

UNITED STATES INTERNATIONAL TRADE COMMISSION

STAINLESS STEEL WIRE ROD FROM GERMANY, ITALY, JAPAN,
KOREA, SPAIN, SWEDEN, AND TAIWAN

Investigations Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3126, September 1998)

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STAINLESS STEEL WIRE ROD¹ FROM GERMANY, ITALY, JAPAN, KOREA, SPAIN, SWEDEN, AND TAIWAN

DETERMINATIONS

On the basis of the record² developed in the subject investigations, the United States International Trade Commission determines,³ pursuant to section 705(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1671d(b)), that an industry in the United States is materially injured by reason of imports from Italy of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Italy and the European Union.

Also, the Commission determines,⁴ pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan of stainless steel wire rod that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Further, the Commission determines, pursuant to sections 735(b) and 771(24) of the Act (19 U.S.C. §§ 1673d(b) and 1677(24)), that an industry in the United States is not threatened

¹ For purposes of these investigations, stainless steel wire rod is defined as stainless steel products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons, or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. Stainless steel wire rod is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Stainless steel wire rod is manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, is normally sold in coiled form, and is of solid cross section. Most stainless steel wire rod sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for stainless steel wire rod is 5.5 millimeters (0.217 inch) in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of stainless steel wire rod sizes normally sold in the United States is between 0.20 inch and 1.312 inches in diameter. Stainless steel wire rod grades SF20T and K-M35FL are excluded from the scope of these investigations; additionally, grades Kanthal A-1, Kanthal AF, Kanthal A, Kanthal D, Kanthal DT, Alkrothal 14, Alkrothal 720, and Nikrothal 40 are excluded from the investigation concerning Sweden. Stainless steel wire rod is provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule (HTS) with a 1998 column 1-general tariff rate of 2.8 percent *ad valorem*, applicable to products of each of the subject countries.

² The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

³ Commissioners Carol T. Crawford and Thelma J. Askey dissenting and Commissioner Jennifer A. Hillman not participating.

⁴ Commissioners Carol T. Crawford and Thelma J. Askey dissenting and Commissioner Jennifer A. Hillman not participating.

with material injury by reason of imports from Germany of stainless steel wire rod that have been found by the Department of Commerce to be sold in the United States at LTFV.^{5 6 7 8}

BACKGROUND

The Commission instituted these investigations effective July 30, 1997, following receipt of a petition filed with the Commission and the Department of Commerce by counsel on behalf of AL Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL-CIO/CLC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of stainless steel wire rod from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and imports of stainless steel wire rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(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 March 23, 1998 (63 *F.R.* 13872). The hearing was held in Washington, DC, on July 22, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁵ Pursuant to 19 U.S.C. § 1677(24)(A)(i) and (iv), the Commission also finds that subject imports from Germany account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition, but (Commissioner Carol T. Crawford dissenting) that there is a potential that such imports from Germany will imminently account for more than 3 percent of total import volume of all such merchandise.

⁶ Commissioner Carol T. Crawford finds subject imports from Germany to be negligible.

⁷ Chairman Lynn M. Bragg finds a threat of material injury by reason of subject German imports.

⁸ Commissioner Jennifer A. Hillman not participating.

VIEWS OF THE COMMISSION

Based on the record in the subject investigations, we find that an industry in the United States is materially injured by reason of imports of stainless steel wire rod (“SSWR”) that have been found by the Department of Commerce (“Commerce”) to be subsidized by the Government of Italy and the European Union.

We also find that an industry in the United States is materially injured by reason of imports of SSWR from Italy, Japan, the Republic of Korea (“Korea”), Spain, Sweden, and Taiwan that have been found by Commerce to be sold at less than fair value (“LTFV”).¹ We further find that an industry in the United States is not threatened with material injury by reason of imports of SSWR from Germany that have been found by Commerce to be sold at LTFV.^{2 3 4 5}

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

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.”⁶ 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.”⁷

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” on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it

¹ Commissioner Crawford and Commissioner Askey determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of SSWR from Italy that have been found by Commerce to be subsidized by the Government of Italy and the European Union, and by reason of imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan that have been found by Commerce to be sold at LTFV. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford and Dissenting Views of Commissioner Thelma J. Askey. Commissioner Crawford joins her colleagues in Sections I, III and IV.A. (unless otherwise noted) of the following opinion. Commissioner Askey joins her colleagues in Sections I, II and III of the following opinion.

² Commissioner Crawford determines that imports of SSWR from Germany are negligible. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford.

³ Chairman Bragg determines that an industry in the United States is threatened with material injury by reason of imports of SSWR from Germany. *See* Dissenting Views of Chairman Lynn M. Bragg Regarding Imports From Germany.

⁴ Commissioner Hillman did not participate in these determinations.

⁵ Material retardation of the establishment of an industry is not an issue in these investigations.

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT 455, 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

(continued...)

deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁰ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise being sold at LTFV and subsidized, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Domestic Like Product Issues

In these investigations Commerce has defined the imported articles as:

products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.¹²

Commerce excluded two products from the scope of the investigations, grade SF20T SSWR and grade K-M35FL SSWR.¹³ Commerce also excluded the following grades of SSWR from the scope of the investigation of imports from Sweden: Kanthal A-1, Kanthal AF, Kanthal A, Kanthal D, Kanthal DT, Alkrothal 14, Alkrothal 720, and Nikrothal 40.

⁸ (...continued)

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).

⁹ *See, e.g.*, S. Rep. No. 96-249, at 90-91 (1979).

¹⁰ 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).

¹¹ 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).

¹² 63 Fed. Reg. 40433 (July 29, 1998) (Germany); 63 Fed. Reg. 40422 (July 29, 1998) (Italy); 63 Fed. Reg. 40474 (July 29, 1998) (Italy -- countervailing duty investigation); 63 Fed. Reg. 40434 (July 29, 1998) (Japan); 63 Fed. Reg. 40404 (July 29, 1998) (Korea); 63 Fed. Reg. 40391 (July 29, 1998) (Spain); 63 Fed. Reg. 40449 (July 29, 1998) (Sweden); and 63 Fed. Reg. 40461 (July 29, 1998) (Taiwan). The scope definition also provides that “[t]he most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.” The scope definition further explains that these products “are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States.” *Id.*

¹³ *Id.*

In the preliminary phase of these investigations, the Commission found a single domestic like product, stainless steel wire rod, consisting of all products within the scope description.¹⁴

In these final phase investigations two German respondents, Krupp Edelstahlprofile GmbH and its related U.S. importer, Krupp-Hoesch Steel Products, Inc. (collectively “Krupp”), argue that the Commission should find three like products, consisting of: (1) coiled stainless steel rod (with diameters less than 19 mm); (2) coiled and non-coiled stainless steel “bar” (with diameters equal to or greater than 19 mm); and (3) coiled stainless steel “bar” and rod with non-circular cross sections.¹⁵ In addition, Hitachi Metals America, Ltd. (“Hitachi”), an importer of SSWR from Japan, reasserted its argument that grade 440C SSWR should be treated as a separate like product from all other forms of SSWR.¹⁶ Petitioners urge the Commission to follow its finding in the preliminary determinations and find a single domestic like product consisting of all SSWR.

Accordingly, we consider (1) whether we should find the following three domestic like products: (a) coiled stainless steel rod (with diameters less than 19 mm); (b) coiled and non-coiled stainless steel “bar” (with diameters equal to or greater than 19 mm); and (c) coiled stainless steel “bar” and rod with non-circular cross sections; and (2) whether we should find grade 440C SSWR to be a separate domestic like product from all other forms of SSWR. For the reasons discussed below, we find that there is one domestic like product in these investigations, consisting of all SSWR corresponding to the scope of Commerce’s investigations.

1. Whether Coiled Stainless Steel Rod (With Diameters Less Than 19 mm), Coiled and Non-coiled Stainless Steel “Bar” (With Diameters Equal To Or Greater Than 19 mm), and Coiled Stainless Steel “Bar” and Rod with Non-circular Cross Sections are Separate Like Products

In the preliminary determinations the Commission applied its six-factor analysis and found that the products, which Krupp then argued should be divided into two domestic like products,¹⁷ and which it now argues should be divided into three domestic like products,¹⁸ constituted a single domestic like product. The Commission noted that, despite certain physical differences among the SSWR products which Krupp sought to have treated as separate domestic like products, all grades of SSWR share the same basic physical characteristics. It found that domestic producers make all grades and sizes of SSWR in the same facilities and with the same employees, and that all grades of SSWR are used to produce one or more of the traditional end product categories for SSWR, namely wire, bar or fasteners. The Commission further found that

¹⁴ Preliminary Determination (“Prelim. Det.”) at 8.

¹⁵ Krupp Posthearing Brief at 12-15. Krupp states in its posthearing brief that it is merely reiterating its like product argument from the preliminary phase of these investigations. However, although the like product definitions now being advanced by Krupp are similar to those it advocated in the preliminary phase of these investigations, they are not the same. In the preliminary phase, Krupp argued that there should be two domestic like products: (1) SSWR of circular cross section with a diameter of less than 19 mm, and (2) SSWR of non-circular cross section or with a diameter of 19 mm or more (which, according to Krupp, is properly defined as stainless steel bar). Krupp also argued that these two domestic like product categories should be expanded to include, in each case, cut-to-length SSWR. Krupp Postconference Brief (Aug. 26, 1997) at 3-24. Krupp’s position appears to have changed in that it is now proposing three domestic like product categories (with a break-out between SSWR of non-circular cross section, and SSWR of a diameter of 19 mm or more), and it is now proposing to include “non-coiled” (*i.e.*, cut-to-length) product only in one of its three proposed domestic like product categories.

¹⁶ Prehearing Brief of Hitachi Metals.

¹⁷ Krupp Postconference Brief at 2-25.

¹⁸ Krupp Posthearing Brief at 12-15.

customers and producers generally consider all SSWR products to be part of the same market and industry. It noted that larger diameter and non-circular SSWR are sold in the same channels of trade as all other forms of SSWR. The Commission recognized that larger diameter and non-circular SSWR have a limited amount of interchangeability with other SSWR, but it noted that this limited degree of interchangeability is common across the spectrum of SSWR grades and sizes. Finally, the Commission acknowledged that there appear to be price differences between large diameter or non-circular SSWR and other SSWR, but it found that these differences were not significant enough to warrant a finding of separate domestic like products. The Commission concluded that there is a continuum of SSWR products that are produced in a wide variety of grades, specifications, shapes and sizes.¹⁹

We do not believe that Krupp's arguments warrant a different decision regarding the domestic like product than in the preliminary determinations. Krupp argues that 1997 import statistics show even greater differences in pricing between the proposed categories than the Commission considered in the preliminary determinations. However, the 1997 data segregating imports from Germany into large- and small-diameter categories, and into circular and non-circular cross section categories, is unreliable.²⁰ Moreover, price is only one of six factors which the Commission traditionally examines in its domestic like product analysis, and the record shows that the other factors weigh in favor of finding one domestic like product.²¹

2. Whether Grade 440C SSWR Should Be Considered A Separate Domestic Like Product From All Other Forms of SSWR

In the preliminary determinations, after applying the six-factor analysis, the Commission concluded that grade 440C SSWR is part of the continuum of SSWR and is not a separate domestic like product. Hitachi has not presented any new reasons for treating this grade as a separate domestic like product, nor has any information been developed in these investigations to support such an approach. Accordingly, we again find that grade 440C SSWR is not a separate domestic like product.

3. Conclusion

In sum, we affirm the decision in the preliminary determinations that there is one domestic like product consisting of all SSWR corresponding to the scope of Commerce's investigations.

C. Domestic Industry and Related Parties

¹⁹ Prelim. Det. at 6-8.

²⁰ ***.

²¹ Some of the other "new information" proffered by Krupp is taken out of context. For example, Krupp focuses on the fact that one purchaser stated that larger-diameter product is viewed as bar, but ignores the fact that the majority of the importers and purchasers who offered an opinion on this issue stated that they consider larger-diameter product to be wire rod, regardless of its diameter. CR at I-16-17, PR at I-9-10. Krupp also highlights the fact that a producer reported that making non-circular product is more costly and requires additional equipment and inventory, but ignores the fact that this producer stated that the manufacturing process of circular and non-circular product is virtually identical, with no significant differences in terms of hot rolling, annealing time or temperatures, pickling steps, or production employees. *Id.* Krupp's observation that only one U.S. producer makes non-circular SSWR has no relevance to the domestic like product analysis. Krupp's arguments regarding the limited interchangeability between non-circular SSWR and other SSWR are not persuasive. As noted in the preliminary determinations, this limited interchangeability is shared across the spectrum of SSWR grades and specifications.

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.”²² In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.²³ Based on our definition of the domestic like product, we define the corresponding domestic industry as consisting of all domestic producers of SSWR.

In these final investigations, we consider two issues with respect to the domestic industry: first, whether Nucor *** are domestic producers; and second, whether appropriate circumstances exist to exclude from the domestic industry two producers, AL Tech and Carpenter, either because they are importers of the subject merchandise or are related to an exporter or importer of the subject merchandise.²⁴

1. Whether Nucor * Are Domestic Producers**

Petitioners argue that the Commission should exclude Nucor and *** from the domestic industry because these companies are not producers of the domestic like product. Nucor did not produce SSWR during the period of investigation.²⁵ ***.²⁶ ***. Because neither Nucor nor *** produces SSWR, we do not include them in the domestic industry.

This raises the issue of whether *** should be included in the definition of the domestic industry. The Commission generally applies a six-factor test when considering whether a company is engaged in sufficient production-related activity to be included in the domestic industry.²⁷ While the record does not contain detailed information on this issue, it appears that *** AL Tech and Talley (before its acquisition by Carpenter), which ***.²⁸ No one has disputed that AL Tech and Talley are properly included in the definition of the domestic industry,²⁹ and, accordingly, we find that *** should be included in the definition of the domestic industry.

2. Whether to Exclude AL Tech and Carpenter

²² 19 U.S.C. § 1677(4)(A).

²³ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d* 96 F.3d 1352 (Fed. Cir. 1996).

²⁴ 19 U.S.C. § 1677(4)(B).

²⁵ In the preliminary determinations we stated that Nucor had announced that it intended to enter the domestic SSWR market in the near future. Prelim. Det. at 10, n. 55. We have since learned that the company had contemplated commercial production of stainless steel wire, not rod, but that it has abandoned these plans. CR at I-10, PR at I-6.

²⁶ CR at I-8-9, PR at I-6.

²⁷ These factors are: (1) the source and extent of the firm’s capital investment, (2) technical expertise involved in U.S. production activities, (3) value added to the product in the United States, (4) employment levels, (5) quantity and type of parts sourced in the United States, and (6) any other costs and activities in the United States directly leading to production of the like product. See, e.g., Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. No. 3116 (July 1998) at 9; and Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Final), USITC Pub 3076 (December 1997) at 11.

²⁸ CR at I-8, PR at I-5.

²⁹ In Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 (Nov. 1993) at I-9, the Commission found that a toller (Talley) which performed the hot-rolling and coiling steps of SSWR production, but not the finishing steps (annealing, pickling and coating), was engaged in sufficient domestic production to be included in the definition of the domestic industry. In this case, ***.

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) of the Act.³⁰ That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of the subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³¹

Two domestic producers, AL Tech and Carpenter, may be excluded pursuant to section 771(4)(B). AL Tech is a majority-owned subsidiary of Sammi Steel Co., Ltd ("Sammi"), a Korean producer of SSWR during the period of investigation.³² AL Tech also ***.³³ Carpenter imported *** quantities of SSWR from Taiwan during the period of investigation, with its 1997 imports amounting for *** percent of its domestic production.³⁴

As in the preliminary determinations, we determine that appropriate circumstances do not exist to exclude either AL Tech or Carpenter from the domestic industry. Both companies were significant producers of SSWR during the period of investigation,³⁵ neither imported significant amounts of subject merchandise relative to its domestic production,³⁶ and neither appears to have derived a significant benefit from its use of imports vis-a-vis the rest of the domestic industry.^{37 38}

³⁰ 19 U.S.C. § 1677(4)(B).

³¹ See Torrington Co. v. United States, 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989) *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and
- (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

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). The Commission has also considered 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., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

³² CR at III-2, PR at III-1.

³³ CR at III-2, n.2, PR at III-1, n.2.

³⁴ CR at III-2 & n.4, PR at III-1 & n.4. In addition, Carpenter owned a 3.5 to 19 percent share of Walsin Cartech Specialty Steel Corp., a Taiwanese producer of SSWR, during the period of investigation, but has since sold this interest. *Id.*

³⁵ AL Tech and Carpenter accounted for *** percent and *** percent, respectively, of domestic production in 1997. CR at III-1, PR at III-1.

³⁶ In 1997, AL Tech *** produced *** tons of SSWR, and Carpenter imported *** tons and produced *** tons of SSWR. CR at III-5-8, PR at III-3-4.

³⁷ The financial performance of these two companies ***. Table VI-2.

³⁸ The exclusion of AL Tech as advocated by certain of the respondents would be inconsistent with the rationale of the related party provision because AL Tech has not been shielded from injury as a result of its relationship with its foreign

II. NEGLIGENCE

If imports from a subject country accounted for less than three percent of total U.S. imports of such merchandise in the most recent 12-month period for which data are available that precedes the filing of the petition, then, barring certain exceptions, the Commission is to determine that such imports are “negligible.”³⁹ Such a finding of negligibility terminates the investigation with respect to those imports.⁴⁰ However, even if imports account for less than three percent in the relevant period, they will not be treated as negligible for purposes of a threat of material injury determination if the Commission determines that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States.⁴¹ The statute allows the Commission to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of making negligibility determinations.⁴²

The issue of negligibility arises in these investigations only with respect to imports from Germany. We have used official U.S. import statistics for imports for consumption, adjusted for inaccuracies discovered in the course of these investigations, to evaluate negligibility. Based on those data, we find that subject imports from Germany accounted for only 2.76 percent of all SSWR imports in the twelve months preceding the filing of the petition (*i.e.*, July 1996 through June 1997).⁴³ Thus, for purposes of our present material injury analysis, we conclude that imports from Germany are negligible.

However, we also find that there is a potential that subject imports from Germany will imminently account for more than three percent of total SSWR imports. We note that Germany’s share of total imports for consumption (adjusted for inaccuracies) was 5.4 percent in 1997, but dropped to 3.2 percent in interim 1998.⁴⁴ Accordingly, for purposes of our threat of material injury analysis, we conclude that imports from Germany are not negligible. Pursuant to Section 771(24)(A)(iv) of the Act, we consider imports from Germany only for purposes of determining threat of material injury.⁴⁵

III. CUMULATION

³⁸ (...continued)
parent.

³⁹ 19 U.S.C. § 1677(24).

⁴⁰ 19 U.S.C. §§ 1671d(b) and 1673d(b).

⁴¹ 19 U.S.C. § 1677(24)(a)(iv). The other exception to a determination of negligibility -- addressing situations where there is more than one country with imports below the three-percent threshold, and the aggregate volume of imports from such countries exceeds seven percent of total imports (19 U.S.C. § 1677(24)(A)(ii)) -- is not relevant in these investigations because only one subject country, Germany, has imports that were at or near the three-percent threshold.

⁴² 19 U.S.C. § 1677(24)(C).

⁴³ Table F-5. For purposes of measuring negligibility in these investigations, we have relied on the imports-for-consumption data series. We note, however, that imports from Germany would also be less than three percent in the relevant 12-month period if measured by the general imports data series, adjusted for inaccuracies. Using general imports, imports from Germany (adjusted for inaccuracies) account for 2.94 percent of SSWR imports in the relevant 12-month period. Table F-8.

⁴⁴ Table F-3. We note also that a series of 12-month rolling averages (beginning with July 1996-June 1997, and going forward to the period May 1997-April 1998) shows that imports from Germany exceeded the three percent-level in most of these periods. Table F-5 (Restated for 12-month periods from July 1996-June 1997 through May 1997-April 1998), attached to Memorandum INV-V-067 (Aug. 28, 1998).

⁴⁵ 19 U.S.C. § 1677(24)(A)(iv).

A. In General

Section 771(7)(G)(I) of the Act 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.⁴⁶

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

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.⁴⁷

While no single factor is necessarily 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.⁴⁸ Only a “reasonable overlap” of competition is required.⁴⁹

B. Discussion

The petitions in these antidumping duty investigations and in the countervailing duty investigation were all filed on the same day. Accordingly, the first part of the statutory standard for cumulation is satisfied and we are required to determine whether there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.⁵⁰

In the preliminary determinations the Commission cumulated imports from all of the subject countries. The Commission found that there was a reasonable degree of fungibility among the domestic

⁴⁶ 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which applies to these investigations. See 19 U.S.C. § 1677(7)(G)(ii).

⁴⁷ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. 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).

⁴⁸ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁴⁹ 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).

⁵⁰ We address in section V.A. below the issue of whether to cumulate imports from the other subject countries with those from Germany for purposes of determining whether imports from Germany threaten material injury to the domestic industry. Pursuant to 19 U.S.C. §1677(24)(A)(iv), we may not consider imports from Germany for purposes of assessing present material injury, and thus do not include imports from Germany in the analysis of cumulation for present material injury purposes.

merchandise and the subject imports. It rejected claims by the Japanese respondents that imports of SSWR from Japan do not compete with the domestic merchandise. In determining to cumulate all subject imports, the Commission further relied on the fact that imports were spread throughout the United States; that imported and domestic SSWR are sold in similar channels of distribution on the open market; and that substantial volumes of imports from each of the subject countries were present in the U.S. market throughout the period of investigation.⁵¹

The Japanese respondents again urge the Commission not to cumulate SSWR imports from Japan with other subject imports for purposes of its material injury analysis. They contend that there is no reasonable overlap of competition between imports from Japan and the domestic merchandise.⁵² The petitioners urge the Commission to cumulate all imports from the subject countries, including imports from Japan, for purposes of its material injury analysis.⁵³

An analysis of the four factors traditionally addressed in cumulation analysis shows that there is a reasonable overlap of competition between the subject imports and the domestic product.⁵⁴ First, the subject imports are spread throughout the United States and there is no indication that the imports are concentrated in any particular geographic region.⁵⁵ Second, although the large majority of domestic production is consumed captively, the great majority of both domestic and imported open market shipments are sold directly to end users, such as wire redrawers and fastener manufacturers.⁵⁶ Accordingly, imports and domestic merchandise are sold in similar channels of distribution on the open market. Third, substantial volumes of imports from each of the subject countries, including Japan, were present in the U.S. market during each year of the period of investigation and during the first quarter of 1998.⁵⁷

With respect to the final factor, the degree of fungibility among imports from different countries and between imports and the domestic like product, the parties appear to accept that there is a reasonable overlap of competition among the subject countries, and only the Japanese respondents argued that their imports do not compete with the domestic like product.

In considering the arguments of the Japanese respondents, we reviewed shipment data for 1997, broken out by grade, and, for the domestic industry, by merchant market and captive shipments, to determine what proportion of imports from Japan and domestic shipments occurred in the principal merchant market grades of the domestic industry. The four grades in which the domestic industry had the largest volumes of merchant market shipments (grades ***) accounted for *** percent of the total volume of merchant market

⁵¹ Prelim. Det. at 24-26.

⁵² The Japanese Respondents do not argue that there is no reasonable overlap of competition between the imports from Japan and other subject imports.

⁵³ Petitioners' Prehearing Brief at 54-59.

⁵⁴ 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 (1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (1994); BIC Corp. v. United States, 964 F. Supp. 391 (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 Italy, Japan, Korea, Spain, Sweden, and Taiwan.

⁵⁵ CR at I-15, PR at I-8.

⁵⁶ *Id.*

⁵⁷ Tables IV-1 and IV-2.

shipments, and *** percent of total domestic shipments.⁵⁸ These grades accounted for *** percent of imports from Japan in 1997.⁵⁹ Also, there are other grades for which there is overlap between the domestic and Japanese products.⁶⁰ While there is no numerical “bright-line” for making such a determination, we find that this level of overlap between domestic sales and imports from Japan supports a finding of a reasonable overlap of competition.⁶¹

The Japanese respondents argue that competition with the domestic industry is attenuated because of quality differences between imports from Japan and the domestic like product. However, while most purchasers reported that domestic SSWR is inferior in product quality, consistency and coil weight when compared to Japanese SSWR,⁶² these factors, although important, are not the only ones which enter into purchasing decisions. Moreover, the domestic product was deemed to be largely comparable in many other respects (*e.g.*, availability, delivery terms and technical support). On the basis of overall comparisons, all of the domestic producers and most importers reported that U.S. and imported SSWR is used interchangeably. Out of 13 importers responding, seven said that Japanese and domestic SSWR are always interchangeable, three reported that they are sometimes interchangeable, and three reported that they are never interchangeable.⁶³

In sum, the limited evidence of quality differences is outweighed by the other evidence showing a reasonable overlap of competition between imports from Japan and the domestic like product.

Accordingly, we find that the domestic merchandise and imports of the subject merchandise from all of the countries, including Japan, were relatively fungible with each other, were sold in similar geographic markets, were sold in similar channels of distribution, and were simultaneously present during each year of the period of investigation. We have therefore cumulated subject imports from all of the countries, except Germany, for purposes of our material injury analysis.⁶⁴

IV. MATERIAL INJURY BY REASON OF DUMPED AND SUBSIDIZED IMPORTS

⁵⁸ See Table F-1.

⁵⁹ APO Release No. 199808135031. These grades accounted for the following percentages of imports from the other subject countries: Germany -- *** percent; Italy -- *** percent; Korea -- *** percent; Spain -- *** percent; Sweden -- *** percent; and Taiwan -- *** percent. *Id.*

⁶⁰ For example, there also was an overlap between domestic shipments and Japanese imports in 1997 for grades ***. *Id.* See also Table X-1, attached to Memorandum INV-V-067 (Aug. 28, 1998).

⁶¹ The Japanese respondents note that *** testified at the staff conference in the preliminary phase investigations that, because of quality considerations, it cannot obtain grade 302 from any source other than Japan. The Japanese respondents rely on this evidence to argue that Japanese imports of this grade do not compete with domestic production. Japanese Respondents’ Prehearing Cumulation Brief at 6. If the sales of grade 302 to *** are disregarded, the percentage of total Japanese imports accounted for by the four grades drops to *** percent. We find that this level constitutes a reasonable overlap of competition, particularly since there are other grades in which there also is overlapping competition.

⁶² Table D-1.

⁶³ CR at II-10, n.7, PR at II-5, n.7.

⁶⁴ The Commission has determined to cross-cumulate dumped and subsidized imports from Italy, and no party has argued to the contrary. The Commission’s practice has been to cumulate such imports. See Certain Steel Wire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371, USITC Pub. 3075 (Nov. 1997) at 21-22.

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the dumped and subsidized imports under investigation.⁶⁵ In making these determinations, the Commission must consider the volume of the dumped or subsidized 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.⁶⁶ 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.”⁶⁷

A. Conditions of Competition⁶⁸

We note several conditions of competition which are relevant to our analysis of the domestic SSWR industry. First, demand for SSWR depends primarily on downstream demand for intermediate products in which SSWR is used and on demand in end-use industries that require the corrosion-resistant properties of SSWR.⁶⁹ Second, overall demand for SSWR has increased in recent years due to general growth in the economy and the development of new applications for SSWR products.⁷⁰ Indeed, in 1997 demand was at an all-time high. Apparent U.S. consumption of SSWR increased during the period of investigation, rising from *** short tons in 1995 to *** short tons in 1997.⁷¹ At the same time, the U.S. industry’s costs of production have increased.⁷² Third, although the statutory captive consumption provision does not apply to these investigations, we consider the significant volume of captive consumption of SSWR as a condition of competition.^{73 74} Finally, there is increasing demand in the domestic market for SSWR in larger coil weights, especially coil weights in excess of 2,000 pounds.⁷⁵

B. Volume of Subject Imports⁷⁶

⁶⁵ 19 U.S.C. §§ 1671d(b) and 1673d(b). The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.” 19 U.S.C. § 1677(7)(A).

⁶⁶ 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).

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ Commissioner Askey does not join the rest of this opinion. *See* Dissenting Views of Commissioner Thelma J. Askey.

⁶⁹ CR at II-3, PR at II-2.

⁷⁰ *Id.*

⁷¹ Table IV-2

⁷² Table A-1.

⁷³ In the final phase of these investigations, no party has argued that the statutory captive consumption provision (codified in 19 U.S.C. § 1677(7)(C)(iv)) applies to these determinations. We find that SSWR sold in the merchant market is generally used in the production of the same downstream products for which SSWR is internally consumed; therefore the third criterion of the captive production provision is not satisfied, and the provision does not apply. *See, e.g.,* CR at I-15 and II-1, PR at I-8 and II-1.

⁷⁴ Chairman Bragg makes no finding regarding the applicability of the captive production provision.

⁷⁵ CR at I-13-15, PR at I-7-8.

⁷⁶ Commissioner Crawford does not join the rest of this opinion. *See* Additional and Dissenting Views of

(continued...)

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷⁷

The volume of cumulated imports from the subject countries except Germany⁷⁸ rose from *** short tons in 1995 to *** short tons in 1996 and to *** short tons in 1997, an overall increase of *** percent. Cumulated subject imports were *** short tons in interim 1998 compared with *** short tons in interim 1997. The value of cumulated imports from the subject countries rose from \$*** in 1995 to \$*** in 1996 and to \$*** in 1997, an overall increase of *** percent. The value of such imports was \$*** in both interim periods.⁷⁹

The increase in the volume of subject imports in the 1995-1997 period was greater than the increase in apparent domestic consumption. The subject imports rose by *** short tons, while consumption rose by *** short tons.⁸⁰

The subject imports gained market share directly at the expense of domestic producers. The cumulated market share of the subject import shipments by quantity rose from *** percent in 1995, to *** percent in 1996, and to *** percent in 1997, and was *** percent in interim 1998 compared with *** percent in interim 1997. During the same period, U.S. producers’ share of consumption by quantity fell from *** percent in 1995 to *** percent in 1996 and to *** percent in 1997.⁸¹ U.S. producers’ share of the quantity of consumption was *** percent in both interim 1998 and interim 1997.⁸² U.S. producers’ share of consumption by value fell from *** percent in 1995 to *** percent in 1996 and to *** percent in 1997. Their market share by value was *** percent in interim 1998 compared with *** percent in interim 1997.⁸³

In light of the rising quantity and market share of the subject imports, at the expense of the domestic industry and to a degree that exceeded increases in demand, we find the increases in volume and market share of the subject imports to be significant.⁸⁴

C. Price Effects of Subject Imports

⁷⁶ (...continued)

Commissioner Carol T. Crawford.

⁷⁷ 19 U.S.C. § 1677(7)(C)(i).

⁷⁸ For the remainder of this opinion, all references to the “subject countries” are to the subject countries other than Germany, and all references to the “subject imports” are to subject imports from all of the subject countries except Germany.

⁷⁹ Table IV-1 (Restated), attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁸⁰ *Id.* and Table IV-2.

⁸¹ Table IV-2 (Restated), attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Certain respondents argue that the increases in imports during the period of investigation are not significant because the domestic industry was operating at full or nearly full capacity. Posthearing Brief of Joint Respondents at 12-14. We have given careful consideration to respondents’ arguments and we have concluded that the information collected on the basis of questionnaire responses in these investigations provides the most reliable measure of the domestic industry’s capacity utilization rates. This information shows that capacity utilization levels were falling in each year from 1995 through 1997. Table III-1. Even if it is true that the domestic industry’s full practical capacity utilization level is below 100 percent, the reported capacity utilization rates do not indicate that the domestic industry was operating at full capacity, such that the increases in imports would not be significant.

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁵

The record shows that purchasers of SSWR consider price to be a significant -- albeit not the most important -- factor in making purchasing decisions.⁸⁶ The record also shows that imported and domestic SSWR is generally substitutable when compared by size and grade.⁸⁷

In these investigations we collected quarterly pricing data for four representative SSWR products. For three of these four products the record shows that U.S. producers' prices increased from the first quarter of 1995 through the fourth quarter of 1995, and then generally declined until the end of 1996. After a slight increase in the second quarter of 1997, prices for these products declined and then stayed flat for the remainder of the year.⁸⁸ Prices for the fourth product increased from the first quarter of 1995 until the fourth quarter of 1995, and then fluctuated in a narrow range for the rest of the investigation period.⁸⁹

The prices of imports showed similar patterns to those described above, albeit generally at lower levels than domestic prices. The subject imports undersold the domestic like product in 83.9 percent of quarterly price comparisons by an average margin of 7.6 percent.⁹⁰ We find that underselling by the subject imports, which was widespread, to be significant in light of the fact that the four products for which pricing data were collected are high-volume, commodity-type grades of SSWR.⁹¹

Given the rising demand for SSWR over the period of investigation and domestic producers' increasing costs, we would have expected domestic producers to have been able to raise their prices at least to cover their rising production costs. Instead, prices have been declining or have been flat, while (as detailed below) the domestic industry's ratio of cost of goods sold to net sales revenue has risen.⁹² On this basis, due to the rising volume, increasing market share, and generally low prices of subject imports, we find that the subject imports have suppressed prices for the domestic product to a significant degree.

⁸⁵ 19 U.S.C. § 1677(7)(C)(ii).

⁸⁶ CR at II-5-7, PR at II-3-4.

⁸⁷ CR at I-11, PR at I-7. In fact, the majority of purchasers reported that the subject imports were comparable to the domestic product and the majority of purchasers, producers and importers reported that SSWR from U.S. producers and subject imports are used interchangeably. CR at II-10-11, II-20, Appendix D, PR at II-5, II-9.

⁸⁸ Figures V-3 through V-5.

⁸⁹ Figure V-6.

⁹⁰ See Tables V-1 through V-4 (without Germany).

⁹¹ Table F-1. We also note that average unit values of domestic merchandise declined by *** percent while those for the subject imports declined by *** percent.

⁹² We considered whether the trends in domestic producers' prices might be attributable to declining raw material prices. The record, however, generally shows the same flat or declining trends even when raw material surcharges are excluded from reported pricing data. Figure V-7.

D. Impact of Subject Imports^{93 94}

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁵ 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.

As detailed above, imports of the subject merchandise increased substantially over the period of investigation and captured an increasing share of the U.S. market. This increase in market share held by the subject imports was entirely at the expense of the domestic industry: while the subject imports went from *** percent of the quantity of domestic consumption in 1995, to *** percent in 1997 (an increase of *** percentage points), U.S. producers' market share fell from *** percent in 1995, to *** percent in 1997 (a decline of *** percentage points).⁹⁶ As also discussed above, SSWR prices in the domestic market declined or were flat, even though demand for SSWR was growing and costs were rising relative to revenues.

The quantity of the domestic industry's production fell during each year of the period of investigation.⁹⁷ Capacity utilization levels also fell throughout the period.⁹⁸ The quantity of shipments declined from 1995 to 1996, and then only rose *** in 1997, remaining well below 1995 levels.⁹⁹ The value

⁹³ As part of its consideration of the impact of imports, 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 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.) The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. New section 771(35)(C), 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a final determination as the last margin or margins published by Commerce prior to the closing of the administrative record in the Commission's investigations. The dumping margins identified by Commerce in its final determinations (the last margins to be published before the closing of the record in these investigations) are as follows (in percent): for Italy, 1.27 (Acciaierie di Bolzano and Acciaierie Valbruna), 12.73 (Cogne Acciai Speciali and all others) 63 Fed. Reg. 40422 (July 29, 1998); for Japan, 0.00 (Hitachi Metals), 21.18 (Nippon Steel), 34.21 (Daido Steel, Sanyo Special Steel and Sumitomo Electric Industries), and 25.26 (all others) 63 Fed. Reg. 40434 (July 29, 1998); for Korea, 28.44 (Sammi Steel) and 3.18 (Dongbang Special Steel, Changwon Specialty Steel, Pohang Iron and Steel, and all others) 63 Fed. Reg. 40404 (July 29, 1998); for Spain, 4.72 (Roldan and all others) 63 Fed. Reg. 40391 (July 29, 1998); for Sweden, 5.71 (Fagersta Stainless and all others) 63 Fed. Reg. 40449 (July 29, 1998); and for Taiwan, 0.02 (Yieh Hsing) and 8.24 (Walsin Cartech and all others) 63 Fed. Reg. 40461 (July 29, 1998).

⁹⁴ Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁹⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁶ Table IV-2 (Restated), attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁹⁷ The domestic industry's production was ***. Table III-1.

⁹⁸ Capacity utilization levels, based on the domestic industry's actual product mix, were *** percent in 1995, *** percent in 1996, and *** percent in 1997. On an optimal product mix basis, capacity utilization levels were *** percent in 1995, *** percent in 1996, and *** percent in 1997. *Id.*

⁹⁹ The domestic industry's shipments were ***. Table III-2.

of the domestic industry's shipments declined throughout the period of investigation.¹⁰⁰ Employment in the domestic industry also declined during the period of investigation.¹⁰¹

The domestic industry's financial performance deteriorated. At the same time as unit costs rose, unit net sales values fell, resulting in a cost-price squeeze.^{102 103} Unable to raise prices to cover rising costs, and with its sales volume declining, the domestic industry experienced *** financial declines. The domestic industry's operating income declined from 1995 to 1996, and *** in 1997.¹⁰⁴ Operating margins also declined.¹⁰⁵

For the foregoing reasons, we find that the subject imports are having a significant adverse impact on the domestic industry,^{106 107 108} and we determine that the domestic industry producing SSWR is materially injured by reason of subject imports from Italy, which Commerce has found to be subsidized, and by reason

¹⁰⁰ The value of the domestic industry's shipments was \$***. Table III-2.

¹⁰¹ The number of production and related workers fell from *** in 1995 to *** in 1997, and hours worked fell from *** to ***. Table III-4.

¹⁰² The domestic industry's unit cost-of goods sold ("COGS") increased from \$*** in 1995 to \$*** in 1996 and to \$*** in 1997. Unit COGS then declined in the interim periods, from \$*** in interim 1997 to \$*** in interim 1998. Unit sales values fell from \$*** in 1995 to \$*** in 1996 and to \$*** in 1997. In the interim periods, unit sales values rose from \$*** in interim 1997 to \$*** in interim 1998. The ratio between COGS and sales values rose from *** percent in 1995 to *** percent in 1996, and to *** percent in 1997. It then *** percent in interim 1997 to *** percent in interim 1998. Table A-1.

¹⁰³ Certain respondents have urged the Commission ***.

¹⁰⁴ Operating income was \$*** in 1995 and \$*** in 1996. This *** \$*** in 1997. Table VI-1.

¹⁰⁵ Operating margins were *** percent in 1995, *** percent in 1996, and *** percent in 1997. Table VI-1.

¹⁰⁶ Certain respondents have argued that the subject imports could not have been the cause of injury to the domestic industry because most imports were of coil weights over 2,000 pounds, sizes which only one domestic producer, Talley, had the capability of supplying in the diameter required by wire redrawers. *E.g.*, Joint Respondents' Comments dated August 20, 1998 at 9. We find that this argument is undercut by the record evidence of Talley's performance during the period of investigation. Given its low capacity utilization, if imports were indeed being driven by demand for large-size coils, one would expect to see an increase in Talley's sales and an improvement in its financial results. Yet, Talley experienced a decline in its shipments from 1995 through 1997 and a deterioration in its financial results. Table III-2 and Table VI-2.

¹⁰⁷ We are also not persuaded by certain respondents' argument that the domestic industry is shielded from injury because the majority of its SSWR production is captively consumed. The domestic industry's merchant market sales accounted for approximately one third of its total shipments during the period of investigation. The record reflects that the domestic industry's merchant market operations are materially injured by reason of the subject imports. Table A-2. In these investigations, we find that material injury to the industry's merchant market operations has resulted in material injury to the domestic industry's overall operations. In this regard, we note that the data for the industry's overall operations -- discussed above -- shows similar results to the data for the domestic industry's merchant market operations. We also note that in a capital intensive industry such as this one, declining sales to the merchant market only serve to raise overall unit COGs. Indeed, industry-wide unit COGs increased over the period of investigation, even though raw material costs declined. Tables VI-1 and VI-6.

¹⁰⁸ Chairman Bragg does not join the preceding footnote. She is not persuaded by certain respondents' argument that the domestic industry is shielded from injury because the majority of its SSWR production is captively consumed. The domestic industry's merchant market sales accounted for approximately one third of its total shipments during the period of investigation. The domestic industry's declining sales and profitability in this portion of its business had a significant overall adverse effect on the industry.

of subject imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan, which Commerce has found to be sold at LTFV.

**VIEWS OF VICE CHAIRMAN MARCIA E. MILLER
AND COMMISSIONER STEPHEN KOPLAN**

V. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM GERMANY

Because we have determined that SSWR imports from Germany did not exceed the three percent negligibility threshold during the 12 months prior to the filing of the petition, but that there is a potential that such imports will imminently exceed the threshold, we analyze whether the domestic industry is threatened with material injury by reason of SSWR imports from Germany,

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of subject imports, the Commission has discretion to cumulate the volume and price effects of subject imports from multiple countries if such imports meet the standard for cumulation that is applied by the Commission in analyzing present material injury.¹⁰⁹ In deciding whether to cumulate for purposes of making threat determinations, the Commission has often considered whether the subject imports are increasing at similar rates and have similar pricing patterns.¹¹⁰

In this investigation, we have determined to exercise our discretion not to cumulate SSWR imports from Germany with subject SSWR imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan for purposes of our threat determination regarding the subject imports from Germany. As noted above, SSWR imports from Germany were less than three percent of total imports for consumption during the 12 months prior to the filing of the petition.¹¹¹ Imports from Germany were well below the three-percent threshold in prior years. During subsequent periods, imports from Germany have slightly exceeded the three-percent threshold.¹¹² However, these imports continue to constitute a very small share of total imports. Not surprisingly, the market share of imports from Germany as a percentage of domestic consumption has been extremely low throughout the investigation period.¹¹³ Moreover, there are differences in the volume and unit

¹⁰⁹ 19 U.S.C. § 1677(7)(H).

¹¹⁰ See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd*, 991 F.2d 809 (Fed. Cir. 1993) (table case); 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).

¹¹¹ Table F-5, Table F-3.

¹¹² See, e.g., Memorandum INV-V-067 (Aug. 28, 1998) at Table F-5 (Restated for 12-month periods from July 1996-June 1997 through May 1997-April 1998); Table F-3.

¹¹³ The imports from Germany's share of U.S. consumption by quantity was *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in interim 1997, and *** percent in interim 1998. By value, the imports from Germany's shares of U.S. consumption was *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in interim 1997, and *** percent in interim 1998. Table A-1. Cf. Ball Bearings, Mounted or Unmounted, and Parts Thereof, From Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, The People's Republic of China, Poland, The Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia, Inv. Nos. 701-TA-307 & 731-TA-498-511 (Preliminary), USITC Pub. 2374, at 25 (April 1991) (exercising discretion not to cumulate imports from any of the subject countries where "the market shares of the subject countries [were] extremely low"), *aff'd sub nom. Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd*, 991 F.2d 809 (Fed. Cir. 1993) (table case).

value trends for imports from Germany as compared to those for the other subject countries.¹¹⁴ Under these circumstances, we decline to exercise our discretion to cumulate the imports from Germany with subject imports from the other countries for purposes of our threat determination regarding imports from Germany.

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.”¹¹⁵ 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.¹¹⁶ In making our determination, we have considered all statutory factors that are relevant.¹¹⁷

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

We find that the volume of imports from Germany during the investigation period has been insignificant. The imports from Germany’s share of U.S. consumption by quantity fluctuated but increased *** in absolute terms over the period of investigation, from *** percent in 1995, to *** percent in 1996, to *** percent in 1997, and was *** percent in interim 1997, compared with *** percent in interim 1998. Likewise, by value the imports from Germany’s share of U.S. consumption fluctuated but increased *** in nominal terms, from *** percent in 1995, to *** percent in 1996, to *** percent in 1997, and was *** percent in interim 1997, compared with *** percent in interim 1998.¹¹⁸ In light of the low market share achieved by imports from Germany, we do not find these increases to be significant. Additionally, although the German producers have reported relatively moderate capacity utilization rates and increases in overall capacity,¹¹⁹ we

¹¹⁴ Tables IV-2 and A-1. Commissioner Koplan notes that, over the entire period of investigation, changes in quantity flows and unit values of imports from Germany were generally dissimilar to those of the other subject countries. Further, questionnaire data on import quantities and prices for the individual products for which the Commission gathered price data showed even less correlation between Germany and other subject countries. He notes that aggregate imports from Germany trended in the same direction as imports from each of the other subject countries during only one year of the period of investigation. However, even for that year, the magnitude of the change for imports from Germany differed significantly from those of the other subject countries.

¹¹⁵ 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

¹¹⁶ 19 U.S.C. § 1677(7)(F)(ii).

¹¹⁷ 19 U.S.C. § 1677(7)(F)(I). Factor I regarding consideration of the nature of the subsidies is inapplicable, because there have not been any subsidies alleged with respect to SSWR from Germany. Likewise, Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue. In addition, there is no record evidence of any antidumping investigations in other WTO member countries involving SSWR from Germany. CR at VII-21, PR at VII-8. See 19 U.S.C. § 1677(7)(F)(iii)(I).

¹¹⁸ Table A-1. The imports from Germany’s share of domestic commercial shipments has also been insignificant: *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in interim 1997, and *** percent in interim 1998. By quantity, imports from Germany for consumption (as adjusted by the Commission Staff) were *** percent of total imports for consumption in 1995, *** percent in 1996, 5.4 percent in 1997, *** percent in interim 1997, and 3.2 percent in interim 1998. Table F-3.

¹¹⁹ The German producers’ capacity utilization rates were *** percent in 1995, *** percent in 1996, *** percent in (continued...)

are not persuaded that German producers are likely to use the available or excess capacity to substantially increase their exports to the United States, in light of their *** low volumes and market penetration in the U.S. market. Moreover, the record evidence indicates that the bulk of German production is shipped to the home market and other export markets, rather than the U.S. market, and there is no indication that this focus is likely to change in the immediate future.¹²⁰ Accordingly, we find that imports from Germany to the United States are not likely to substantially increase.¹²¹

Although there is record evidence of underselling at significant margins by the subject imports from Germany,¹²² given the insignificant volumes of these imports, we do not find that their prices are likely to have significant price depressing or suppressing effects on domestic prices in the immediate future.

Finally, given the insignificant volume and price effects of imports from Germany, we do not find that SSWR imports from Germany will imminently have a significant adverse impact on the domestic

¹¹⁹ (...continued)

1997, *** percent in interim 1997, and *** percent in interim 1998. The German producers' projected capacity utilization rates of *** percent and *** percent in 1998 and 1999, respectively. Table VII-1. The German producers also reported increases in average production capacity from *** short tons in 1995, to *** short tons in 1996, to *** short tons in 1997, and projected capacity for 1998 and 1999 of *** short tons and *** short tons, respectively. *Id.* While average production capacity has increased, we note that Krupp Edelstahlprofile GmbH ("Krupp") expected ***, and BGH Edelstahl Freital GmbH ("BGH"), by far the smaller of the two German producers, revised its capacity estimates *** as a result of production problems at its new mill. CR at VII-3-4, PR at VII-1-2.

¹²⁰ During the investigation period, German producers' shipments to the home market ranged between *** percent and *** percent of all shipments, and their shipments to other export markets ranged between *** percent and *** percent of all shipments. By contrast, shipments to the United States ranged between *** percent and *** percent of all shipments. The German producers currently project that home market shipments will be *** percent and *** percent and that other export market shipments will be *** and *** percent of all shipments in 1998 and 1999, respectively, whereas they project that their U.S. shipments will be only *** and *** percent of all shipments in 1998 and 1999, respectively. Table VII-1. Additionally, although both of the German producers make other products on the same production equipment that they use to make SSWR, there is no indication that they intend to shift production away from these products and toward SSWR production. The record evidence indicates that production of these other products is *** part of these producers' operations than their SSWR business. CR at VII-3 (SSWR sales by Krupp accounted for *** percent of total sales, while other products produced on the same equipment accounted for *** percent of total sales), PR at VII-1; CR at VII-4 (SSWR sales by BGH accounted for *** percent of total sales, while other products produced on the same equipment accounted for *** percent of total sales), PR at VII-2. Moreover, BGH has indicated that it is actually shifting away from rod production because the "market in Germany and the European Union . . . for bar, and downstream rod products is much stronger than anticipated and more profitable than sales of rod." Prehearing Brief of BGH at 2; *cf.* CR at VII-4, PR at VII-2.

¹²¹ Nor do we find that the level of inventories of German SSWR indicates the likelihood of substantially increasing imports. The German producers' inventory levels, both in absolute terms and in proportion to production and total shipments, have been relatively *** over the investigation period. Table VII-1. Although U.S. importers' inventories of German SSWR *** increased from *** short tons in 1995, to *** short tons in 1996, to *** short tons in 1997, and were *** short tons and *** short tons in interim 1997 and 1998, respectively, the total inventory volume remains ***. Table VII-9.

¹²² For the four products for which the Commission's Staff collected price comparison data, imports from Germany undersold comparable domestic products in 24 out of 27 possible comparisons at an average margin of underselling of 15.8 percent. CR at V-25, PR at V-8. The quantity of German product, however, was generally *** compared to the quantities sold by domestic producers and by other subject foreign producers, and there were no reported sales from Germany of one of the four products. Tables V-1, V-2, V-3 & n.1, and V-4.

industry. We also do not find any other demonstrable adverse trends indicating “the probability that there is likely to be material injury by reason of” SSWR imports from Germany.¹²³

For the reasons stated above, we determine that the domestic industry producing SSWR is not threatened with material injury by reason of LTFV imports of SSWR from Germany.

¹²³ 19 U.S.C. § 1677(7)(F)(i)(IX).

**DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG
REGARDING IMPORTS FROM GERMANY**

Having found that there is a potential that subject SSWR imports from Germany will imminently account for more than three percent of all such merchandise imported into the United States,¹ I now consider whether subject imports from Germany threaten the domestic industry.² In assessing whether the U.S. industry is threatened with material injury by reason of the subject imports, section 771(7)(F) of the Act directs the Commission to consider 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.”³ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”⁴ and considers the threat factors “as a whole.”⁵ In making my determination, I have considered all statutory factors that are relevant to these investigations.⁶

Section 771(7)(H) of the Act provides that the Commission may “to the extent practicable” cumulatively assess the volume and price effects of the subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.⁷ In my material injury analysis regarding SSWR imports from subject countries other than Germany, I joined the majority of my colleagues in determining that the requirements for cumulation for purposes of making a material injury determination are satisfied in these investigations. I also determine that it is appropriate to cumulate subject imports from Germany with those other subject SSWR imports in assessing the potential for harm that subject German imports present to the domestic industry.⁸ In this regard, I note that imports from Germany exhibited volume⁹ trends similar to subject imports from the other countries as well as generally similar pricing trends¹⁰ during the period of investigation. Indeed, to the extent that some trends were not similar, German import trends tended to be more imminently injurious.

Subject imports from Germany increased in volume over the period of investigation at a faster rate than did subject imports from every other country except Japan and Taiwan.¹¹ Indeed, German capacity increased throughout the period of investigation and is projected to continue to increase.¹² Importantly, as German capacity has increased so too has the importance of the United States as an export market. As a share of total shipments of German SSWR, exports to the United States increased one-and-one-half fold

¹ Table IV-1.

² See 19 U.S.C. §1677(24)(A)(iv).

³ 19 U.S.C. §1673b(a) and §1677(7)(F)(ii).

⁴ 19 U.S.C. §1677(7)(F)(ii).

⁵ SAA at 184.

⁶ 19 U.S.C. §1677(7)(F)(I). I note that Factor VII regarding raw and processed agriculture products does not apply in these investigations. See 19 U.S.C. §1677(F)(I)(VII).

⁷ 19 U.S.C. §1677(7)(H).

⁸ Having determined that the other subject imports are a cause of present material injury, I do not here assess whether such imports threaten material injury.

⁹ Table IV-1.

¹⁰ Tables V-1, V-2, and V-4; Figures V-3, V-4, and V-6.

¹¹ Table IV-1.

¹² Table VII-1.

during the period.¹³ In addition, there is substantial German production which could be diverted to the United States from either the home or other export markets.¹⁴

Subject imports from Germany undersold the domestic like product in approximately 90 percent of the available price comparisons, by average margins greater than those for most of the other subject imports.¹⁵ In fact, for the three German products for which prices were obtained, importers reported lower prices at the end of the period (first quarter of 1998) than earlier in the period, for example, the first quarter of 1996.¹⁶ In light of the declining prices and consistent underselling, I find that imports from Germany will enter the United States at prices that will depress or suppress domestic prices of SSWR to a significant degree.

For purposes of assessing the impact of future increases of German imports, I am particularly mindful that, with a majority of my colleagues, the Commission determined that the domestic industry is presently experiencing material injury by reason of cumulated subject imports from Italy, Japan, Korea, Spain, Sweden and Taiwan. Consequently, when assessed in conjunction with the presently injurious effect of the cumulated subject imports, continued unfair German imports pose an imminent threat of further material injury to the domestic industry.

Thus, for the foregoing reasons, I determine that the domestic industry producing stainless steel wire rod is threatened with material injury by reason of imports of this merchandise from Germany which the Department of Commerce has determined to be sold in the United States at less-than-fair-value.

¹³ Table VII-1. I note that decreased exports to the United States during the period January-March 1998 is likely due to the pendency of these investigations. *See* 19 U.S.C. § 1677(I).

¹⁴ Table VII-1.

¹⁵ Tables V-1, V-2, and V-4; CR at V-25, PR at V-8.

¹⁶ Tables V-1, V-2, and V-4.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these final investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of Stainless Steel Wire Rod (“SSWR”) from Italy, Japan, Korea, Spain, Sweden, and Taiwan found by the Department of Commerce to be sold at less-than-fair-value (“LTFV”) and imports from Italy found by Commerce to be subsidized by the Government of Italy and the European Union.¹ I further determine that subject imports from Germany are negligible. I concur in the conclusions of my colleagues in the finding of the like product, domestic industry, related parties, captive consumption, cumulation, and in the discussion of the condition of competition² and I therefore join their views in these areas. These additional and dissenting views provide an explanation of my determination of negligibility with respect to subject imports from Germany, and of no material injury or threat of material injury to an industry in the United States by reason of LTFV imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan and subsidized imports from Italy.

I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV or subsidized 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 . . .³

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”⁴ 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.”⁵

The statute directs that we determine whether a domestic industry is materially injured “by reason of” the dumped or subsidized imports. Thus we are called upon to evaluate the effect of dumped or subsidized 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 dumped or subsidized imports. 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 dumped or subsidized 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

¹ Material retardation of the establishment of an industry is not an issue in these investigations.

² Specifically, I concur in the majority’s discussion in the conditions of competition section regarding domestic demand conditions and captive consumption only.

³ 19 U.S.C. § 1677(7)(B)(i).

⁴ 19 U.S.C. § 1677(7)(B)(ii).

⁵ 19 U.S.C. § 1677(7)(C)(iii).

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.⁶ It is important, therefore, to assess the effects of the dumped or subsidized imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping or subsidies, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.⁷

In my analysis of material injury, I evaluate the effects of the dumping⁸ and subsidies on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping and subsidies on domestic prices, I compare domestic prices that existed when the imports were dumped or subsidized with what domestic prices would have been if the imports had been fairly traded. Similarly, to evaluate the effects of dumping or subsidies on the quantity of domestic sales,⁹ I compare the level of domestic sales that existed when imports were dumped or subsidized with what domestic sales would have been if the imports had been fairly traded. 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 effects on the statutory impact factors¹⁰ (e.g., employment, wages, etc.) are 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 dumping or subsidies, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been fairly traded. If so, the domestic industry is materially injured by reason of the dumped or subsidized imports.

For the reasons discussed below, I determine that subject imports from Germany are negligible and that the domestic industry producing SSWR is not materially injured by reason of dumped or subsidized imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

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 dumping and subsidies. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

⁶ S. Rep. No. 100-71 at 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

⁷ Both the United States 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, 694-695 (Ct. Int'l Trade 1994).

⁸ 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).

⁹ In examining the quantity sold, I take into account sales from both existing inventory and new production.

¹⁰ 19 U.S.C. § 1677(7)(C)(iii).

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, 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, to what extent purchasers will change the quantity of their purchases if the price of the product changes. For the reasons discussed below, I find that the overall demand for SSWR in the domestic market is somewhat elastic.

Importance of the Product. The first factor that measures the willingness of purchasers to pay higher prices is the importance of the product to purchasers. In the case of an intermediate product (“input”), the importance of the product to the purchaser will depend on the significance of the input’s cost relative to the total cost of the downstream product or service in which it is used, whether the input is critical to production of the downstream product or service, and ultimately the demand conditions for the downstream product. In the case of an end-use product, demand is determined by the importance of the product to the end-user.

SSWR purchased in the United States from producers and importers is used for the manufacture of stainless steel wire, bar, fasteners, and other products.¹¹ SSWR represents a large portion of the overall cost of downstream products.¹² For example, wire drawers reported that SSWR accounts for between 35 and 100 percent of the cost of wire, with the majority reporting 50 to 75 percent.¹³ Thus, increases in the price of SSWR translate into significantly higher prices for downstream products. This relationship between SSWR prices and the prices of downstream products is particularly relevant given that purchasers of downstream products have other sources from which they may purchase, such as imports of stainless steel wire.¹⁴ In the case of wire, higher domestic SSWR prices raise the cost of production to downstream domestic wire producers. Higher costs translate into higher prices for their wire products, which in turn reduces their competitiveness vis-a-vis imports of wire. More generally, in the face of downstream import competition, increases in the price of domestically produced downstream products would result in reductions in demand for the downstream domestic products, and by extension, lower demand for domestic SSWR.¹⁵ These market conditions indicate a higher elasticity of demand for SSWR.

I further note that, as stated in the majority opinion and in the record, overall demand for SSWR has risen during the past several years due to general growth in the economy and as SSWR has been used in new and expanding applications such as bar conversion.¹⁶ Current consumption exceeds U.S. capacity by about *** percent.¹⁷

¹¹ CR at I-3 and I-6; PR at I-3-4.

¹² CR at II-5; PR at II-3.

¹³ CR at II-5; PR at II-3. Stainless steel wire producers appear to account for a significant portion of SSWR consumption, perhaps over 50 percent. *See, e.g.,* CR at II-1 and III-9, PR at II-1 and III-4-5, and Tables III-2 and IV-2.

¹⁴ During 1995-1997, about one-quarter of all stainless steel round wire consumed in the United States was imported. CR at II-4-5; PR at II-3.

¹⁵ Nine of 32 purchasers reported that changes in the price of SSWR have affected the volumes of sales of their downstream products. CR at II-5; PR at II-3.

¹⁶ CR at II-3; PR at II-2.

¹⁷ Table A-1.

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.

In this investigation, the record indicates that there are some alternative products. Although thirty-one of the 36 purchasers reported that there were no direct substitute products for stainless steel wire rod, there is some evidence of substitutability of other products for SSWR.¹⁸ The possible direct substitutes include using products manufactured from alternate materials or metals.¹⁹

Captive Consumption. Nearly 70 percent²⁰ of domestic production of SSWR is captively consumed by the domestic industry in the manufacture of wire and small-diameter bar.²¹ This tends to reduce the responsiveness of demand to changes in prices.

Accordingly, I find that demand for SSWR in the domestic market is somewhat elastic. That is, the consumption of SSWR will tend to fall in response to a general increase in the price of SSWR.

B. Substitutability

Simply put, substitutability between SSWR products from different sources measures the similarity or dissimilarity of the 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, purity, rate of defects, convenience or difficulty of usage in production process, 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 and have high substitutability if 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. Thus, while overall demand for a product will only change moderately in response to the overall price change, the demand for products from different sources (e.g., subject imports) will decrease or increase depending on their relative prices and the substitutability of the products from different sources. In other words, purchasers can avoid price increases from one source by shifting their purchases to alternative sources. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of SSWR: the domestic industry, 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 find that there is moderate-to-good substitutability between domestic SSWR and subject imports of SSWR from Italy, Korea and Spain and that there is moderate substitutability between domestic SSWR and subject imports from Japan, Sweden, and Taiwan. I further find that nonsubject and subject imports are good substitutes and that nonsubject and domestic

¹⁸ CR at II-4; PR at II-2; Tr. at 117-127.

¹⁹ CR at II-4; PR at II-2.

²⁰ CR at III-9; PR at III-4-5.

²¹ CR at III-9; PR at III-4-5.

products are relatively good substitutes. I have evaluated the substitutability among SSWR from the different sources as follows.

Subject Imports and Domestic Product. Subject imports and the domestic like product are generally interchangeable. Most importers agreed that imports of SSWR are used interchangeably with the domestic product.²² In general, the majority of purchasers rated the subject imports as comparable with each other and to SSWR from U.S. producers.²³ The majority of purchasers, producers, and importers reported that SSWR from U.S. producers and subject imports are used interchangeably.²⁴ For most of the sixteen factors for which purchasers were asked to compare domestic and subject imported products, the majority of purchasers rated the domestic and subject imported products as comparable, or there was no consensus as to whether a particular source was superior, inferior, or comparable.²⁵

There are a number of other differences among products from different sources. First, competition between subject imports and the domestic product is muted because nearly 70 percent of U.S. production is captively consumed.

Second, only one of the four U.S. producers actually supplies coils in excess of 2,000 pounds in the diameter required by wire drawers.²⁶ Large coil represents about *** percent of overall U.S. consumption of SSWR in 1997.²⁷

Third, about *** of U.S. producers' shipments are of 19mm or greater diameter SSWR, while subject importers supply virtually none in this larger size.²⁸

Fourth, there are differences in product mix. The principal grade of wire shipped by importers was 304. The principal grades shipped commercially by U.S. producers were ***. The majority of captively consumed product consisted of grade ***.²⁹

Fifth, there are differences in quality. Purchaser questionnaire responses indicated that Japanese,³⁰ Swedish and Taiwanese imports are generally considered to be superior to the domestic product while imports from other countries were generally considered comparable to the domestic product.³¹ Purchasers have argued that they have been forced to import SSWR because of the continuing low quality of the domestic product, particularly compared to the high quality Japanese product. Petitioners noted that all but one U.S. producer were ISO-9000 certified and that Talley (now owned by Carpenter) is constantly working to improve quality standards.³²

²² CR at II-10; PR at II-5.

²³ CR at II-11, II-20 and Table D-1; PR at II-5, II-9.

²⁴ CR at II-10; PR at II-5.

²⁵ CR at II-11; PR at II-5.

²⁶ CR at I-14; PR at I-8.

²⁷ CR at I-13-15, PR at I-8; and Table VI-2. This figure does not include nonsubject imports of large coil (not available) and presumes that 1997 imports of large coil are shipped or consumed in 1997.

²⁸ Table F-9.

²⁹ CR at I-5; PR at I-4.

³⁰ Japanese respondents argue that only *** percent of domestic production is potentially competitive with Japanese imports. *See Respondents' Prehearing cumulation brief at 4.* However, as discussed in the majority opinion, the actual overlap appears to be broader. *See Majority's discussion of cumulation in Views of the Commission, PR at 11-13 (confidential Views of the Commission at 14-17).*

³¹ CR at II-11; PR at II-5.

³² CR at II-13; PR at II-7.

Such differences among products diminish the substitutability between subject and domestic products. On balance, I find subject imports and the domestic like product to be moderate to moderately good substitutes.

Nonsubject Imports and Domestic Product. I further find that, overall, nonsubject imports of SSWR are relatively good substitutes for the domestic like product. Nonsubject imports from Taiwan, France, Japan, Sweden, and the United Kingdom account for a majority of nonsubject imports, while Russia and the Czech Republic provide a minor amount. These nonsubject imports are seen as generally interchangeable with the domestically produced SSWR.³³ Nonsubject imports have a *** percent market share by quantity. Overall, I find that nonsubject imports of SSWR and the domestic like product are relatively good substitutes based on their perceived similarity.

Nonsubject and Subject Imports. The available information indicates that nonsubject imports from Japan, Sweden, Taiwan, France, and the United Kingdom are good substitutes for subject imports from Japan, Taiwan, Sweden and the other cumulated subject import countries. U.S. producers and most importers agreed that subject and nonsubject imports are used interchangeably.³⁴ Overall, I find that nonsubject imports of SSWR and the subject imports are good substitutes based on their perceived similarity.

C. Supply Conditions

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 and maintain price increases. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the supply is elastic for the domestic SSWR industry.

Capacity Utilization and Inventories. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any producer attempting a price increase would face a counterattack by other producers to prevent competitors who have the available capacity and are willing to sell more at a lower price.³⁵

The domestic industry's capacity utilization rate for SSWR was *** percent in 1997.³⁶ Capacity utilization differed significantly among U.S. producers. For example, Carpenter operated at *** percent of capacity in 1997 (not including Talley), while Republic operated at *** percent.³⁷ From these capacity figures, it is evident that the domestic industry is able to increase production over time.

³³ CR at II-21; PR at II-9-10.

³⁴ CR at II-21; PR at II-9-10.

³⁵ In the preliminary phase of these investigations, Nucor Wire, which was developing a new wire production process, was discussed as a possible U.S. producer of SSWR. At that time, I expressed my intention to pursue more information on this issue. However, Nucor's new wire production process *** and *** the plant was closed. CR at I-10-11 and III-1, n. 1; PR at I-6 and III-1, n. 1.

³⁶ Table III-1. In the preliminary phase of these investigations, I indicated my intention to examine the domestic industry's practical capacity utilization rates. The Commission conducted verifications of Carpenter and AL Tech. It concluded that the capacity utilization rates of these two companies was accurate and was based on "normal operating levels." See Verification Report, Carpenter Technology Corporation, Aug. 10, 1998, and Verification Report, AL Tech Specialty Steel Corporation, Aug. 10, 1998.

³⁷ Table III-1.

The potential for some product shifting also exists since domestic producers use the same equipment in certain stages of production of stainless steel bar and SSWR.³⁸ In contrast, domestic producers have little ability to increase domestic shipments by diverting exports to the domestic market or by shipping from inventories.³⁹

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.

Currently, the domestic industry consists of three producers: Carpenter, AL Tech, and Republic. Talley, a fourth producer for much of the period of investigation, was acquired by Carpenter in February 1998. With that acquisition, Carpenter accounts for *** percent of domestic production.⁴⁰

Petitioners have been accused by respondents of being unwilling to sell SSWR or certain product grades to purchasers, forcing purchasers to buy subject imports. Respondents state that because the petitioners often compete with purchasers in the downstream market, petitioners do not want to sell to purchasers. Fourteen of thirty-seven purchasers report that they compete for sales with their suppliers. Seven purchasers specifically stated that they were unable to purchase certain grades because they compete with their suppliers.⁴¹

The domestic industry's ability to respond quickly to fluctuations in supply and demand for SSWR leads me to find that supply for the domestic SSWR industry is elastic.

III. NEGLIGIBILITY

In these investigations, the issue of negligibility arises only with respect to subject imports from Germany. I concur with my colleagues in finding that subject imports from Germany were negligible for purposes of the present material injury analysis. I further concur that the trade data have been appropriately adjusted to account for imports misclassified as originating in Germany and for imports of cut bar misclassified as SSWR.⁴² However, I disagree with my colleagues regarding the treatment of subject imports into U.S. foreign trade zones ("FTZs") and negligibility for threat analysis. My finding with respect to subject imports into FTZs and my analysis of negligibility follow.

Under the statute, if the Commission determines "that imports of the subject merchandise are negligible," an investigation shall be terminated.⁴³ The statute defines negligible imports as follows:

. . . imports from a country of merchandise corresponding to a domestic like product identified by the Commission are "negligible" if such imports account for less than 3 percent of the volume of all such

³⁸ CR at I-9-10, II-3, and III-2; PR at I-6, II-2, and III-2.

³⁹ From 1995 to 1997, the percentage of the quantity of U.S. producers' export shipments relative to total shipments increased slightly from *** to *** percent. Table A-1. Moreover, inventories have been kept low since most SSWR is manufactured to customer specifications. CR at III-15; PR at III-5.

⁴⁰ CR at III-1; PR at III-1.

⁴¹ CR at II-16-17; PR at II-8.

⁴² As noted in Tables F-7 and F-8, CR at Appendix F, the Commission Staff adjusted the official import statistics regarding Germany, Italy and Taiwan downwards to account for the misclassification of imports.

⁴³ 19 U.S.C. § 1671d(b)(1) and 1673d(b)(1).

merchandise imported into the United States in the most recent 12-month period for which data are available . . .⁴⁴

By operation of law, a finding of negligibility terminates the investigation with respect to such imports without an injury determination.⁴⁵ To calculate whether the 3-percent threshold is met, the Commission must determine what imports are included in the numerator and the denominator of the equation. The statutory definition of negligible imports does not state specifically that both the numerator and the denominator are limited to subject imports from an individual country and total imports, respectively. I believe, however, that such a conclusion is the only reasonable interpretation of the statute.

First, I examine what imports should be included in the numerator. The Commission's legal determination is whether imports of the subject merchandise are negligible. Therefore, the Commission's inquiry regarding the numerator is limited to the subject imports. Read separately, the phrase "imports from a country of merchandise corresponding to a domestic like product" might suggest a universe of imports different from the subject imports. This phrase, however, is qualified by the definition's specific reference that these are the imports that are "negligible" if the three-percent threshold is not met. Because the Commission's legal determination is limited to whether the subject imports are negligible, the imports described in the statutory definition are necessarily limited to the subject imports as well. Therefore, the numerator is limited to the subject imports.

Second, I examine what imports should be included in the denominator. The phrase "all such merchandise" refers to all imports of the same type used in the numerator, *i.e.*, imports from all countries of a type corresponding to a domestic like product. Under the statute, the denominator consists of the total of subject and nonsubject imports from all countries under investigation as well as imports from nonsubject countries.⁴⁶

In keeping with the statute's requirement that subject imports are the focus of the negligibility determination, it is then necessary to decide what imports are included in the definition of subject imports. In these investigations, a question has arisen as to consideration of imports into FTZs.⁴⁷ Since imports into FTZs from subject sources are not subject to antidumping or CVD duties until they are withdrawn from the FTZ and enter the customs territory of the United States, there is some question about whether to record such entries as imports during the time they enter and remain in the FTZ, or whether they should be treated as imports only when they actually enter the customs territory of the United States for consumption. Since there is often a delay between the time imports enter into FTZs and the time they are withdrawn therefrom and enter the customs territory of the United States,⁴⁸ the treatment of such imports can affect the calculation of

⁴⁴ 19 U.S.C. § 1677(24).

⁴⁵ 19 U.S.C. §1671d(b) and 1673(d)(b)(1).

⁴⁶ I note that the SAA clearly identifies "subject imports" as the numerator and "total imports" as the denominator: "[t]he comparison of subject imports to total imports contrasts with current practice, under which the Commission evaluates the U.S. market share held by each country's imports in determining negligibility." SAA at 185.

⁴⁷ There is a similar legal question that arises regarding temporary imports under bond ("TIB") and bonded warehouse entries. In Inv. No. 751-TA-17-20, Titanium Sponge from Japan, Kazakhstan, Russia, and Ukraine, USITC Pub. 3119 (Aug. 1998), the Commission clearly stated that: "imports under TIB are not considered subject imports." See also CR at II-15, *citing* HTSUS, U.S. Note 1(a), 2 at 98-39 (1998). The status of bonded warehouse entries is less clear. However, in these investigations, the evidence indicates that there are no such imports from Germany and few if any from other import sources. See Tables F-3 and F-7. Therefore, for purposes of my negligibility analysis in these investigations, I do not consider imports under TIB or bonded warehouse entries.

⁴⁸ Imports into FTZs could also be re-exported abroad. This is not a significant issue in these investigations since ***
(continued...)

market shares for any given period of time. Since the only significant imports to enter into any FTZs were classified as being from Germany (but were in fact product from both Germany and Sweden), the answer to this question can significantly affect the calculation of the import market share of Germany.⁴⁹

I begin by addressing the question of whether imports from subject sources should be regarded as subject imports at the time of their entry into an FTZ. The Commission has spoken clearly and unanimously on the question of whether imports from subject import sources into FTZs should be considered “subject” imports. In Coumarin from the People’s Republic of China (Preliminary), the Commission unanimously determined that imports into FTZs should be considered subject imports.⁵⁰ Identical unanimous findings were subsequently made by the Commission in Defrost Timers from Japan⁵¹ and Coumarin from the People’s Republic of China (Final).⁵² In each of these cases, entries into FTZs from subject sources were included as subject imports as of the time of their entry into the FTZ for purposes of analysis. For purposes of my negligibility analysis, therefore, I include imports from subject sources in Germany into FTZs as subject imports.

Once the proper definitions of subject imports and total imports have been established, it is a relatively straightforward matter to calculate whether subject imports from Germany exceed the three-percent threshold by simply dividing the subject imports in question by the amount of total imports. Adjusted subject imports from Germany during the 12 month period preceding the filing of the petition in these investigations totaled *** short tons. Total adjusted imports during this period were *** short tons. Thus, subject imports from Germany represented a 2.94 percent share of total imports during this period.⁵³ This is clearly below the three-percent threshold. On this basis, I find that subject imports from Germany were negligible for purposes of the present material injury analysis. I further determine that none of the statutory exceptions to negligibility applies to subject imports of SSWR from Germany. Because there is only one subject country

⁴⁸ (...continued)

of the subject German imports (including Swedish product misclassified as being from Germany) into FTZs have been re-exported and there is ***. There are *** imports from other countries into FTZs. APO Release No. 199807095003.

⁴⁹ In these investigations, German market share remains below the three-percent threshold regardless of whether imports into FTZs are included immediately upon entry into the FTZ or delayed until actual entry into the customs territory of the United States. However, the FTZ issue is relevant for negligibility in threat analysis since it can affect the estimates of market shares in the imminent future. See my findings below regarding negligibility in threat analysis.

⁵⁰ Inv. No. 731-TA-677 (Preliminary), Coumarin from the People’s Republic of China, USITC Pub. 2733 (Feb. 1994): “In calculating the volume of subject imports, we have addressed the issue of whether shipments of Chinese coumarin into a foreign trade zone (“FTZ”) should be considered imports into the United States for material injury purposes . . . Commerce considers shipments into FTZs to be imports when it calculates dumping margins. Therefore, under the statute, imports into FTZs are subject imports.” Views of the Commission at I-9.

⁵¹ Inv. No. 731-TA-643 (Final), Defrost Timers from Japan, USITC Pub. No. 2740 (Feb. 1994). “In calculating the volume of subject imports, we have addressed the issue of whether shipments of Japanese defrost timers into a foreign trade zone (“FTZ”) should be considered imports into the United States for material injury purposes . . . Commerce considers shipments into FTZs to be imports when it calculates dumping margins. Therefore, under the statute, imports into FTZs are subject imports.” Views of the Commission at I-10-11.

⁵² In Inv. No. 731-TA-677 (Final), Coumarin from the People’s Republic of China, USITC Pub. No. 2852 (Feb. 1995), the Commission unanimously reaffirmed its position regarding imports into FTZs, with one change relating to re-exports out of FTZs: “Since Commerce’s affirmative determination does not apply to coumarin shipped from an FTZ to a third country, we decline to include such re-exports in our import data. We therefore conclude that entries into an FTZ, with the exception of amounts that are re-exported from the FTZ without entering the customs territory of the United States, are subject imports for purposes of our injury analysis.” Public Report at I-10. As noted above, in the current investigations, *** of the subject German imports into FTZs have been re-exported, and there is ***.

⁵³ Table F-8.

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, I do not find, pursuant to § 1677(24)(A)(iv), that subject imports of SSWR from Germany will imminently account for more than three percent of the volume of total imports of SSWR. My findings regarding negligibility in threat analysis are presented below.

A. Negligibility in Threat Analysis

If the Commission determines that subject imports of SSWR from Germany are negligible, then it must terminate the investigation regarding Germany, unless the Commission finds that there is a potential that imports from Germany will “imminently” account for more than three percent of the volume of all such merchandise imported into the United States.⁵⁴ While “imminent” clearly indicates a forward-looking analysis, there is no specific guidance from the statute. The SAA, however, indicates that rates of import growth can be examined: “[i]mport volumes at the conclusion of the 12-month period examined for purposes of considering negligibility may be below the negligibility threshold, but increasing at a rate that indicates they are likely to imminently exceed that threshold during the period the Commission examines in conducting its threat analysis.”⁵⁵ Thus, prior and current levels of subject imports, while not necessarily dispositive regarding the imminence question, are useful in determining whether there has been any rise in the rate of subject imports from a country that indicates they are likely to imminently exceed the three-percent threshold. For the reasons discussed below, I do not find that subject imports from Germany will “imminently” exceed the three-percent threshold.

During the twelve month period prior to the filing of the petition, subject imports of SSWR from Germany totaled *** short tons while total imports totaled *** short tons.⁵⁶ Thus, subject imports from Germany were 2.94 percent of total imports by quantity, which is clearly under the three-percent threshold. For all of 1997, however, subject imports from Germany accounted for 5.6 percent of total imports by quantity. During the latter half of 1997, subject imports from Germany increased by *** percent relative to the first half of 1997. Prior to the filing of the petition, however, subject imports from Germany were falling. From 1995 to 1996, the last two full years before the filing of the petition, subject imports from Germany fell by *** percent from *** short tons to *** short tons, despite an overall increase in U.S. consumption of SSWR and a nominal and real depreciation of the German mark against the dollar.⁵⁷ Germany’s share of total imports fell from *** percent in 1995 to *** percent in 1996, by quantity. Although Germany’s share of total imports rose to 5.6 percent in 1997, German import share fell from *** percent in interim 1997 to 1.4 percent in interim 1998.⁵⁸ It is instructive to look at the Commission’s most recent prior finding of negligibility. In Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela,⁵⁹ the Commission examined the question of negligibility for subject imports of steel wire rod from Germany and found such imports to be below the three-percent threshold during the relevant 12 month period, and found no potential that imports of subject imports of steel wire rod from Germany would imminently exceed three percent of total imports. Subject imports from Germany in those investigations fell from *** percent of total imports in 1994 to *** percent in 1995 and then rose to *** percent of total imports in 1996. The subject imports from Germany were *** percent of total imports in interim 1997, compared with *** percent in

⁵⁴ 19 U.S.C. §1677(24)(A)(iv).

⁵⁵ SAA at 186.

⁵⁶ Table F-8.

⁵⁷ Tables IV-2 and F-7; CR at V-2; PR at V-2.

⁵⁸ Table F-7.

⁵⁹ Inv. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 (Nov. 1997).

1996. In those investigations, despite increases in the most recent full year of the period of investigation and increases between interim periods, the Commission unanimously determined that subject imports from Germany would not imminently exceed the three-percent threshold. In the current investigations, subject imports from Germany as a share of total imports follow similar trends, except that in the current investigations the ratio falls between the interim periods.

An examination of the most recent monthly import data further supports my finding that there is not a potential that subject imports from Germany will “imminently” exceed the three-percent threshold. In the last four full months for which data were available, subject imports from Germany were consistently less than three percent of all imports.⁶⁰

I have also examined the information German producers reported to the Commission regarding their future export plans.⁶¹ In their questionnaire responses to the Commission, German producers reported their projected total exports to the U.S. to be *** short tons for 1998 and *** short tons for 1999.⁶² Such levels of imports from Germany would be below the three-percent threshold using any of several reasonable estimates of total imports. Using total imports from any one of the three full years of the period of investigation, projected subject imports from Germany for either 1998 or 1999 do not amount to more than *** percent of total imports for any combination, except for projected 1999 German imports compared with actual 1995 total imports, which only minimally exceeds the three-percent threshold.⁶³ If total imports continued to decrease for all of 1998 at their interim rate of decline of *** percent, projected subject imports from Germany for 1998 would only be *** percent of total imports. Even if total imports fell at a faster rate, it is likely that projected subject imports from Germany would remain well below the three-percent threshold. Total imports would have to drop by *** percent below their 1997 levels in order for projected 1998 subject imports from Germany to rise above the three-percent threshold. Using projected 1999 subject imports in the numerator, total imports would have to drop by *** percent below their 1997 levels in order for projected 1999 subject imports to exceed the three-percent threshold.⁶⁴

Finally, I note that during the period of investigation, German SSWR producers operated at between *** percent and *** percent capacity utilization. Between the interim periods, reported capacity utilization rose from *** percent to *** percent, and is projected to ***.⁶⁵ German producers plan *** in capacity in 1998.⁶⁶ Moreover, the share of their total production that is exported to the U.S. is small.

For these reasons, I do not find that there is a potential that subject imports from Germany will imminently exceed the three-percent threshold. Therefore, I find that subject imports from Germany are negligible and that the investigation regarding dumped imports from Germany should be terminated.

IV. NO MATERIAL INJURY BY REASON OF LTFV OR SUBSIDIZED IMPORTS OF SSWR FROM ITALY, JAPAN, KOREA, SPAIN, SWEDEN, AND TAIWAN

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

⁶⁰ Table F-8 (Restated for the period July 1997-April 1998), attached to Memorandum INV-V-066, (Aug. 25, 1998).

⁶¹ I recognize that German producers are not the only sources of imports from Germany, but other imports are comparatively minimal over the period of investigation. *See* Table F-4.

⁶² Table VII-1.

⁶³ Tables VII-1 and F-7.

⁶⁴ Tables VII-1 and F-7.

⁶⁵ Table VII-1.

⁶⁶ CR at VII-1-4; PR at VII-1-2.

A. Volume of Subject Imports⁶⁷

The volume of cumulated subject imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan increased from *** short tons in 1995 to *** short tons in 1997. The volume of cumulated subject imports fell from *** short tons to *** short tons between the interim periods.⁶⁸ The value of cumulated subject imports increased from \$*** in 1995 to \$*** in 1997. The value of cumulated subject imports fell from \$*** to \$*** between the interim periods. U.S. imports of dumped and subsidized SSWR from cumulated subject countries increased by *** percent on the basis of quantity and by *** percent on the basis of value between 1995 and 1997. From 1995 to 1997, market share of cumulated subject imports increased from *** percent to *** percent on the basis of quantity and increased from *** percent to *** percent on the basis of value.⁶⁹

While it is clear that the larger the volume of cumulated subject 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 their price effects and impact. Based on the market share of cumulated subject imports, the conditions of competition in the domestic market for SSWR, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the volume of cumulated subject imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan is not significant.

B. Price Effects

To determine the effect of subject imports on domestic prices I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped or subsidized. As discussed, both demand and supply conditions in the SSWR market are relevant. Examining demand conditions helps us understand how purchasers would have reacted to higher prices for the domestic product, or buy different quantities of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had been fairly traded.

In these investigations, the estimated dumping margins vary by country.⁷⁰ Thus, while all subject imports would have become more expensive relative to the domestic product and other alternative sources for the product (e.g., nonsubject imports), prices for the subject imports from the different countries would have risen by different amounts, had they been fairly traded. In such a case, if the products are substitutable, demand would have shifted away from relatively higher priced subject imports in varying degrees, had they been fairly traded, and shifted towards relatively lower priced products. As noted above, I find that cumulated subject imports are, as a whole, moderate to moderately good substitutes for the domestic product.

⁶⁷ In order to exclude fairly traded imports from Japan, Sweden, and Taiwan from my analysis of no material injury or threat of material injury by reason of cumulated subject imports, I rely on questionnaire data on imports for consumption. Unfortunately, these data do not provide breakouts of subject imports into FTZs, entries under TIB, or bonded warehouse entries. However, as noted earlier, the record in these investigations indicates that there are minimal such imports from cumulated subject countries. I recognize that subject imports from Sweden into FTZs are accounted for in these data when removed from the FTZ and entered into the customs territory of the United States. *** Tables IV-1 (Restated), F-3 (Restated), F-7 (Restated), attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁶⁸ Table IV-1 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁶⁹ Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁷⁰ Italy also received countervailing duty margins in the range of 1.28 to 22.2 percent.

Specifically, subject imports from Japan, Sweden and Taiwan are moderate substitutes for the domestic product and subject imports from Italy, Korea, and Spain are moderately good substitutes for the domestic like product. Nonsubject imports are also present in this market, accounting for *** percent of overall market share in 1997, the last full year of the period of investigation.⁷¹ As noted above, I find that nonsubject imports are relatively good substitutes for the domestic product and are good substitutes for subject imports as a whole.

Had subject imports been fairly traded, demand for the domestic product would not have increased significantly. If cumulated subject imports had been fairly traded, their overall prices in the U.S. market would have increased only somewhat. Those subject imports with higher margins would have become more expensive, relatively speaking, to domestic, nonsubject, and low-margin subject imports of SSWR, while those with lower margins would have increased less in price relative to the domestic like product and nonsubject imports. Japan received much higher dumping margins than other cumulated subject countries, ranging from 21 to 34 percent.⁷² Had subject imports from Japan been fairly traded, a significant portion of the demand for subject imports from Japan likely would have shifted towards alternative sources, including domestic product, nonsubject imports, and possibly lower margin subject imports. Italy, which received relatively low dumping margins ranging from 1.27 to 12.73 percent and countervailing duty margins ranging from 1.28 to 22.2 percent, had a *** percent market share. Had subject imports from Italy been fairly traded, some of the demand for subject imports from Italy likely would have shifted towards alternative sources, including the domestic product, nonsubject imports and possibly lower margin subject imports. Domestic producers would likely have captured some of this shift in demand from Japan and Italy,⁷³ as would nonsubject suppliers, had cumulated subject imports been fairly traded. Subject imports from Korea, which had a *** percent market share in 1997, received an average dumping margin of only 3.18 percent. Dumping margins for subject imports from Spain, Sweden and Taiwan ranged from 4.72 to 8.24 percent. Collectively, these four subject countries account for nearly two-thirds of all cumulated subject imports. Had they been fairly priced, subject imports from these countries would have continued to be sold in large quantities. In fact, subject imports from the very lowest margin countries could even have increased, had all cumulated subject imports been fairly traded. This could have occurred due to the differences in magnitude of margins received by the different cumulated subject countries. Producers in Korea, which was the import source most frequently named by purchasers as the price leader,⁷⁴ could have captured some of the shift in demand away from higher-margin countries, had cumulated subject imports been fairly traded. Producers in Korea could have increased their shipments to the U.S. using their ample excess capacity, had demand shifted from Japanese and other higher margin countries.⁷⁵ At a minimum, had cumulated subject imports been fairly traded, the presence of subject imports from low-margin countries would have prevented significant price increases by domestic producers. The combination of the minor, if any, shift in demand from Korea, Spain, Sweden, and Taiwan, a somewhat moderate shift in demand from Italy, and the shift in demand away from Japan, had all subject imports been fairly traded, would have created only a minor shift in overall demand towards the domestic product.

Such a shift in demand would not have allowed the domestic industry to raise its prices. On the supply side, competitive market conditions would have limited attempts by the domestic industry to increase

⁷¹ Table IV-2.

⁷² Table I-1.

⁷³ Given that subject imports from Japan are only moderate substitutes for the domestic product and good substitutes for nonsubject imports, any shift in demand to the domestic product would be somewhat mitigated.

⁷⁴ CR at V-6; PR at V-1.

⁷⁵ Table VII-4.

prices.⁷⁶ Information on the record indicates that the domestic industry has a significant amount of unused capacity, although there are few inventories and few exports by U.S. producers that could be diverted to the domestic market. Despite the relatively small number of U.S. producers, there would have been ample competition from low-margin subject imports and nonsubject imports, had subject imports been fairly traded. On the demand side, the overall elasticity of demand for SSWR indicates that any price increases by domestic suppliers in response to a shift in demand would have been resisted by purchasers in the form of reduced demand. In these circumstances, domestic producers could have raised their prices only minimally, and certainly not by significant amounts, had cumulated subject imports been fairly traded. Any effort by a domestic producer to raise prices significantly would have been undermined by competitors. All these factors would have combined to enforce price discipline in the market, had subject imports been fairly traded.

Overall, any shift in demand from subject imports to domestic SSWR would have been minor. Had subject imports been fairly traded, domestic producers would have captured only a small fraction of the market share of cumulated subject imports, which overall would have continued to be sold in large quantities in the U.S. market.

In general, while there may be some minimal effects on domestic prices that can be attributed to the cumulated subject imports, I do not find that cumulated subject imports are having significant effects on prices for domestic SSWR. Therefore, significant effects on domestic prices cannot be attributed to unfair traded subject imports. Consequently, I find that cumulated subject imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan are not having significant effects on prices of domestic SSWR.

C. Impact

To assess the impact of subject 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.⁷⁷ These factors together either encompass or reflect the volume and price effects of the dumped or subsidized imports, and so I gauge the impact of the dumping and subsidies through those effects.

As discussed above, the domestic industry producing SSWR would not have been able to increase its prices significantly if cumulated subject imports of SSWR had been fairly traded. Therefore, any impact of dumped or subsidized imports on the domestic industry would have been on the domestic industry's output and sales. Had cumulated subject imports not been dumped or subsidized, the overall demand for cumulated subject imports would have declined only slightly, and there would have been only a minor increase in demand for the domestic product given the conditions of competition, including competition from non-LTFV imports from Japan, Sweden, Taiwan, and other nonsubject sources, as well as from cumulated subject import sources that would have continued to enter the U.S. market. In other words, had subject imports not been dumped or subsidized, 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 cumulated subject imports had been fairly traded. Therefore, I find that the domestic industry producing SSWR is not materially injured by reason of dumped or subsidized imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

⁷⁶ See conditions of competition discussion above, and Tr. at 99-100.

⁷⁷ 19 U.S.C. § 1677(7)(C)(iii).

V. NO THREAT OF MATERIAL INJURY BY REASON OF DUMPED OR SUBSIDIZED IMPORTS OF SSWR FROM ITALY, JAPAN, KOREA, SPAIN, SWEDEN, AND TAIWAN⁷⁸

On the basis of information obtained in these investigations, I determine that an industry in the United States is not threatened with material injury by reason of dumped or subsidized imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan. Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of the subject merchandise 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.”⁷⁹ The Commission considers the threat factors “as a whole”⁸⁰ and may not make such a determination “on the basis of mere conjecture or supposition.”⁸¹ In making my determination, I have considered all of the statutory factors⁸² that are relevant to this investigation⁸³ and have determined that the domestic industry producing SSWR is not threatened with material injury by reason of the dumped or subsidized imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan. Although cumulation is discretionary for purposes of threat analysis, I find no reason to deviate from my earlier decision to cumulate subject imports from Italy, Japan, Korea, Spain, Sweden, and Taiwan.⁸⁴

As required by the statute, I have considered the nature of the subsidies found by the Department of Commerce for subject imports from Italy.⁸⁵ None of the parties raised arguments regarding the specific nature of the countervailable subsidies that Commerce determined were provided to three of the Italian respondents. Commerce found only minimal export subsidies provided to the three largest Italian

⁷⁸ Even if I had found that there is a potential that Germany will “imminently” exceed the three-percent threshold, I would have found no threat of material injury by reason of cumulated subject imports, including Germany.

⁷⁹ 19 U.S.C. §1677(7)(F)(ii).

⁸⁰ 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 indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

⁸¹ 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Of Int’l Trade 1990). See also Calabrian Corp. v. United States, 794 F.Supp. 377, 387 and 388 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

⁸² The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although “[no] substantive change in Commission threat analysis is required.” SAA at 185.

⁸³ 19 U.S.C. Sec.1677(7)(F)(I). Factor VII regarding raw and processed agricultural products is inapplicable due to the definition of like product. See 19 U.S.C. Sec. 1677(7)(F)(iii)(I). Furthermore, I note that there is no evidence of any antidumping remedies in effect in other WTO member markets against the subject imports from any country. CR at VII-21; PR at VII-8.

⁸⁴ Respondents have raised arguments that cumulation may not be appropriate for several subject countries, based on differences in volume and price trends across the subject countries and other factors. On balance, I find the evidence to be in favor of cumulation.

⁸⁵ In its final countervailing duty determination, Commerce calculated a 1.28 percent subsidization rate for the Italian producers Valbruna and Bolzano, a 22.2 percent rate for Cogne, and an “all others” rate of 13.85 percent.

companies.⁸⁶ Overall, I do not find that the nature and level of these subsidies indicate that there will be a significant increase in the volume of subject merchandise.

I do not find that there is an imminent substantial increase in production capacity or any existing unused capacity in the cumulated exporting countries likely to result in a substantial increase in imports of subject SSWR into the United States. With the exception of Taiwan, production capacities reported by producers in cumulated subject countries have increased at a modest pace. Moreover, of the six cumulated subject countries, *** are projecting drops in capacity; *** are projecting no change in capacity; and *** is projecting only a modest increase in its capacity. On an aggregated basis, capacity in all the cumulated countries is projected to fall.⁸⁷ Capacity utilization of subject producers of SSWR remained at a relatively high level, with 1997 utilization rates for five-of-six cumulated countries above *** percent.⁸⁸ Even Korea, which received the lowest margin of any country, had a capacity utilization rate of *** percent.⁸⁹ At these levels of capacity utilization, subject producers as a whole would have only a limited ability to increase their exports to the U.S. market. As a share of total shipments, SSWR exports to the United States from subject sources were low, ranging from *** percent for Japan to *** percent for Korea (white coil).⁹⁰ For 1996, these ratios ranged from *** percent for Japan to *** percent for Sweden. Given the high capacity utilization rates and the conditions of competition discussed here and above, I do not find any existing unused capacity or imminent, substantial increase in production capacity in cumulated subject countries indicating the likelihood of substantially increased imports of the subject merchandise into the United States.

The record in these investigations shows an increase in the volume of imports of the subject merchandise, but this does not indicate a likelihood of substantially increased subject imports of SSWR from cumulated subject countries into the U.S. or show that there is a threat of material injury by reason of these subject imports. As noted above, the volume of subject imports of SSWR from cumulated subject countries increased by *** percent from 1995 to 1997. The increase from 1995 to 1996 was *** percent and from 1996 to 1997 was *** percent. Cumulated subject imports fell by *** percent from interim 1997 to interim 1998. Nonsubject imports increased by *** percent from 1995 to 1997 and by *** percent between the interim periods.⁹¹ Consumption in the domestic SSWR market increased between 1995 and 1997 by *** percent.⁹² Based on the significant and increasing presence of nonsubject imports, the high levels of overall capacity utilization in cumulated subject countries, and the conditions of competition in the domestic SSWR market, I do not find that the increase in volume and market penetration of imports of the subject merchandise indicates the likelihood of substantially increased imports of subject SSWR from cumulated subject countries into the United States.

I have also considered inventories of subject merchandise. Overall, inventories in cumulated subject countries were low. The ratio of inventories to production for all cumulated subject countries, except Japan,

⁸⁶ In particular, Commerce found that export subsidies had been conferred on Respondents Valbruna and Bolzano in the amount of 0.15 percent *ad valorem*, and on Cogne in the amount of 0.01 percent *ad valorem*. Other benefits identified by Commerce include: equity infusions, pre-privatization assistance, debt forgiveness, capacity reduction payments, and early retirement benefits. Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 Fed. Reg. 40474 (July 29, 1998).

⁸⁷ Tables VII-2 through VII-8.

⁸⁸ Tables VII-2 through VII-8.

⁸⁹ For white coil. Table VII-4.

⁹⁰ Tables VII-2 through VII-8.

⁹¹ Table IV-1 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁹² Table A-1.

fell. For Japan, the ratio remained essentially stable.⁹³ One reason is that SSWR is generally made to order, thus minimizing the benefits of carrying inventory. The level of U.S. importers' inventories of subject imports increased during the period of investigation. Such inventories rose from *** short tons in 1995 to *** short tons in 1997.⁹⁴ In 1997, U.S. importer inventories of cumulated subject imports only represented *** percent of overall U.S. consumption, *** percent of U.S. production, and *** percent of all imports in 1997.⁹⁵ Accordingly, I do not find that inventory levels of the subject merchandise support a finding of a threat of material injury by reason of dumped or subsidized imports of SSWR from cumulated countries.

In my determination of no material injury by reason of dumped or subsidized imports of SSWR from cumulated subject countries, I demonstrated that subject imports have had no significant effect on domestic prices. I find no evidence that this will change in the immediate future, in light of the competition in the SSWR industry in the U.S. market and other conditions of competition. Therefore, I conclude that cumulated subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices or that are likely to increase demand for further subject imports.

I have also considered the potential for product shifting. Evidence on the record suggests that there is some potential for product shifting between bar and wire rod.⁹⁶ Nonetheless, I find that there is little evidence in the record that subject producers in cumulated subject countries actually engaged in product shifting to increase exports to the United States, or that they intend to do so.

I find no indication of any other demonstrable adverse trends, or convincing evidence of any recent or imminent changes in subject import levels or domestic market structure, that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise. I further find no actual and potential negative effects on the existing development and production efforts of the domestic industry that indicate that the domestic industry is threatened with material injury by reason of subject imports.⁹⁷

For the reasons stated above, I find that the domestic industry producing SSWR is not threatened with material injury by reason of dumped or subsidized imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

VI. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing SSWR is not materially injured or threatened with material injury by reason of LTFV or subsidized imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan. I further determine that the subject imports from Germany are negligible.

⁹³ Tables VII-2 through VII-8.

⁹⁴ Table VII-9 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁹⁵ Table A-1 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

⁹⁶ CR at VII-6-21; PR at VII-2-8.

⁹⁷ Both the domestic industry's capital expenditures and R&D expenses have increased over the investigation period. See CR at VI-19 (the domestic industry's capital expenditures were \$*** in 1995, increased in 1996 to \$***, then declined to \$*** in 1997, but were still more than *** the industry's expenditures in 1995; the industry's R&D expenses consistently increased from \$*** in 1995, to \$*** in 1996, and to \$*** in 1997); PR at VI-4.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these final phase investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of stainless steel wire rod (“SSWR”) from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”). I also determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of SSWR from Italy that have been found by Commerce to have been subsidized by the Government of Italy and the European Union.

I concur in the conclusions of my colleagues with respect to the domestic like product, the domestic industry, related parties, negligibility, and cumulation of the subject imports for material injury purposes. In these dissenting views, I explain the reasons for my determination that the domestic industry producing SSWR is not materially injured or threatened with material injury by reason of the subject imports.

I. NO MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In the final phase of an antidumping duty investigation, I am required to determine whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.¹ In making this determination, I must consider the volume of subject 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.² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³

In assessing whether the domestic industry is materially injured by reason of LTFV imports, I have considered all relevant economic factors that bear on the state of the industry in the United States.⁴ 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 I have considered all relevant factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵

A. Period of Investigation

In these final phase investigations, I have examined data for the period from 1995 through 1997, plus interim 1998, when performing my analysis in these final phase investigations.⁶ At certain points in my analysis, I have also examined the industry’s financial data for 1994 for reference and context. I note that data for this period were available from the preliminary phase of these investigations. I also note that my

¹ 19 U.S.C. § 1673d(b).

² 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).

³ 19 U.S.C. § 1677(7)(A).

⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵ *Id.*; 19 U.S.C. § 1673d(b).

⁶ When referring simply to the period of investigation in this opinion, I am referring to this period.

findings would not have changed if these data had not been available to me.⁷ In this regard, I believe that examination of data from 1994 has allowed me to understand more completely the impact the subject imports have had on the financial condition of the industry and supports, but is not necessary to, my finding that the subject imports are not materially injuring the domestic industry.

B. Conditions of Competition and the Business Cycle

Several conditions of competition are pertinent to my analysis of the impact of the subject imports on the domestic industry producing stainless steel wire rod.

First, aggregate demand for SSWR depends primarily on the level of demand for the intermediate products in which it is used (i.e., stainless steel wire, stainless steel bar and stainless steel fasteners). Demand for these products is further dependent on demand in several end use industries that require the corrosion-resistant properties of SSWR (such as the automotive, medical instruments and general manufacturing industries).

In recent years, overall demand for SSWR has increased because of general growth in the economy and the development of new applications for SSWR products.⁸ Between 1995 and 1997, apparent consumption of SSWR increased by *** percent, with most of the increase in apparent consumption occurring between 1996 and 1997.⁹

Second, the domestic industry captively consumes more than two-thirds of its total shipments of wire rod in the manufacture of wire and small-diameter bar.¹⁰ Accordingly, I have considered whether the captive production provision requires me to “focus primarily”¹¹ on merchant market data when assessing market share and the factors affecting the financial performance of the domestic industry.¹² Although significant production of the domestic like product is both internally transferred and sold in the merchant market, I find that the SSWR that is internally transferred to produce downstream products by the industry does enter the merchant market for SSWR.¹³ I also find that the SSWR sold in the merchant market is generally used in the

⁷ Although the Commission usually examines data for a three-year period in its investigations, I have the discretion to determine the appropriate period of investigation. Wieland Werke, AG v. United States, 718 F. Supp. 50, 55 (Ct. Int'l Trade 1989). In prior cases, the Commission has examined longer time periods in other investigations where it found that an examination of the longer time period would better allow it to understand the conditions in the market, the cyclical nature of an industry, or generally provide it with a broader perspective of the market. *See, e.g., Large Newspaper Printing Presses from Germany and Japan*, Inv. Nos. 731-TA-736 & 737, USITC Pub. 2988, at 14 (Aug. 1996).

⁸ Confidential Staff Report (“CR”) at II-3; Public Staff Report (“PR”) at II-2.

⁹ CR and PR at Table A-1.

¹⁰ The domestic industry as a whole captively consumed between 67 and 69 percent of its total SSWR shipments during the period from 1995 and 1997. CR at III-9, PR at III-4.

¹¹ In this regard, I note that the statute requires the Commission to analyze the impact of the subject imports on all domestic production operations, including both captive and merchant market shipments. *See* 19 U.S.C. §§1677(4) & 1677(7)(B). Moreover, I note that, if the statutory provisions are met and the captive production provision applies, it merely permits the Commission to “focus primarily” on the merchant market operations of the industry; the provision does not allow the Commission to disregard the industry’s captive consumption completely. 19 U.S.C. §1677(7)(C)(iv). The majority agrees that the captive production provision does not apply in this case.

¹² 19 U.S.C. § 1677(7)(C)(iv).

¹³ *** of the four producers reported that the wire rod used captively does not differ from the wire rod sold in the merchant market. CR at III-13; PR at III-5.

production of the same downstream products for which SSWR is internally consumed.¹⁴ Accordingly, I find that the provision does not apply in these investigations.¹⁵

Although the captive production provision is inapplicable in these investigations, I have considered the significant volume of captive production as a condition of competition in this marketplace. As the Commission has recognized on previous occasions,¹⁶ the subject imports do not compete with captive production of domestic merchandise in the same way that they compete with domestic production sold in the merchant market. While the subject imports may arguably have an indirect effect on captive domestic production through competition on a downstream basis (i.e., through indirect competition in the wire and bar markets), the record in these investigations indicates that there is little actual price or volume competition between the subject imports and captive domestic production in the SSWR marketplace.¹⁷ Accordingly, any competitive price or volume effects between the subject imports and captive domestic consumption is attenuated, at best.

Third, there is significant demand for large coil sizes in the market. Wire purchasers in particular report that larger coil sizes are desirable because they make the wire drawing process more efficient.¹⁸ During the period, the large bulk of the shipments of subject merchandise was sold in coil weights of 2,000 pounds or more, while the large majority of domestic merchandise was sold in coil weights of less than 2,000 pounds.¹⁹ Further, *** subject countries shipped coils of more than 2,000 pounds to the United States, but only one domestic producer produced merchandise of that size in the diameter required by wire drawers.²⁰

¹⁴ CR at III-3; PR at III-2. *** of the four domestic producers reported that they produced only wire and small diameter bar products from captively consumed SSWR, that downstream products compete with identical products sold by their open market customers, and that the SSWR they sell in the open market does not differ physically from the captively consumed SSWR. *Id.*

¹⁵ In this regard, I note that I do not agree with the interpretation of the first criteria that has been adopted by several Commissioners in past cases. *See, e.g., Polyvinyl Alcohol from China, Japan, and Taiwan*, Inv. Nos. 731-TA-726,727, & 729 (Final), USITC Pub. 2760 at 12 & n. 76 (May 1996). These Commissioners would interpret the first criteria as requiring that the Commission analyze whether the downstream products produced by the industry (i.e., wire and bar) enter the merchant market for domestic like product (i.e., SSWR) and compete with the domestic like product in that market. I believe the better interpretation of this factor is that adopted by Chairman Bragg. Chairman Bragg has interpreted this factor as requiring the Commission to assess whether the type or category of domestic like product that is used to produce a downstream product (and not the downstream product itself) enters the merchant market for the domestic like product. *Id.*

¹⁶ *See, e.g., Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom*, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and Invs. Nos. 731-TA-573-579, 581-592, 594-597, 599-609 and 612-619 (Final), Pub. No. 2664 at 21 (August 1993).

¹⁷ In this regard, I note that the statute appears to direct our attention primarily to the impact of imports on the domestic market and industry for SSWR, not the downstream markets in question.

¹⁸ CR at I-13-15 & II-16; PR at I-7-8 & II-7.

¹⁹ CR at I-13; PR at I-8. In 1997, nearly *** percent of all subject import shipments had coil weights of 2,000 pounds or more. Compare CR I-14-15; PR at I-8 (as revised by memorandum INV-V-060) with CR and PR Table IV-2. In contrast, only *** percent of the domestic industry's commercial shipments were of coil weights greater than 2,000 pounds. Compare CR at I-14 (PR at I-8) with Tables IV-2 & IV-3.

²⁰ CR at I-14; PR at I-8.

Fourth, during the period of investigation, the domestic industry was unable to supply sufficient merchandise to a number of purchasers.²¹ A significant number of purchasers reported that members of the industry placed them on allocation or were unable to deliver product in a timely fashion during the period of investigation.²² Similarly, during the period of investigation, the domestic industry appears to have refused to supply any SSWR to certain segments of the market. In this regard, a significant number of purchasers also reported that they were unable to purchase SSWR from the domestic producers because they competed with the domestic producers in downstream markets.²³

Fifth, a significant minority of purchasers reported that the quality of the domestic merchandise was inferior to that of the subject merchandise.²⁴ More importantly, however, a majority of purchasers rated the Japanese, Swedish and Taiwanese product as being superior to the domestic product in terms of product quality.²⁵

Sixth, although the record indicates that price is an important factor in the purchasing decision for most purchasers, the record indicates that price is not the most important factor, or even one of the most important factors, in the purchase decision.²⁶ The large majority of purchasers rated quality as being the most important factor in the purchase decision, while most purchasers rated price as being the third most important factor. On average, purchasers ranked price lower than a number of factors in terms of its importance in the purchase decision, including factors such as delivery times, quality, availability, coil weights and technical support.²⁷

Finally, the reported prices of domestic merchandise include raw material surcharges. These surcharges are added to the negotiated price of a sale by the domestic producer to reflect changes in the prices of key raw materials, including nickel, chromium and molybdenum.²⁸ The surcharges are set according to fixed formulas that are based on London Metal Exchange prices. Generally, most of the importers do not add such a surcharge on their U.S. shipments of SSWR.²⁹

I have taken all of these conditions of competition into account for purposes of my material injury and threat analysis.

²¹ CR at II-16-19; PR at II-8-9.

²² CR at II-17-18; PR at II-8.

²³ CR at II-16-17; PR at II-8. In fact, the domestic producers sold no merchandise at all to stainless steel bar producers in 1996 and 1997. CR and PR at II-1. The bar producers who purchase wire rod accounted for approximately *** percent of commercial purchases of imports during the period of investigation. CR and PR at II-1.

²⁴ CR at II-11 & II-13-15; PR at II-5-7.

²⁵ CR at II-11; PR at II-5.

²⁶ CR at II-5-7; PR at II-3-4.

²⁷ CR at II-6; PR at II-4.

²⁸ CR at V-6-7; PR at V-6.

²⁹ CR at V-7; PR at V-6.

C. Volume of Subject Imports

Section 771(7)(C)(i) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”³⁰ In these investigations, I have closely examined the increases in volume and market share of the cumulated subject imports during the period of investigation. On a quantity basis, the volume of the cumulated subject importers’ shipments increased from *** short tons in 1995 to *** short tons in 1997, or by *** percent, while the value of the subject imports increased from \$*** to \$*** during the same period, or by *** percent.³¹ The subject imports also exhibited increases in interim 1998.³²

The subject imports also increased their market share during the period of investigation.³³ On a quantity basis, the cumulated imports’ share of the total U.S. market increased from *** percent in 1995 to *** percent in 1997, although their share fell slightly in interim 1998 from interim 1997.³⁴ When measured on a value basis, the subject imports showed similar trends.³⁵ The subject imports also increased their overall share of the commercial market during the period of investigation, with their market share on a quantity basis increasing from *** percent in 1995 to *** percent in 1997.³⁶

Although the cumulated subject imports exhibited increases in their volumes and market share during the period of investigation, I find that the absolute volume of the subject imports, and any increases in that volume, was not significant during the period. I base this conclusion on the fact that there is only a minimal level of substitutability, at best, between the subject imports and the domestic merchandise. As I discussed above, I find that the substitutability of the domestic and subject merchandise is most significantly limited by the fact that nearly two-thirds of domestic production consists of captively produced and consumed merchandise.³⁷ Because there is little direct competition between the subject imports and this large volume of captive domestic production, I believe that the subject imports can have, and have had, little or no volume-based impact on nearly two-thirds of domestic production.

In addition, I find that the substitutability between the subject imports and the domestic merchandise is further significantly limited by a significant difference in the products offered by the subject and domestic producers. The record of these investigations clearly establishes that nearly three-fourths of the subject imports shipments in 1997 were of coil weights larger than 2,000 pounds, while only *** percent of total

³⁰ 19 U.S.C. § 1677(7)(C)(i).

³¹ Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

³² Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

³³ Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

³⁴ Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998). The cumulated subject imports’ share of the market fell slightly from *** percent in interim 1997 to *** percent in interim 1998. *Id.*

³⁵ By value, the subject imports’ market share of the total U.S. market increased from *** percent in 1995 to *** percent in 1997, but declined to *** percent in interim 1998 from interim 1997. Table IV-2 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998).

³⁶ Table IV-3 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998). The commercial market share of the cumulated subject imports declined slightly between interim 1997 and interim 1998, from *** percent to *** percent. On a value basis, the subject imports showed similar trends, with their market share increasing from *** percent in 1995 to *** percent in 1997, then decreasing slightly in interim 1998 from interim 1997. *Id.*

³⁷ CR at III-9-10; PR at III-4-5.

domestic commercial shipments were in sizes of more than 2,000 pounds.³⁸ Since the record also indicates that these large size coils are preferred from a production efficiency standpoint by a number of purchasers, the difference in product offerings of the subject and domestic producers significantly limits the substitutability, and therefore any volume effects, of the subject merchandise. In this regard, I note that only one of the domestic producers, Talley, was able to produce coils of this size in the diameter sought by wire drawers during the period of investigation. Given that the remaining producers accounted for nearly *** of all domestic production in 1997,³⁹ I believe the record indicates that the bulk of domestic commercial shipments were simply not competing in any substantive way with the large majority of the subject imports.⁴⁰

Further, the substitutability of the subject and domestic merchandise is limited by the fact that the domestic producers have refused to, or been unable to supply, SSWR to certain customers during the period of investigation.⁴¹ As an example of the industry's refusal to supply certain of its downstream competitors, I note that the domestic producers made no sales of SSWR at all during 1996 or 1997 to stainless steel bar producers.⁴² Moreover, significant numbers of purchasers reported that they were refused sales, placed on allocation, or experienced significant delivery delays by the industry at various points during the period of investigation.⁴³ Because of availability concerns arising from these occurrences, most purchasers reported that they attempted to maintain several sources of supply for their SSWR purchases.⁴⁴ Again, the refusal or inability on the part of the industry to provide purchasers with adequate volumes of product significantly limits the substitutability of the subject and domestic merchandise and limits, as well, the significance of any volume increases of the subject imports.

Finally, although quality concerns play a less significant role in reducing the level of substitutability of the domestic and subject merchandise, I note that the record indicates that most purchasers report that the domestic product has lower quality than the subject imports from Japan, Taiwan and Sweden.⁴⁵ Because these three countries accounted for *** percent of total subject shipments in 1997, quality differences between the subject and domestic merchandise further limits to a significant degree the substitutability of the subject and domestic merchandise. Accordingly, this further limits significantly any volume effects of the subject imports.

In sum, although the cumulated subject imports have increased their share during a period when the market has increased substantially, I find that the volume of the subject imports has not been significant

³⁸ CR at I-13-15; PR at I-7-8.

³⁹ CR and PR at III-1.

⁴⁰ In this regard, I further note that Talley's net commercial sales volumes and its gross profits as a percentage of sales levels have *** during the period from 1995 to 1997, despite overall industry declines in these areas. CR and PR at Table VI-2. This suggests to me that Talley, the only domestic producer that produces large coil-weight products and that is most directly competing with the subject imports in the commercial market, has not been significantly impacted by the subject imports.

⁴¹ CR at II-10 & II-16-19; PR at II-5 & II-8-9.

⁴² CR and PR at II-1.

⁴³ CR at II-16-18; PR at II-8. For example, fifteen purchasers stated that they had been placed on allocation or experienced late deliveries during the period. *Id.*

⁴⁴ CR at II-13; PR at II-6. Moreover, in this same vein, I note that fourteen purchasers reported that they had been referred by one of the domestic producers to a related subject producer during the period. In most cases, the purchaser was referred by Carpenter to its related Taiwanese joint venture. Given this, to some extent, the domestic producers have themselves caused increases in import volumes during the period, although the Commission does not have the ability to estimate the level of import volumes affected. CR at II-7; PR at II-4.

⁴⁵ CR at II-11; PR at II-5.

during the period, given the minimal level of substitutability between the subject imports and the domestic merchandise. I note that my conclusion in this regard is supported by the results of the COMPAS model performed by the staff in these investigations, which indicates that there have been minimal quantity-related effects from the cumulated subject imports during the period of investigation.⁴⁶

D. Price Effects of Subject Imports

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, I must consider (i) whether there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (ii) whether the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁴⁷

In these final phase investigations, I have closely examined the consistent levels of underselling exhibited by the subject merchandise during the period of investigation and the general declines in the price of the domestic merchandise during the period of investigation.⁴⁸ I find that the record in this investigation indicates that the underselling exhibited by the subject imports during the period was not significant nor have the subject imports had significant price suppressive or depressive effects during that period.

First, and most importantly, I find that the subject imports have not had a significant impact on domestic prices in these final investigations because there was, at best, a minimal level of substitutability between the subject merchandise and the domestic merchandise during the period of investigation. As I discussed above, I find that the record evidence in these investigations indicates that the substitutability of the subject and domestic merchandise is severely limited by the large volume of captive domestic production, the inability of most domestic producers to produce large coil size merchandise, the refusal or inability of the domestic producers to supply purchaser requirements in the market, and the existence of quality differences between the domestic merchandise and significant segments of the subject imports. As a result of this minimal level of substitutability between the subject and domestic merchandise, I find that there are, at best, a minimal price effects between sales of the subject and domestic merchandise.

Moreover, I also find that the record evidence indicates that price, although an important factor in the purchase decision, is not a critical factor in a customer's purchase decision. Although the record indicates that purchasers generally reported that price was an important factor in the purchase decision, it also shows that most purchasers listed price as being only the third most important factor.⁴⁹ Similarly, when asked whether the lowest price will win a sale, no purchasers reported that it will "always" win the sale, only four

⁴⁶ The COMPAS model for these investigations estimated a quantity effect ranging from *** to *** percent (excluding Germany) from the subject imports. CR and PR at App. E-5. Moreover, I also note that my conclusion in this matter is supported by a close review of Table F-1 in App. F of the staff report, which indicates that year-to-year volume changes for the subject imports in individual grades did not correlate to a significant degree with the volume changes in grades for the domestic producer's commercial shipments. CR and PR at Table F-1.

⁴⁷ 19 U.S.C. § 1677(7)(C)(ii).

⁴⁸ As reported in the staff report, the cumulated subject imports undersold the domestic merchandise in 157 out of 187 possible instances, at average underselling margins ranging from 4.0 percent for Sweden to 11.6 percent for Korea. CR at V-25; PR at V-8. Moreover, average domestic unit values for both domestic and the subject merchandise declined during the period, with average unit values of domestic merchandise declining by *** percent while those for the subject merchandise declined by *** percent. Table A-1 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998); CR at V-23; PR at V-8.

⁴⁹ Twenty of 28 purchasers who reported that price was an important factor listed it as being only the third most important factor, behind quality and other factors. CR at II-6; PR at II-3.

reported that it will “usually” win the sale, and thirty-two purchasers reported that the lowest price will only “sometimes” or “never” win the sale. Given this record evidence on the role of price in the purchase decision, I find that price cannot generally be considered a critical or even one of the most important aspects of the purchase decision. Accordingly, I believe that this further supports my finding that any sales at LTFV or subsidization of the subject imports have had only a minimal impact on domestic prices during the period of investigation.

Further, when examining the impact of the subject imports on domestic prices, the record indicates that any domestic price declines during the period are more attributable to changes in the raw materials surcharges imposed by the domestic producers than to the impact of the subject imports. As the staff report clearly shows, when raw material surcharges are deducted from reported domestic prices, the weighted-average prices for the domestic merchandise (net of the surcharge) generally remained flat or rose slightly during the period for the four comparison products.⁵⁰ Given this, the record indicates that any price declines that appear to have occurred during the period of investigation are, in fact, illusory and that domestic prices have not been depressed by reason of the subject imports.

Finally, the record clearly indicates that ***.⁵¹ This suggests to me first that the other domestic producers were competing at relatively similar price levels as the subject imports and that the reported margins of underselling by the subject importers may be overstated.⁵² It also suggests to me that *** has been able to maintain a price premium for its product consistently throughout the period.

Given the minimal substitutability of the domestic and subject merchandise, the relatively less important role price plays in the purchase decision, and the impact of the raw materials surcharge on apparent domestic prices, I find that the subject imports have not had a significant impact on domestic prices during the period of investigation. My finding on this issue is supported by the outcome of the COMPAS model in these investigations, which indicates that the price effects of the cumulated subject imports have been minimal.⁵³

E. Impact of Subject Imports

In assessing the impact of the subject imports on the domestic industry, I am directed by the statute to consider several factors, including (i) declines in the industry’s output, sales, market share, profits, productivity, return on investments, and capacity utilization; (ii) factors affecting domestic prices; (iii) negative effects on the industry’s cash flow, inventories, wages, growth, ability to raise capital and investment; (iv) negative effects on their existing development and productions efforts; and (v) the magnitude of the dumping margin.⁵⁴

⁵⁰ CR and PR at Figure V-7. Moreover, to the extent that there have been price declines in the market, I note that the weighted-average unit values of the nonsubject imports of SSWR from Taiwan have had significantly *** weighted-average unit prices during 1996 and 1997 than the cumulated subject imports and that those average unit prices have exhibited significant price declines during the period. Table A-1 (Restated) attached to Memorandum INV-V-061 (Aug. 19, 1998). Given this, I find that any price effects that have occurred during the period cannot be attributed, in significant part, to LTFV sales by the subject imports.

⁵¹ CR at V-23, n. 5; PR at V-8, n.5.

⁵² The margins of underselling ranged between 4.0 and 11.6 percent for the six subject countries for whom I am performing a material injury analysis. CR at V-25; PR at V-8.

⁵³ The COMPAS model (excluding Germany) indicates that the impact of the subject imports on price has been in the range of *** to *** percent. CR and PR at E-4.

⁵⁴ I have closely considered the margins found by Commerce for the subject countries in these investigations. CR and
(continued...)

In these final phase investigations, I have closely examined the fact that the domestic industry experienced significant declines in nearly all financial indicators during the period of investigation. During the period from 1995 to 1997, the industry's production and shipment levels, sales revenues, market share, profitability levels, employment levels and capacity utilization generally declined during the period from 1995 through 1997.⁵⁵ Yet, despite the fact that the industry experienced declines in these financial indicators during the period, I find that the record in these investigations indicates that any declines in the financial condition of the industry have not been by reason of the subject imports.

In making this finding, I have again relied on the fact that there is a minimal level of substitutability between the subject and domestic merchandise, due in significant part to the large volume of captive domestic production, the inability of the industry to offer large coil weight product and the refusal or inability of the domestic industry to supply product to open market purchasers in a significant number of cases. Because of the minimal levels of substitutability, I find (as I described above) that the subject imports have had minimal volume and price effects on the domestic industry. As a consequence of this finding, I further find that the subject imports have not had a significant impact on the revenues obtained by the domestic industry in this market. Accordingly, I believe that any declines in the sales, revenues, production, and profitability levels of the domestic industry cannot be attributed in significant part to the subject imports.

Moreover, although the industry has lost market share during the period of investigation, I find that the record evidence indicates that this decline simply reflects changes in the industry's own consumption of captive production, increased demand for products not offered by the industry (i.e., large coil weight products), and the industry's refusal or inability to supply significant segments of the market. As I have previously noted, three of the four major members of the industry have been unable to produce 2,000 pound coils, despite the fact that there appears to be a large demand in the market for such coil sizes. Moreover, the industry has refused to supply product, in part or in whole, to certain customers who are downstream competitors of the industry.⁵⁶ Similarly, members of the industry have placed certain customers on allocation during the period of investigation, apparently because they were unable to dedicate production capacity to the customers' needs. Indeed, the record clearly indicates that certain members have referred customers to the subject producers and encouraged them to purchase product from the subject countries on a significant number of occasions.⁵⁷ Given the foregoing, I find that the record indicates that the loss of market share by the industry has not been due to the subject imports but to other factors more closely linked to business decisions made by the industry.

Further, although various members of the industry contend that they have been unable to make needed capital investments in their facilities or obtain necessary financing during the period, I believe that the record indicates otherwise. For example, despite incurring *** during 1997, Carpenter (the single largest domestic producer, ***) was able to obtain sufficient financing to acquire Talley, its *** domestic competitor in this industry. Similarly, although the domestic industry claims to have been unable to make sufficient

⁵⁴ (...continued)
PR at I-2 & App. B.

⁵⁵ CR and PR at App. A and Tables III-1, III-2, III-4, VI-1, IV-2, & VI-6.

⁵⁶ CR at II-16-19; PR at II-8.

⁵⁷ CR at II-7; PR at II-4. In this regard, I note that the supply issues that limit the substitutability of the subject and domestic merchandise will be further exacerbated by the pending bankruptcy of AL Tech and the acquisition of Talley by Carpenter.

capital investments in their operations, I note that the industry has been able to double its capital expenditures during the period from 1995 to 1997.⁵⁸

Finally, my finding that the subject imports have had a minimal impact on the domestic industry is further supported by a comparison of the industry's condition in 1994 with its financial condition in 1997. Although the record suggests that the subject imports were at their lowest volume and market share levels in 1994⁵⁹ and at their highest levels in 1997, the financial condition of the industry has improved considerably in a number of respects since 1994, exhibiting increases in its overall production, shipments, net sales, unit values and capital expenditures levels.⁶⁰ Given that these production, shipments, sales and investment increases occurred during a period of increasing subject import volumes and apparently declining prices, I believe that this comparison confirms my finding that the subject imports have had a minimal impact on the condition of the industry.

Accordingly, I determine that the domestic industry producing stainless steel wire rod is not materially injured by reason of the subject imports from Italy, Japan, Korea, Spain, Sweden and Taiwan.⁶¹ I note that this conclusion is supported by the results of the staff's COMPAS model, which indicates that there are minimal revenue effects on the industry from the subject imports.⁶²

II. NO THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

Having found that the domestic industry is not materially injured by reason of the subject imports, I must determine whether the industry is threatened with material injury by reason of the subject imports.⁶³ The statute directs me to consider nine enumerated factors when performing this threat analysis.⁶⁴ In making my determination, I have considered all statutory factors that are relevant to these investigations.⁶⁵

When performing my threat analysis, I have taken into account the statutory requirement that I assess 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."⁶⁶ As the statute specifies, I may not make such a determination "on the basis of mere conjecture or supposition," and must consider the threat factors "as a whole in making [my] determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued."

For the reasons discussed below, I determine that the domestic industry producing stainless steel wire rod is not threatened with material injury by reason of LTFV imports from the subject countries or by reason

⁵⁸ The domestic industry increased its capital expenditures from \$*** in 1995 to \$*** in 1997. CR and PR at Table VI-8.

⁵⁹ Preliminary Report at Table C-1.

⁶⁰ Table A-1 (U.S. industry data only) attached to Memorandum INV-V-067 (Aug. 28, 1998).

⁶¹ Because I found that the subject imports from Germany were currently below the negligibility threshold but will be imminently non-negligible, I have not made a finding as to whether they have materially injured the domestic industry. However, as required by the statute, I have determined whether they threaten to materially injure the domestic industry.

⁶² CR and PR at App. E.

⁶³ 19 U.S.C. §§ 1673d(b) & 1677(7)(F).

⁶⁴ 19 U.S.C. §1677(7)(F).

⁶⁵ 19 U.S.C. § 1677(7)(F)(i). In this regard, I note that Factor VII of section 1677(7)(F)(i), regarding raw and processed agriculture products, is inapplicable. In addition, none of the subject countries are subject to antidumping findings or remedies in any WTO member countries. CR at VII-21; PR at VII-8. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

⁶⁶ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

of subsidized imports from Italy. Accordingly, I do not find that further LTFV or subsidized imports are imminent and that material injury by reason of imports would occur unless an order is issued.

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, I have 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.⁶⁷ In deciding whether to cumulate for purposes of making our threat determinations, the Commission has in the past also considered whether the subject imports are increasing at similar rates and have similar pricing patterns, including similar levels of underselling.⁶⁸ The Court of International Trade has held, however, that the Commission is not required to consider divergent volume and pricing trends in exercising its discretion to cumulate for purposes of its threat analysis⁶⁹

In this case, as I have previously discussed, I find that the requirements for cumulation in the injury context are met, i.e., all of the petitions were filed on the same day and the subject imports compete with one another and the domestic merchandise.⁷⁰ Accordingly, I have examined whether it is appropriate to cumulate all of the subject countries for purposes of my threat analysis.

I find that it is not appropriate to cumulate subject imports from Italy and Sweden with the subject imports from Germany, Japan, Korea, Spain, and Taiwan.⁷¹ The record clearly shows that, unlike the latter five countries, the volume and market shares of the subject imports from Italy and Sweden declined significantly throughout the period of investigation, particularly in 1997, which is the most relevant period for purposes of my threat analysis.⁷² Moreover, the record also clearly shows that the subject imports from Italy and Sweden generally exhibited lower average underselling margins than most of the other subject countries during the period of investigation and that the average unit prices of Italy and Sweden declined at a less rapid rate than the prices of the other subject countries during the period.⁷³ In light of the foregoing, I believe that the volume and price trends of Italy and Sweden are sufficiently different to warrant not cumulating them with the remaining subject countries.

⁶⁷ 19 U.S.C. § 1677(7)(H).

⁶⁸ 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).

⁶⁹ Kern Liebers USA, Inc. v. United States, Slip Op. 95-9 at 49-50 (Ct. Int'l Trade, January 27, 1995).

⁷⁰ 19 U.S.C. §1677(7)(G).

⁷¹ As indicated in the majority opinion, I find that Germany will imminently rise above the negligibility threshold. Accordingly, I am statutorily required to consider the subject imports from Germany for “purposes of determining threat of material injury.” 19 U.S.C. §1677(24)(A)(iv).

⁷² The volumes of shipments of the subject imports from Italy and Sweden declined by *** percent and *** percent, respectively, between 1995 and 1997, while their market shares declined by *** percentage points and *** percentage points, respectively. CR and PR at Table A-1, App. A.

⁷³ The average margins of underselling for Italy and Sweden during the period were 7.0 and 4.0 percent, respectively, while the average margins of underselling for Germany, Japan, Korea and Spain were significantly higher. CR at V-25; PR at V-8.

Accordingly, I have exercised my discretion to cumulate the subject imports from Germany, Japan, Korea, Spain and Taiwan for my threat analysis. I have also exercised my discretion to cumulate the subject imports from Italy and Sweden and perform a separate threat analysis for those two countries.⁷⁴

B. Vulnerability of the Industry

I also have considered whether the domestic industry is vulnerable to a threat of material injury by reason of the subject imports. Although the industry has experienced declines in its production, sales, employment, profitability and other financial indicators during the period from 1995 to 1997,⁷⁵ I do not find the industry to be vulnerable to a threat of material injury from the subject imports. The industry retains a dominant share of the market, accounting for nearly *** percent of the total market in 1997, and it remains profitable on a gross profits basis.⁷⁶ Moreover, a comparison of the financial condition of the industry in 1994 with its condition in 1997 indicates that the industry is in many respects performing better now than it was in 1994.⁷⁷ Given these considerations, I find that the industry is not now vulnerable to the threat of material injury by reason of the subject imports.

C. No Threat of Material Injury By Reason of the Subject Imports from Germany, Japan, Korea, Spain and Taiwan

I have considered all of the relevant statutory threat factors⁷⁸ when assessing whether the cumulated subject imports from Germany, Japan, Korea, Spain and Taiwan threaten to materially injure the domestic industry. For the reasons set forth below, I find that the domestic industry is not threatened with material injury by reason of the subject imports from these five countries.

As required by the statute, when performing my threat analysis, I first considered whether there is “any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports.”⁷⁹ In this case, the record indicates that the subject producers in Japan, Spain and Taiwan all had *** capacity utilization rates in 1997 and interim 1998. I also note that these three countries are projected to have *** capacity utilization rates in 1998 and 1999.⁸⁰ Moreover, although the subject producers in Germany and Korea reported *** capacity use rates in 1997 than the Japanese, Spanish and Taiwanese producers, I believe that the German and Korean producers were still operating at reasonably high capacity use levels.⁸¹ Moreover, although Germany and Spain are projecting capacity *** in 1998 and 1999, the capacity *** in

⁷⁴ In this regard, I have chosen to cumulate these two groups of countries because of the general similarity in price and volume trends among the countries within each group.

⁷⁵ CR and PR at Table A-1, App. A.

⁷⁶ CR and PR at Tables IV-2, VI-1 & VI-2.

⁷⁷ See Table A-1 (U.S. industry data only) attached to Memorandum INV-V-067 (Aug. 28, 1998).

⁷⁸ Because no allegations of subsidization were made with respect to the subject imports from Germany, Japan, Korea, Spain and Taiwan, Factor I of the threat factors is inapplicable to this analysis.

⁷⁹ 19 U.S.C. §1677(7)(F)(i)(II).

⁸⁰ CR at Tables VII-3, VII-6 and VII-8. The capacity use rates for all three countries were above *** percent in 1997 and are projected to *** in 1998 and 1999.

⁸¹ CR and PR at Tables VII-1 & VII-4-5.

those countries are offset by projected capacity *** in other countries.⁸² Given the high or relatively high levels of capacity use in the five countries and the relatively small overall projected capacity *** in those countries, I find that the capacity levels of the five cumulated countries do not indicate that there is likely to be a substantial increase in these imports in the imminent future.

I have also examined whether there has been “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”⁸³ In this case, I note that the volume of the subject imports from the five cumulated countries increased from *** tons in 1995 to *** tons in 1997.⁸⁴ Market share for the cumulated imports also increased during the period, from *** percent in 1995 to *** percent in 1997.⁸⁵ Despite these increases in the volume and market share of imports during a period of increasing demand, I note (as I previously discussed) that there is a minimal level of substitutability between the subject imports and the domestic merchandise, which indicates that there have been, and will be, only minimal volume effects by reason of the subject imports. Accordingly, I find that the volume and market share increases exhibited by the cumulated imports are not significant and do not suggest that there will be a substantial imminent increase in the subject imports that will have a significant effect on the domestic industry.

Similarly, I have examined “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”⁸⁶ As I explained in my injury views above, the cumulated subject imports have not had significant price effects on the price of domestic merchandise because of the limited substitutability of the subject imports and the domestic merchandise. I do not believe that there is significant record evidence to suggest that the level of substitutability between subject and domestic merchandise will change significantly in the imminent future.⁸⁷ Accordingly, I find it unlikely that the cumulated imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future.

I have also considered the levels of “inventories of the subject merchandise.”⁸⁸ The inventory levels of the subject producers in the five cumulated countries have remained stable or declined significantly during the period of investigation.⁸⁹ Moreover, although the level of U.S. importers’ inventories increased from *** short tons in 1995 to *** short tons in 1997,⁹⁰ this level of inventories is not so substantial that it suggests that the cumulated imports present an imminent threat of injury to the industry. Accordingly, I do not find that inventory levels of the subject merchandise support a finding of a threat of material injury.

I am also directed to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to

⁸² Compare Tables VII-1 and VII-6 with Tables VII-3, VII-4-5, and VII-8.

⁸³ 19 U.S.C. §1677(7)(i)(III).

⁸⁴ CR and PR at Table IV-1.

⁸⁵ CR and PR at Table IV-2.

⁸⁶ 19 U.S.C. §1677(7)(F)(i)(III).

⁸⁷ In coming to this conclusion, I have examined and taken into account the argument made by Carpenter that it is intending to increase its ability to supply large coil sizes in the market. While I believe that Carpenter will do so, I do not think that significant changes in its ability to produce these coils are imminent.

⁸⁸ 19 U.S.C. §1677(7)(F)(i)(V).

⁸⁹ CR and PR at Tables VII-1, VII-3-6, and VII-8.

⁹⁰ CR and PR at Table VII-9.

produce other products.”⁹¹ Here, the record evidence suggests that there is some potential for product shifting between bar and wire rod as well as between SSWR and downstream products like wire.⁹² Despite this, I believe there is little indication in the record that the subject producers actually shifted production between these products to increase shipments to the United States during the period of investigation, or that they intend to do so in the event of an order.

I also examined “the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.”⁹³ In this case, although members of the industry contend that their ability to make additional necessary investments and obtain necessary financing has been hindered by the impact of the subject imports, the record indicates that the subject imports have had, and will continue to have, a minimal impact on the industry’s ability to finance production and development efforts.⁹⁴

Finally, I am required by the statute to consider “any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).”⁹⁵ I do not find that the record in these investigations indicates that there are any demonstrable adverse trends suggesting that the subject imports will imminently materially injure the industry.

In sum, I determine that the domestic industry producing stainless steel wire rod is not threatened with material injury by reason of the subject imports from Germany, Japan, Korea, Spain and Taiwan.

D. No Threat of Material Injury By Reason of the Subject Imports from Italy and Sweden

I have also considered all of the relevant statutory threat factors when performing my analysis of whether the cumulated subject imports from Italy and Sweden threaten to materially injure the domestic industry. For the reasons set forth below, I find that the domestic industry is not threatened with material injury by reason of the subject imports from Italy and Sweden.

As required by the statute, I first considered the nature of the subsidies found by Commerce for the subject imports from Italy⁹⁶ and whether those imports are likely to increase as a result of those subsidies. In its final countervailing duty determination, Commerce calculated a 1.28 percent subsidization rate for the Italian producers Valbruna and Bolzano, a 22.2 percent rate for Cogne, and an “all others” rate of 13.85 percent. Although the subsidization levels calculated for Cogne were relatively high, those found for Valbruna and Bolzano were quite low. Moreover, Commerce found only minimal levels of export subsidies had been granted to the two companies during its period of investigation.⁹⁷ Accordingly, I find that the nature and level of these subsidies do not suggest that there will be a significant increase in the volume of the cumulated subject imports.

⁹¹ 19 U.S.C. §1677(7)(F)(i)(VI).

⁹² CR at I-6-11, VII-1-4, VII-7-17, & VII-19-21; PR at I-5-6, & VII-1-8.

⁹³ 19 U.S.C. §1677(7)(F)(i)(VIII).

⁹⁴ *See, e.g.*, CR and PR at Table VI-8.

⁹⁵ 19 U.S.C. §1677(7)(F)(i)(IX)

⁹⁶ 19 U.S.C. §1677(7)(F)(i)(I). The statute directs me particularly to consider whether Commerce found any export subsidies. *Cf.* SAA at 855 (noting that factor I involves “consideration of export subsidies”).

⁹⁷ Commerce found an export subsidies rate of 0.15 percent ad valorem for Valbruna and Bolzano and 0.01 percent for Cogne. 63 Fed. Reg. 40,474 (July 29, 1998).

I also find that there is little unused production capacity or significant imminent increases in production capacity in Italy and Sweden. The capacity utilization rates of Italy and Sweden were *** during 1997⁹⁸ and are projected to *** in 1998 and 1999.⁹⁹ Moreover, neither Italy nor Sweden is projecting capacity *** in 1998 or 1999; indeed, the overall capacity of the Italian producers is projected to *** by *** short tons in 1998.¹⁰⁰ Accordingly, the capacity levels and utilization rates of the Italian and Swedish producers do not indicate to me that there will be a substantial and imminent increase in the subject imports from Italy and Sweden.

I also note that the volume or market share of the subject imports from Italy and Sweden have not significantly increased during the period of investigation. On the contrary, the volume and market share of both countries have fallen.¹⁰¹ Accordingly, I find that the volume trends of the two countries do not indicate that there is a likelihood of substantially increased volumes of subject merchandise. Moreover, I note that any imminent volume impact from these two countries is limited by the minimal level of substitutability between the subject imports from those countries and the domestic merchandise.

I also find that it is unlikely that imports of the subject merchandise from Italy and Sweden will be entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.¹⁰² As I explained in my injury views above, the subject imports (including those from Italy and Sweden) have not had significant price effects on the price of domestic merchandise because of the limited substitutability of the subject imports and the domestic merchandise. I do not believe that there is significant record evidence to suggest that the level of substitutability between subject and domestic merchandise will change significantly in the imminent future. Accordingly, I find it unlikely that imports from Italy and Sweden will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future.

Moreover, I find that inventories of Italian and Swedish merchandise have remained relatively stable during the period, both in the United States and the Italy and Sweden.¹⁰³ Accordingly, the inventory levels of the two countries do not support an affirmative threat finding.

I also find that there is not a significant potential for product-shifting in these two countries.¹⁰⁴ Although the record evidence suggests that there is some potential for product shifting between bar and wire rod as well as between SSWR and downstream products like wire,¹⁰⁵ there is little indication in the record that the subject producers in Italy and Sweden have actually shifted production between these products or intend to do so in the event of an order.

⁹⁸ Italy's capacity utilization rate was *** percent in 1997 and Sweden's capacity utilization rate was ***. CR and PR at Tables VII-2 and VII-7.

⁹⁹ CR and PR at Tables VII-2 and VII-7.

¹⁰⁰ *Id.*

¹⁰¹ The volumes of the subject imports from Italy and Sweden declined by *** percent and *** percent, respectively, between 1995 and 1997, while their market shares declined by *** percentage points and *** percentage points, respectively. CR and PR at Table A-1.

¹⁰² 19 U.S.C. § 1677(7)(F)(i)(III).

¹⁰³ CR and PR at Table VII-2 and VII-7; CR and PR at Table VII-9.

¹⁰⁴ 19 U.S.C. § 1677(7)(F)(i)(VI).

¹⁰⁵ CR at I-6-7, VII-4-7, & VII-17-19; PR at I-5, VII-2-3, & VII-7.

I also find that the subject imports have had little actual or potential negative effects on the existing development and production efforts of the domestic industry.¹⁰⁶ In this case, although members of the industry contend that their ability to make additional necessary investments and obtain necessary financing has been hindered by the impact of the subject imports, I believe (as I discussed above) that the record indicates that the subject imports have had, and will continue to have, a minimal impact on the industry's ability to finance its production and development efforts.¹⁰⁷

Finally, I do not find that there are any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).¹⁰⁸

In sum, I determine that the domestic industry producing stainless steel wire rod is not threatened with material injury by reason of the subject imports from Italy and Sweden.

III. CONCLUSION

For the foregoing reasons, I determine that the domestic industry producing stainless steel wire rod is not materially injured or threatened with material injury by reason of LTFV and/or subsidized imports of stainless steel wire rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan.

¹⁰⁶ 19 U.S.C. §1677(7)(F)(i)(VIII).

¹⁰⁷ *See, e.g.*, CR and PR at Table VI-8.

¹⁰⁸ 19 U.S.C. §1677(7)(F)(i)(IX).