible for product 4 from Trinidad and Tobago. Imports from Trinidad and Tobago of product 5 represented very small volumes. There were no reported imports from Trinidad and Tobago of products 6 and 7. Tables V-6-V-8, CR at V-15-V-17, PR at V-9.

<sup>168</sup>Further support for this conclusion can be found in the purchaser questionnaire responses, which overwhelmingly identified domestic producers as the price leaders in this market. See generally Purchaser Questionnaire Responses at 12.

domestic price increases that would otherwise have occurred to a significant degree. As noted above, the domestic industry's unit SG&A and unit COGS both increased modestly between 1995 and 1996, by 4.5 and 1.3 percent, respectively.<sup>169</sup> Although domestic producers were unable to raise prices to cover the entire cost increase in 1996, price increases in the latter half of the year did cover a significant portion of those cost increases.<sup>170</sup> We do not view the inability to cover the remaining costs to be evidence of significant price suppression. Moreover, in light of the absence of evidence supporting a correlation between subject import volumes or prices and declines in domestic steel wire rod prices during the period of investigation, we cannot conclude that subject import prices prevented, to a significant degree, domestic price increases that would otherwise have occurred.

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<sup>169</sup>Table VI-1, CR at VI-2-VI-3, PR at VI-2.

<sup>170</sup>Between the second and fourth quarters of 1996, domestic producers' prices rose by 1.9 percent for product 1, 2.1 percent for product 2, 1.8 percent for product 3, 1.0 percent for product 4, and 0.3 percent for product 5, while their prices for product 6 declined by 0.2 percent. *See generally* Tables V-3-V-8, CR at V-12-V-17, PR at V-9. In addition, the domestic industry's per-unit net sales value increased from \$350 per short ton in the first half of 1996 to \$353 per short ton in the second half of 1996. Memorandum INV-U-084.

### 3. Impact of Subject Imports <sup>171</sup> <sup>172</sup>

As discussed above, after remaining steady between 1994 and 1995, the domestic industry's financial performance declined precipitously between full-year 1995 and full-year 1996, resulting in significant operating losses.<sup>173</sup> Because we have found no causal connection between the volume or prices of imports from Trinidad and Tobago and the decline in domestic steel wire rod prices in 1995-96, however, we cannot conclude that the domestic industry's financial troubles were attributable to subject imports from Trinidad and Tobago. In any event, as discussed above, by the second half of 1996, as prices began recovering, so did the financial condition of the domestic industry, as well as virtually every other indicator of the condition of the domestic industry, despite the fact that subject import volumes continued to rise. This recovery continued into the first half of 1997, aided by further increases in domestic prices and

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<sup>171</sup>Pursuant to 19 U.S.C. § 1677(7)(C)(iii)(V), we note that the dumping margin for Trinidad and Tobago identified by Commerce in its preliminary determination is 13.0 percent. 62 Fed. Reg. 51572 (Oct. 2, 1997).

<sup>172</sup>As previously stated, Commissioner Crawford does not evaluate impact based on trends in statutory impact factors. In her analysis of material injury by reason of subsidized and dumped imports, Commissioner Crawford evaluates the impact of subject imports on the domestic industry by comparing the state of the industry when the imports were unfairly traded with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact of the subsidization and dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As noted above, there is no substantial evidence that the domestic industry would have been able to increase its prices significantly if subject imports from Trinidad and Tobago had been fairly traded. Had subject imports from Trinidad and Tobago been fairly traded, there would have been an insignificant shift in demand from subject imports to the domestic industry due to capacity limitations in the domestic industry. If subject imports from Trinidad and Tobago had been fairly traded, to satisfy the demand for steel wire rod purchasers would have continued to purchase subject imports from other sources and would have continued to purchase nonsubject imports. In other words, had subject imports from Trinidad and Tobago not been subsidized and dumped, the domestic industry would not have been able to increase its output and sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports from Trinidad and Tobago had been fairly traded. Therefore, Commissioner Crawford does not find that unfairly traded steel wire rod from Trinidad and Tobago are having a significant impact on the domestic industry and she finds that the domestic industry producing steel wire rod is not materially injured by reason of unfairly traded imports of steel wire rod from Trinidad and Tobago.

<sup>173</sup>Table VI-1, CR at VI-2-VI-3, PR at VI-2.

rising apparent consumption.<sup>174</sup> In addition, as discussed in detail above, the record indicates that the domestic industry continued to invest vigorously in plant modernizations and expansions throughout the period of investigation, contradicting any claim that competition from subject imports from Trinidad and Tobago contributed to a decline in capital expenditures.<sup>175</sup>

In light of the lack of significant import volumes and significant price effects attributable to subject imports from Trinidad and Tobago, the consistently high level of investments by the domestic industry, and the improving trend in the industry's financial condition that began well before the petition was filed, we do not find that the subject imports from Trinidad and Tobago are presently having an adverse impact on the domestic industry.

## **VI. NO THREAT OF MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS**<sup>176</sup>

### **A. Cumulation for Purposes of Threat Analysis**

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.<sup>177</sup> In deciding whether to cumulate for purposes of making our threat determinations, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.<sup>178 179</sup>

Petitioners argue that imports from the four subject countries should be cumulated for purposes of the Commission's threat determinations with respect to Canada and Venezuela, although they concede that

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<sup>174</sup>Memorandum INV-U-084 (Nov. 19, 1997); Table IV-2, CR at IV-3, PR at IV-3; Table III-2, CR at III-4, PR at III-3. Because the rising price trend and accompanying financial recovery of the domestic industry began in mid-1996, more than half a year before the petitions in these investigations were filed in February of 1997, we conclude that these trends are not related to the pendency of the investigation and that, consistent with 19 U.S.C. § 1677(7)(I), the post-petition information provision, we may give full weight to such trends.

<sup>175</sup>See notes 143 - 147, *supra*.

<sup>176</sup>Commissioner Crawford does not join in this discussion because of her determination that the domestic steel wire rod industry is presently being materially injured by reason of unfairly traded imports from Canada and Venezuela.

<sup>177</sup>19 U.S.C. § 1677(7)(H).

<sup>178</sup>See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992); Metallwerken 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).

<sup>179</sup>Commissioner Newquist notes that when assessing whether to cumulate for purposes of a threat of material injury analysis, he places little weight on whether imports from various subject countries are increasing at similar rates or have similar margins of underselling and pricing patterns. Nowhere does the statute require that these "factors" be examined in determining whether to cumulate for a threat analysis.

the Commission may not cumulate for purposes of its threat determination for Trinidad and Tobago.<sup>180</sup> Canadian, Venezuelan, and German respondents argue that the Commission should not cumulate for purposes of its threat determinations.<sup>181</sup>

In these investigations, the volume of subject imports from Canada, Germany,<sup>182</sup> Trinidad and Tobago, and Venezuela all rose between 1994 and 1996, and were lower in interim 1997 than in interim 1996.<sup>183</sup> With respect to price trends, for product 1, prices for subject imports from Canada, Trinidad and Tobago, and Venezuela all reached their period highs in mid-1995 and declined in 1996. For product 2, prices for subject imports from all four subject countries reached their period highs in 1995 and declined in 1996 (except that Venezuelan prices peaked in the first quarter of 1996).<sup>184</sup> With respect to underselling, subject imports from Germany, Trinidad and Tobago and Venezuela undersold the domestic product in most comparisons, while subject imports from Canada showed a mixed pattern of over- and underselling.<sup>185</sup> Based on these trends, as well as the analysis of the mandatory cumulation factors in the Cumulation section above, we determine that it is appropriate to cumulate and cross-cumulate the subject imports from all four countries for purposes of our threat determinations with respect to Canada and Venezuela. For purposes of our threat determination with respect to Trinidad and Tobago, we consider subject imports from Trinidad and Tobago alone.

## **B. Statutory Factors**

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>186</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.<sup>187</sup> In making our

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<sup>180</sup>Petitioners’ Prehearing Brief at 53-54.

<sup>181</sup>Canadian Respondents’ Prehearing Brief at IV-1-IV-3; Sidor Prehearing Brief at 1-4; Saarlühl Prehearing Brief at 16-18.

<sup>182</sup>As in our discussion of material injury by reason of the subject imports, all references to subject imports from Germany are to allegedly LTFV imports, not the subsidized imports which we have found to be negligible.

<sup>183</sup>Table IV-1, CR at IV-2, PR at IV-2.

<sup>184</sup>Tables V-3 and V-4, CR at V-12-V-13, PR at V-9.

<sup>185</sup>CR at V-22 and V-25, PR at V-11-V-12.

<sup>186</sup>19 U.S.C. § 1671b(a) and 1677(7)(F)(ii).

<sup>187</sup> 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA  
(continued...)

determination, we have considered all statutory factors<sup>188</sup> that are relevant to these investigations.<sup>189</sup>

For the reasons discussed below, we determine that the domestic industry is not threatened with material injury by reason of subject imports from Canada, Trinidad and Tobago, and Venezuela.

### **1. Determinations with Respect to Canada and Venezuela**

None of the subsidies identified by Commerce, with the exception of one small subsidy to the Trinidadian producer CIL, are export subsidies.<sup>190</sup> We do not find that any of the other subsidies identified by Commerce for any of the four subject countries is of such a nature as to create a likelihood of increased imports within the imminent future.<sup>191</sup>

The record indicates that subject imports have been decreasing throughout interim 1997, and were at lower levels during that period than during either the first or second half of 1996.<sup>192</sup> Although the statute

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indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 854.

<sup>188</sup> The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although “[n]o substantive change in Commission threat analysis is required.” SAA at 855.

<sup>189</sup> 19 U.S.C. § 1677(7)(F)(i). Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. Additionally, there are no known antidumping or countervailing duty findings or remedies in effect in other countries with respect to certain steel wire rod from Canada, Germany, Trinidad and Tobago, or Venezuela. CR at VII-6, PR at VII-2. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

<sup>190</sup> 62 *Fed. Reg.* 54972 (Oct. 22, 1997) (Canada); 62 *Fed. Reg.* 54990 (Oct. 22, 1997) (Germany); 62 *Fed. Reg.* 55003 (Oct. 22, 1997) (Trinidad and Tobago); 62 *Fed. Reg.* 55014 (Oct. 22, 1997) (Venezuela). The export subsidy to CIL amounts to 3.72 percent *ad valorem*.

<sup>191</sup>We do not agree with Quebec’s assertion that imports from foreign producers which benefit from “survival subsidies” can never be a cause of material injury. Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany, and the United Kingdom, Inv. Nos. 701-TA-314-317 and 731-TA-552-555 (Final), USITC Pub. 2611 at 50-51 n.99 (March 1993), cited by Quebec, merely stands for the proposition that one cannot draw any definite inference about the likely volume of imports from a production facility the owner of which is bankrupt. Thus, we do not believe that Lead and Bismuth supports respondents’ argument that survival subsidies can never be a cause of material injury. Moreover, since Commerce did not use the term “survival subsidies” in its final determinations, it is a matter of opinion whether the subsidies found would fall within that category. We decline to look behind Commerce’s determination to make such an assessment.

<sup>192</sup>In its final comments, respondent Saerstahl attached a public Commerce document containing new factual information in an attempt to show that the Commission is erroneously treating the German

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now directs us to consider whether any changes in subject import volume since the filing of the petition are related to the pendency of the investigation,<sup>193</sup> the record indicates that the reduced level of subject imports in interim 1997 is not related to the filing of the petitions in these investigations on February 26, 1997. While the petition was filed at the end of February of 1997, the decline in subject imports began earlier.<sup>194</sup> Thus the interim 1997 data appear to show a continuation of a downward trend in imports, rather than merely a response to the petition. Consequently, we believe that the interim 1997 data concerning subject import volume are not skewed by the filing of the petition and are probative regarding the likelihood of substantially increased exports of subject merchandise to the United States. These data, combined with the full year 1996 data, lead us to conclude that substantially increased imports of subject merchandise are not likely.<sup>195</sup>

The available data indicate that foreign producers of the subject merchandise have generally been operating at or near full capacity throughout the period of investigation.<sup>196</sup> While most such producers reported stable capacity throughout the period of investigation with no plans for expansion, \*\*\*. However, the record indicates that \*\*\*.<sup>197</sup> \*\*\*.<sup>198</sup> Based on this evidence we cannot conclude that the existence of additional or unused productive capacity, or imminent increases in capacity, indicate a likelihood of substantially increased imports of subject merchandise into the United States.

As stated above, subject imports at current volumes and prices have not had any significant

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<sup>192</sup>(...continued)

company Thyssen as a producer of steel wire rod. In accordance with 19 C.F.R. § 207.30, we have disregarded the new factual information in Sairstahl's final comments. We note, however, that since we did not send a foreign producer questionnaire to Thyssen, our foreign industry data do not reflect any production of steel wire rod for which it might be responsible.

<sup>193</sup>19 U.S.C. § 1677(7)(I).

<sup>194</sup>Memorandum INV-U-080; Table V-3-V-8, CR at V-12-V-17, PR at V-9. According to official statistics, subject imports declined in December of 1996 from prior levels, rose somewhat in January of 1997, then declined in every month but one during the remainder of the interim period. We note that official statistics, which are the only source of monthly import data on the record, track a group of products which is not identical to the "certain steel wire rod" within the scope of these investigations. However, we find that these statistics are a good indicator of monthly import trends.

<sup>195</sup>Moreover, we note that, as discussed above, during periods in which the imports did increase, this increase did not come at the expense of domestic producers' market share, and that despite import volumes during 1996 that significantly exceed more recent levels, such imports never reached injurious levels. Commissioner Newquist joins this footnote only with regard to the conclusion that imports never reached injurious levels during the period of investigation.

<sup>196</sup>See Tables VII-1-VII-6, CR at VII-1-VII-6, PR at VII-2-VII-3.

<sup>197</sup>CR at VII-1-VII-5, PR at VII-1-VII-3.

<sup>198</sup>Table VII-5, CR at VII-5, PR at VII-3.

adverse effects on prices for the domestic like product in the United States.<sup>199</sup> We find no record basis for concluding that such price effects are likely to occur in the imminent future. Accordingly, we do not find that subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices or are likely to increase demand for further subject imports.

The record reveals that, in general, steel wire rod is not produced for inventory; rather, both domestic and foreign producers are geared towards wire drawers' orders.<sup>200</sup> While purchasers may amass inventories,<sup>201</sup> producers generally do not do so. Indeed, the data show that, during the period of investigation, foreign producers shipped the vast majority of wire rod produced in a given year during the year it was produced.<sup>202</sup>

There is no information in the record indicating that there is any potential for product-shifting. Although some producers can shift production facilities between steel wire rod and rebar,<sup>203</sup> there is no record evidence that any subject producer has done so during the period of investigation or will do so in the near future. Moreover, there is little or no evidence of record from which it could be inferred that Ispat International has to date or will in future coordinate the marketing practices of its various steel wire rod producing affiliates in subject countries.<sup>204</sup>

In light of the extensive, continuing expansion and modernization programs pursued by the domestic industry throughout the period of investigation and projected for the next year, discussed above, we do not find that subject imports are having or are likely to have negative effects on the development and production efforts of the domestic industry.

Finally, there are no other demonstrable adverse trends that indicate the probability the domestic industry is likely to be materially injured by reason of subject imports. As discussed above, the domestic industry has experienced improving trends in domestic shipments, prices, and profits that began in mid-1996 and continued through interim 1997. In addition, it has recently brought on line many capacity and process improvements. In light of these circumstances, we find that the domestic industry is not vulnerable to subject imports in the immediate future.

Evaluating all the statutory threat factors, we find that the record indicates neither that substantially increased volumes of subject steel wire rod is imminent nor that material injury by reason of subject imports would occur absent issuance of a countervailing duty order. Accordingly, we determine that the domestic steel wire rod industry is not threatened with material injury by reason of subject imports from Canada and Venezuela.

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<sup>199</sup>Commissioner Newquist concurs in the discussion regarding "Price Effects of Subject Imports" in section V(A)(2), *supra*, and finds that the record provides a rational basis for concluding that significant adverse price effects are not likely to occur in the imminent future.

<sup>200</sup>CR at VII-5, PR at VII-1.

<sup>201</sup>CR at V-6, PR at V-5.

<sup>202</sup>Tables VII-I-VII-6, CR at VII-1-VII-6, PR at VII-2-VII-3; CR at VII-5, PR at VII-1.

<sup>203</sup>CR at III-3, PR at III-1.

<sup>204</sup>*Compare* Conf. Tr. at 183-85; Ispat Hamburger Postconference Brief at 24; CIL Postconference Brief at 39; \*\*\* Importer Questionnaire; *with* Petitioners' Posthearing Brief at 15.

## 2. Determination With Respect to Trinidad and Tobago<sup>205</sup>

We have considered the nature of the subsidies found by Commerce in its final determination. Although Commerce did find that CIL received an export subsidy, amounting to 3.72 percent *ad valorem*,<sup>206</sup> given the small relative magnitude of the export subsidy in light of all the other factors discussed below, we do not find that this factor alone supports a finding that imports of the subject merchandise are likely to increase to injurious levels in the imminent future.

The record indicates that the volume of subject imports during interim 1997 was roughly equivalent to subject imports during interim 1996.<sup>207</sup> Moreover, subject imports during interim 1997 have decreased from their levels during both the first and second halves of 1996.<sup>208</sup> Although the statute now directs us to consider whether any changes in subject import volume since the filing of the petition are related to the pendency of the investigation,<sup>209</sup> the record indicates that the reduced level of subject imports in interim 1997 is not related to the filing of the petition in this investigation on February 26, 1997. While the petition was filed at the end of February of 1997, the decrease in imports began earlier.<sup>210</sup> Thus the interim 1997 data appear to be a continuation of a trend in imports, rather than merely a response to the petition. Consequently, we believe that the interim 1997 data concerning subject import volume are not skewed by the filing of the petition and are probative of the likelihood of substantially increased exports of subject merchandise to the United States. These data, combined with the full year 1996 data, lead us to

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<sup>205</sup>Commissioner Crawford notes that in her analysis of whether the domestic steel wire rod industry is threatened by reason of unfairly traded imports from Trinidad and Tobago that she considers the statutory factors. 19 U.S.C. § 1677(F)(1). She notes that no new evidence has been introduced in this final phase of the investigation to alter her preliminary determination on this issue. Prelim. Det. at 32. The volume of subject imports from Trinidad and Tobago has changed little when the interim period of 1996 is compared with the most recent data from interim 1997. Table IV-1, CR at IV-2, PR at IV-2. Trinidad and Tobago's market share increased only \*\*\* percent from 1995 to 1996. The capacity utilization of Trinidad and Tobago's steel wire rod industry is \*\*\* and there is no evidence that there are significant inventories of subject imports in Trinidad and Tobago. Table VII-5, CR at VII-5, PR at VII-3. Commissioner Crawford has determined that unfairly traded imports from Trinidad and Tobago are not having a price effect on the domestic industry or a significant impact on the output, sales and revenues of the domestic steel wire rod industry. There is no evidence which suggests that these conditions will change in the future. Thus, she determines that the domestic steel wire rod industry is not threatened with material injury by reason of unfairly traded imports from Trinidad and Tobago.

<sup>206</sup>62 Fed. Reg. 55003 (Oct. 22, 1997).

<sup>207</sup>Table IV-1, CR at IV-2, PR at IV-2.

<sup>208</sup>Memorandum INV-U-080.

<sup>209</sup>19 U.S.C. § 1677(7)(I).

<sup>210</sup>Memorandum INV-U-080; Tables V-3-V-8, CR at V-12-V-17, PR at V-9. According to official statistics, subject imports from Trinidad and Tobago declined in December of 1996 from prior levels, rose in January of 1997, and were at significantly reduced levels during the rest of the interim period.

conclude that substantially increased imports of subject merchandise are not likely.<sup>211</sup>

There is currently only one producer of steel wire rod in Trinidad and Tobago, CIL. The data indicate that CIL has been operating \*\*\*.<sup>212</sup> As discussed elsewhere, CIL \*\*\* throughout the period of investigation largely through equipment upgrades. However, \*\*\*.<sup>213</sup> These upgrades \*\*\*.<sup>214</sup> Based on this evidence we cannot conclude that the existence of additional or unused productive capacity, or imminent increases in capacity, indicate a likelihood of substantially increased imports of subject merchandise from Trinidad and Tobago into the United States.

As stated above, subject imports from Trinidad and Tobago at current volumes and prices have not had any significant adverse effects on prices for the domestic like product in the United States.<sup>215</sup> We find no record basis for concluding that such price effects are likely to occur in the imminent future. Accordingly, we do not find that subject imports from Trinidad and Tobago are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices or are likely to increase demand for further subject imports.

The record reveals that, in general, steel wire rod is not produced for inventory; rather, both domestic and foreign producers are geared towards wire drawers' orders.<sup>216</sup> While purchasers may amass inventories,<sup>217</sup> producers generally do not do so. Indeed, the data show that \*\*\*.<sup>218</sup>

There is no information in the record indicating that CIL has any potential for product-shifting. Moreover, there is little or no evidence of record from which it could be inferred that Ispat International has to date or will in the future coordinate the marketing practices of its various steel wire rod producing affiliates in subject countries as alleged by the petitioners.<sup>219</sup> In light of the extensive, continuing expansion and modernization programs pursued by the domestic industry throughout the period of investigation and projected for the next year, discussed above, we do not find that subject imports from Trinidad and Tobago

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<sup>211</sup>Moreover, we note that, as discussed above, during periods in which the imports did increase, this increase did not come at the expense of domestic producers' market share, and that despite import volumes during 1996 that significantly exceed more recent levels, such imports never reached injurious levels. Commissioner Newquist joins this footnote only with regard to the conclusion that imports never reached injurious levels during the period of investigation.

<sup>212</sup>See Table VII-5, CR at VII-5, PR at VII-3.

<sup>213</sup>CR at VII-3-VII-5, PR at VII-1-VII-3.

<sup>214</sup>Table VII-5, CR at VII-5, PR at VII-3.

<sup>215</sup>Commissioner Newquist concurs in the discussion regarding "Price Effects of Subject Imports" in section V(B)(2), *supra*, and finds that the record provides a rational basis for concluding that significant adverse price effects are not likely to occur in the imminent future.

<sup>216</sup>CR at VII-5, PR at VII-1.

<sup>217</sup>CR at V-6, PR at V-5.

<sup>218</sup>Tables VII-I-VII-6, CR at VII-1-VII-6, PR at VII-2-VII-3.

<sup>219</sup>*Compare* Conf. Tr. at 183-85; Ispat Hamburger Postconference Brief at 24; CIL Postconference Brief at 39; \*\*\* Importer Questionnaire; *with* Petitioners' Posthearing Brief at 15.

are having or are likely to have negative effects on the development and production efforts of the domestic industry.

Finally, there are no other demonstrable adverse trends that indicate the probability the domestic industry is likely to be materially injured by reason of subject imports. As discussed above, the domestic industry has experienced improving trends in domestic shipments, prices, and profits that began in mid-1996 and continued through interim 1997. In addition, it has recently brought on line many capacity and process improvements. In light of these circumstances, we find that the domestic industry is not vulnerable to subject imports in the immediate future.

Evaluating all the statutory threat factors, we find that the record indicates neither that substantially increased volumes of subject steel wire rod from Trinidad and Tobago is imminent nor that material injury by reason of subject imports would occur absent issuance of a countervailing duty order. Accordingly, we determine that the domestic steel wire rod industry is not threatened with material injury by reason of subject imports from Trinidad and Tobago.

### **CONCLUSION**

For the foregoing reasons, we determine that the domestic industry producing certain steel wire rod is neither materially injured nor threatened with material injury by reason of subject imports from Canada, Trinidad and Tobago, and Venezuela, and find that subsidized imports from Germany are negligible.

## DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these investigations, I determine that the industry in the United States producing steel wire rod is materially injured by reason of imports of steel wire rod from Canada and Venezuela that the Department of Commerce has found to be subsidized. I join my colleagues' findings as to like product, cumulation, and negligibility, and I join their discussion of the condition of the domestic industry. These additional views provide an explanation of my determination that the industry in the United States producing steel wire rod is materially injured by reason of the subsidized imports from Canada and Venezuela.<sup>220</sup>

The statute calls upon us to determine whether the domestic industry is materially injured by reason of the unfairly traded imports. This case illustrates important analytical differences between my interpretation of the statute and that of my colleagues, regarding both injury and causation.

We differ regarding injury. Injury is a relative concept, not an absolute. We must in each case ask whether the industry is injured relative to what. That is, we must have a baseline, or a point of comparison, against which to measure the condition of the industry as it is factually described in the evidentiary record. The so-called "trends" analysis implicitly adopts as a baseline some unspecified point in the past when the industry was "healthy" or "normal." Injury is then determined by comparing the industry's current condition with its past "normal" or "healthy" state, whenever it occurred, but generally within the period of investigation. If the industry is not performing as well as it was at the previous point in time selected for comparison, it is found to be injured; if it is performing as well as or better than it was at the baseline point, it is found not to be injured. In my view, this analysis is inadequate for several reasons. It lacks transparency. It arbitrarily selects a time period to define the industry's profile. It uses as a point of comparison a historical period in time largely different from the time period the Department of Commerce has reported that subsidies or dumping took place. Perhaps most important, it carries an assumption that any industry that is doing well cannot simultaneously be injured under the statute.

This case presents evidence of an industry doing well. However, in my view "doing well" is not necessarily inconsistent with being injured. A runner might win his race even with a sprained ankle. The measure of his injury is not whether he wins, rather it is how much faster his time would have been had he not had the sprained ankle. Just as an exceptionally talented runner might win a race notwithstanding a sprained ankle, it is reasonable to expect that an efficient and aggressive industry can be doing well in spite of competition from unfairly traded imports. The measure of injury is not whether the industry is doing well, but whether it would have been doing even better had the imports not been unfairly traded. My analysis adopts a baseline that I believe more accurately reflects both the intent of the statute and realities in the marketplace. It compares the performance of the industry when imports were unfairly traded against how well the industry would have been doing if the subject imports had been fairly traded. It allows an estimate of output, prices and revenue foregone as a result of the dumping or subsidy. The more appropriate comparison used in my analysis thus captures foregone revenues lost by profitable industries, as well as those that are not profitable. This case presents such a situation, as I will discuss below. The industry could not have increased its output significantly, but it could have increased its prices, and therefore its revenues significantly, had the subject

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<sup>220</sup>In making my determination of material injury by reason of subsidized imports from Canada and Venezuela, I have in accordance with the statute cumulated subsidized and allegedly dumped imports from Canada, subsidized and allegedly dumped imports from Venezuela, subsidized and allegedly dumped imports from Trinidad and Tobago and allegedly dumped imports from Germany. See the Commission's Opinion Section IV, above. Throughout these Dissenting Views these cumulated volumes are referred to as "unfairly traded" imports.

imports from Canada and Venezuela been traded fairly.

My interpretation of the causation requirement of the statute also differs from that of my colleagues.<sup>221</sup>

In this case, as in most, we have evidence of a domestic industry experiencing internal problems as well as robust domestic competition and competition from both subject and non-subject imports. A dynamic marketplace resists any tidy classification of causes and effects. Undoubtedly many factors contributed to the industry's failure to show larger profits. Here, it is possible that internal industry problems, taken alone, have caused injury that would be deemed material, and could even be greater than the harm caused by the unfair imports. Other problems facing the industry, singularly or together, might also have caused material injury. Nonetheless, we are not to weigh causes.<sup>222</sup> Rather, we are to determine if the dumping or subsidies caused injury that is material. The dumping or subsidies need not be the most important cause of the material injury. It must only be found that, when isolated from other causes, the dumping or subsidies caused material injury to the domestic industry. The value of my analysis is that, in addition to measuring injury by foregone revenues, or in this case foregone profits, it allows isolation of the injury caused by the unfairly traded imports, thereby allowing me to determine if the unfairly traded imports, taken alone, are causing material injury. This avoids inappropriate speculation on causes and effects of different events in the marketplace.<sup>223</sup>

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<sup>221</sup>The statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the subsidized and LTFV imports. The clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of subsidized and LTFV imports, not by reason of the subsidized and 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 are 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, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize 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 subsidized and LTFV imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the subsidized and 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).

A detailed description of my analytical framework is presented below. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. *United States Steel Group v. United States*, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’d* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

<sup>222</sup>The legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

<sup>223</sup>Such a comparison is intended to “isolate the imports as a cause of “material injury””, *United*  
(continued...)

In this case, the record reveals that the industry's revenues were adversely affected by a variety of factors. One of those factors was the unfairly traded imports, which reduced the industry's revenues materially over what those revenues would have been had the imports been fairly traded. Consequently, even though the domestic industry is doing well, it is materially injured by reason of the unfairly traded imports.

## I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the unfairly traded imports, 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 . . . .<sup>224</sup>

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."<sup>225</sup> In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>226</sup>

The statute directs that we determine whether the domestic industry is "materially injured by reason of" the unfairly traded imports. Thus we are called upon to evaluate the effect of the unfairly traded imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the subsidy and the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects 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."<sup>227</sup> It is important, therefore, in these investigations to assess the effects of the unfairly traded imports in a way that distinguishes those effects from the effects of other factors unrelated to the subsidies and the dumping. To do this, as noted above, I compare the current condition of the industry to the industry conditions that would have existed without the subsidies and the dumping, that is, had subject imports all been fairly traded. I then determine whether the change in conditions constitutes material injury.

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<sup>223</sup>(...continued)

*States Steel Group v. United States*, 873 F. Supp. 673, 695 (CIT 1995), *aff'd* 96 F.3d 1352 (Fed Cir. 1996), and thus fulfills the statutory requirement that the material injury suffered by the domestic industry is "by reason of" the unfairly traded imports.

<sup>224</sup>19 U.S.C. § 1677(7)(B)(I).

<sup>225</sup>19 U.S.C. § 1677(7)(B)(ii).

<sup>226</sup>19 U.S.C. § 1677(7)(C)(iii).

<sup>227</sup>S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports.<sup>228</sup>

In my analysis of material injury, I evaluate the effects of the unfairly traded imports<sup>229</sup> on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the unfairly traded imports on domestic prices, I compare domestic prices that existed when the imports were unfairly traded with what domestic prices would have been if the imports had been traded fairly. Similarly, to evaluate the effects of the unfairly traded imports on the quantity of domestic sales,<sup>230</sup> I compare the level of domestic sales that existed when imports were unfairly traded with what domestic sales would have been if the imports had been traded fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the unfairly traded imports, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been traded fairly. If so, the domestic industry is materially injured by reason of the unfairly traded imports.

For the reasons discussed below, I determine that the domestic industry producing steel wire rod is materially injured by reason of subsidized imports of steel wire rod from Canada and Venezuela.

## II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the unfairly traded imports. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

### A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase,

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<sup>228</sup>United States Steel Group v. United States, 96 F.3d 1352, 1361(Fed. Cir. 1996), *aff'd* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

<sup>229</sup>As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

<sup>230</sup>In examining the quantity sold, I take into account sales from both existing inventory and new production.

for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for steel wire rod is relatively low.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of products that are incorporated into other products (e.g., a component), the importance will depend on its cost relative to the total cost of the product in which it is used. When the price of the component is a small portion of the total cost of the product in which it is used, changes in the price of the component are less likely to affect its purchase.

Record evidence shows that steel wire rod is used as a component for a host of products and that the cost component of steel wire rod in most of the end uses is moderate.<sup>231</sup> This moderate cost share suggests a lower elasticity of demand for steel wire rod.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Steel wire rod is an intermediate product used in the production of wire and wire products. The record in these investigations indicates there are few, if any, practical substitutes for steel wire rod used in wire making.<sup>232</sup> This suggests an inelastic demand for steel wire rod.

Based on the moderate cost share of steel wire in downstream products and in particular the limited availability of alternative products, I find that overall the demand for steel wire rod is inelastic. That is, purchasers will not reduce significantly the amount of steel wire rod they buy in response to a general increase in the price of steel wire rod.

## B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes if their product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

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<sup>231</sup>Staff Report, CR at II-21; PR at II-16.

<sup>232</sup>Staff Report at CR I-4 and I-5; PR at I-3 and I-4.

Because demand elasticity for steel wire rod is inelastic, overall purchases will not decline significantly if the overall prices of steel wire rod increase. However, purchasers can avoid price increases from one source by seeking other sources of steel wire rod. In addition to any changes in overall demand for steel wire rod, the demand for steel wire rod from different sources will decrease or increase depending on their relative prices and their substitutability. If steel wire rod from different sources is substitutable, purchasers are more likely to shift their demand from one source when the products from that source (i.e., subject imports) experience a price increase. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of steel wire rod: domestically produced steel wire rod, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among steel wire rod from different sources as follows.

Based on the evidence in the record, I find that subject imports and domestic steel wire rod are good substitutes for each other. I further find that subject imports and nonsubject imports are at least moderate substitutes for each other. Thus, a shift in demand away from subject imports likely would increase demand for both nonsubject imports and domestic steel wire rod.

Purchasers noted that Canadian steel wire rod and domestic steel wire rod were equally available, had comparable delivery times, could be purchased with similar discounts, and were of the same consistent quality. A majority of purchasers reported that Venezuelan steel wire rod and domestic product had comparable delivery times, were available at similar discounts, were packaged in the same manner, and had comparable product consistency and product range. Most producers, importers and purchasers reported that German subject imports and domestic steel wire rod were used to produce the same downstream products. Most purchasers reported German subject imports to be of comparable quality, have the same product range, were offered at similar discounts and were served with comparable technical support as domestic steel wire rod. Similarly, producers, importers and purchasers generally agree that subject imports from Trinidad and Tobago and domestic steel wire rod generally can be used in the same end uses. The majority of purchasers reported that subject imports from Trinidad & Tobago were comparable as to delivery terms, discounts provided, packaging, and product quality, range and consistency. Overall a majority of purchasers reported that domestic steel wire rod and subject imports are comparable in the majority of the bases for comparison and are good substitutes for each other.<sup>233</sup>

For these reasons, I find that subject imports and domestic steel wire rod are good substitutes for each other. I further find that nonsubject imports are at least moderate substitutes for domestic steel wire rod and subject imports.<sup>234</sup> Therefore, all else being equal, it is likely that purchasers would have switched from purchases of subject imports to purchases of both nonsubject imports and domestic steel wire rod had the subject imports been fairly traded.

### C. Supply Conditions

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<sup>233</sup>Staff Report CR Tables II-2, II-3, II-4, II-5 and II-6 at II-11, II-13, II-15, II-17 and II-19; PR at Tables II-2, II-3, II-4, II-5 and II-6 at II-8, II-10, II-11, II-12, and II-14.

<sup>234</sup>Most importers indicated that nonsubject imports of steel wire rod and subject imports were moderate substitutes. CR at II-20; PR at II-13 and II-15. An additional indication of the degree of substitutability between subject imports and nonsubject imports is that the increase in subject imports from 1995 to 1996 mainly displaced nonsubject imports in the market. CR, Table C-1 at C-3; PR at Table C-1 at C-3.

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories, the availability of products for export markets that can be diverted to the domestic market, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of steel wire rod is low.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could easily make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1996, a 10.2 percent of the domestic industry's capacity to produce steel wire rod was not used<sup>235</sup> and, thus only this limited amount of capacity was available to increase production. Other evidence in the record indicates that this apparent available capacity may be overstated. The domestic industry acknowledged that it did not have the capacity to serve the demand for steel wire rod in the domestic market.<sup>236</sup> Several purchasers reported instances when U.S. producers could not fill orders for steel wire rod and placed the purchasers on allocation.<sup>237</sup> The inability of the domestic industry to supply the domestic steel wire purchasers with adequate supply was a point emphasized by the Respondents during the investigations.<sup>238</sup> Thus, the domestic industry had little, if any, actual unused capacity available to supply the demand for subject imports.

Inventories and Exports. As noted above in the Commission's opinion at Section II, the domestic industry maintained insignificant inventories throughout the period of investigation.<sup>239</sup> In addition, the domestic industry's exports are insignificant, accounting for approximately 1 percent of shipments in 1996.<sup>240</sup> Thus, the domestic industry did not have available inventories or exports that could have filled the demand for subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. There are 17 domestic producers of steel wire rod in the U.S. market, and thus there is significant competition within the domestic industry. Nonsubject imports

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<sup>235</sup>CR Table III-2 at III-4, PR at Table III-2 at III-3.

<sup>236</sup>Petitioner's Prehearing Brief at 7; Conf. Tr. at 260-62; Table III-2, CR at III-4; PR at III-3; Table IV-2, CR at IV-3, PR at Table IV-3. *See above*, n. 51 and the accompanying discussion at Section II of the Commission's Opinion.

<sup>237</sup>CR at III-3; PR at III-1.

<sup>238</sup>Prehearing brief of the American Wire Producers Association at 6-17.

<sup>239</sup>Memorandum INV-U-083 (Nov. 18, 1997). *See above*, n. 64 and accompanying discussion at Section II of the Commission's Opinion.

<sup>240</sup>CR, Table C-1 at C-4; PR at Table C-1 at C-4.

also have been a presence in this market, accounting for 10.7 percent of consumption during 1996.<sup>241</sup> Consequently, I find that there is a significant level of competition in the U.S. market for steel wire rod.

Notwithstanding the level of competition in the domestic market, I find that the elasticity of supply is low based on the domestic industry's limited ability to increase supply from existing unused capacity, inventories and exports

### III. MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS OF STEEL WIRE ROD FROM CANADA AND VENEZUELA

The statute requires us to consider the volume of unfairly traded imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

#### A. Volume of Unfairly Traded Imports

Unfairly traded imports of steel wire rod from Canada, Venezuela, Trinidad & Tobago, and Germany<sup>242</sup> increased from 943,697 short tons in 1995 to 1,312,952 short tons in 1996.<sup>243</sup> The value of subject imports was \$354,893,000 in 1995, and \$449,927,000 in 1996.<sup>244</sup> By quantity, subject imports held a market share of, 12.6 percent in 1995, and 17.6 percent in 1996. Their market share by value was 13 percent in 1995, and 17.3 percent in 1996.<sup>245</sup> While it is clear that the larger the volume of unfairly traded imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effects and impact. Based on the market share of unfairly traded imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price effects and impact.

#### B. Effect of Unfairly Traded Imports on Domestic Prices

To determine the effect of unfairly traded imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had been fairly traded. As discussed, both demand and supply conditions in the steel wire rod market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been fairly traded. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and

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<sup>241</sup>CR, Table C-1 at C-3; PR, Table C-1 at C-3.

<sup>242</sup>As stated above, for purposes of my analysis of material injury by reason of subsidized steel wire rod imports from Canada and Venezuela, I have cumulated subject imports from Canada and Venezuela with subject imports from Trinidad and Tobago and Germany in accordance with the Commission's determination regarding negligibility, cumulation and cross-cumulation as set forth above in Sections III and IV of the Commission's Opinion.

<sup>243</sup>CR, Table IV-2 at IV-3; PR, Table IV-2 at IV-3.

<sup>244</sup>CR, Table IV-1, at IV-2; PR, Table IV-1 at IV-2.

<sup>245</sup>CR, Table IV-2, at IV-3; PR, Table IV-2 at IV-3.

prevented price increases for the domestic product, even if subject imports had been fairly traded.

If the unfairly traded imports had not been subsidized or dumped, their prices in the U.S. market would have increased. Thus, if subject imports had been fairly traded, they would have become more expensive relative to domestic steel wire rod and nonsubject imports. In such a case, if unfairly traded imports are good substitutes with steel wire rod from other sources, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the subsidy margins and preliminary dumping margins for unfairly traded imports range from moderate to high. Thus, subject imports likely would have been priced significantly higher had they been fairly traded. Unfairly traded imports and domestic steel wire rod are good substitutes for each other. However, due to capacity limitations the domestic industry would have been able to supply only a small portion of the full demand for subject imports that likely would have shifted to domestic steel wire rod had subject imports been fairly traded. Nonsubject imports are also a presence in the market, and they are moderate substitutes with subject imports. Thus, some of the demand for subject imports likely would have shifted to nonsubject imports as well. However, it is unlikely that nonsubject imports would have captured all of the demand for unfairly traded imports because of the moderate degree of substitutability. Instead, some fairly traded subject imports would have remained in the market to serve part of the demand that the domestic industry and nonsubject imports could not supply. Overall, the shift in demand and the limited availability of supply from other sources would have allowed the domestic industry to raise its prices for steel wire rod. Overall demand would not have changed very much in response to higher prices, since demand is inelastic. Thus, had the subject imports been fairly traded, the domestic industry would have increased its prices for steel wire rod.<sup>246</sup> Consequently, I find that unfairly traded imports are having a significant effect on prices for domestic steel wire rod.

#### C. Impact of Unfairly Traded Imports on the Domestic Industry

To assess the impact of unfairly traded imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.<sup>247</sup> These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so I gauge the impact of the subsidy and dumping through those effects.

As discussed above, had subject imports been fairly traded, the domestic industry would have increased its prices significantly. However, the domestic industry would not have been able to increase its output and sales because of the low elasticity of domestic supply. Nevertheless, the domestic industry dominates the market, accounting for 71.8 percent of domestic consumption in 1996. Therefore a significant increase in the price of domestic steel wire rod would have had a significant impact on the domestic industry's revenues. Based on the increase in the domestic industry's prices, and consequently, its revenues, I conclude that the domestic industry would have been materially better off if the subject imports had been fairly traded.

#### IV. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing steel wire rod is materially injured by reason of subsidized imports of steel wire rod from the Canada and Venezuela.

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<sup>246</sup>See testimony of Robert Stoner TR at 313 - 317.

<sup>247</sup>19 U.S.C. § 1677(7)(C)(iii).

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigations Nos. 701-TA-368-371 (Final)

### CERTAIN STEEL WIRE ROD FROM CANADA GERMANY, TRINIDAD & TOBAGO, AND VENEZUELA

#### DETERMINATIONS

On the basis of the record<sup>248</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada, Trinidad & Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the respective governments of these countries.<sup>249</sup> The Commission also determines pursuant to the Act that subsidized imports from Germany are negligible, and its investigation of such imports is thereby terminated (19 U.S.C. § 1671d(b)(1)).

#### BACKGROUND

The Commission instituted these investigations effective February 26, 1997, following receipt of a petition filed with the Commission and the Department of Commerce by Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Texas, Inc., Beaumont, TX; and Northwestern Steel & Wire, Sterling, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain steel wire rod from Canada, Germany,

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<sup>248</sup>The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>249</sup>Commissioner Crawford dissenting with respect to Canada and Venezuela.

Trinidad & Tobago, and Venezuela were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)). Notice of the scheduling 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 20, 1997 (62 FR 44288). The hearing was held in Washington, DC, on October 16, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On October 22, 1997, the Department of Commerce ("Commerce") published notice in the *Federal Register* of the suspensions of its countervailing duty investigations on steel wire rod from Trinidad & Tobago (62 FR 54960) and Venezuela (62 FR 54966) based on agreements it concluded with these countries; however, at the same time Commerce indicated that it was continuing its investigations, pursuant to requests by petitioners. Accordingly, the Commission determined to continue its investigations.