

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STEEL WIRE ROPE FROM JAPAN, KOREA, AND MEXICO

Investigations Nos. 731-TA-547 (Reviews)

DETERMINATION AND VIEWS OF THE COMMISSION

Publication 3259, December 1999)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. AA1921-124 and 731-TA-546-547 (Reviews)

## CERTAIN STEEL WIRE ROPE FROM JAPAN, KOREA, AND MEXICO

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty finding and orders on certain steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted these reviews on January 4, 1999 (64 F.R. 367) and determined on April 8, 1999 that it would conduct full reviews (64 F.R. 19198, April 19, 1999). Notice of the scheduling of the Commission's reviews 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* on June 30, 1999 (64 F.R. 35181). The hearing was held in Washington, DC, on October 14, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 20, 1999. The views of the Commission are contained in USITC Publication 3259 (December 1999), entitled *Certain Steel Wire Rope from Japan, Korea, and Mexico: Investigations Nos. AA1921-124 and 731-TA-546-547 (Reviews)*.

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued:

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

<sup>2</sup> Chairman Lynn M. Bragg dissenting on Japan, and Commissioner Stephen Koplán dissenting on Japan and Mexico.

## VIEWS OF THE COMMISSION

Based on the record in these five-year reviews,<sup>1</sup> we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping finding covering steel wire rope from Japan, and antidumping duty orders covering carbon steel wire rope from Korea and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

### I. BACKGROUND

On September 7, 1973 the United States Tariff Commission (the predecessor to the International Trade Commission (“Commission”)) issued an affirmative injury determination regarding imports of steel wire rope from Japan<sup>3</sup> and on October 15, 1973, the Department of Treasury issued its antidumping finding, with no margins specified.<sup>4</sup> On February 8, 1993 the Department of Commerce (“Commerce”) issued an affirmative antidumping determination on carbon steel wire rope from Mexico, with a margin of 111.68 percent for Aceros Camesa, S.A. de C.V. (“Camesa”) and for all other exporters.<sup>5</sup> Only Camesa participated in the original investigation. On February 23, 1993, Commerce issued an affirmative antidumping determination on carbon steel wire rope from Korea, with *de minimis* margins for KISWIRE, Ltd. (“KISWIRE”), Young Heung Iron and Steel Co., Ltd. (“YHC”), and Dae Heung Industrial Co. (“Dae Heung”) and a margin of 1.51 percent for Manho Rope Manufacturing, Ltd. (“Manho”) and all other firms. Accordingly, carbon steel wire rope produced by KISWIRE, YHC and Dae Heung was excluded from the order.<sup>6</sup> The Commission issued final affirmative injury determinations for both Mexican and Korean subject merchandise on March 25, 1993,<sup>7</sup> and Commerce issued antidumping duty orders on March 25, 1993 for Mexico and on March 26, 1993 for Korea.<sup>8</sup> The Commission instituted five-year reviews on steel wire rope from Japan, Mexico, and Korea on January 4, 1999.<sup>9</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent

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<sup>1</sup> The record is defined in Sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR §207.2(f)).

<sup>2</sup> Chairman Bragg dissenting as to Japan and Commissioner Koplun dissenting as to Japan and Mexico. Chairman Bragg joins in sections I, II, IV, VI and VII, and Commissioner Koplun joins in sections I, II, III, IV, and VI.

<sup>3</sup> Steel Wire Rope from Japan, Inv. No. AA1921-124 (Final), USITC Pub. 608 (September 7, 1973) (“Original Japan Determination”).

<sup>4</sup> 38 Fed. Reg. 28571 (October 15, 1973).

<sup>5</sup> 58 Fed. Reg. 7531 (February 8, 1993).

<sup>6</sup> 58 Fed. Reg. 11029 (Feb. 23, 1993).

<sup>7</sup> Steel Wire Rope from Mexico and Korea, Inv. Nos. 731-TA-546 and 547 (Final), USITC Pub. 2613 (March 1993) (“Original Mexico and Korea Determinations”).

<sup>8</sup> 58 Fed. Reg. 16172 (March 25, 1993) (Mexico) and 58 Fed. Reg. 16397 (March 26, 1993) (Korea).

<sup>9</sup> 64 Fed. Reg. 364 (Jan. 4, 1999).

interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>10</sup> If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received a response to the notice of institution from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (“Committee”). The Committee was the petitioner in the original investigations of carbon steel wire rope from Korea and Mexico.<sup>11</sup> The Committee is composed of nine domestic manufacturers which together make up the vast majority of domestic steel wire rope production.<sup>12</sup>

Regarding respondent interested parties, the Commission received a response from one Korean company, Kumho Wire Manufacturing Co., Ltd. (“Kumho”), which, based on the information available to the Commission, accounts for a substantial share of subject imports from Korea. Camesa, the only Mexican producer of subject merchandise to participate as a party in these reviews, did not respond to the original notice of institution but did participate after the Commission decided to conduct full five-year reviews for all three subject countries on April 8, 1999. No producer, exporter, or U.S. importer of carbon steel wire rope from Japan filed a response to the notice of institution or has otherwise participated in these reviews.<sup>13</sup>

On October 14, 1999 the Commission held a hearing in these reviews, in which representatives of the Committee and Camesa participated. Kumho filed a prehearing brief in support of revocation of the order but did not participate in the hearing of October 14 or file a posthearing brief.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>14</sup> 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 under this subtitle.”<sup>15</sup> In its final five-year review determinations, Commerce defined the subject merchandise differently for each of the subject countries. The definitions were as follows:

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<sup>10</sup> See 19 C.F.R. § 207.62(a).

<sup>11</sup> AMSTED Industries, Inc. was the petitioner in the original investigation of steel wire rope from Japan. AMSTED is the parent of Macwhyte Co. Macwhyte \*\*\* Committee member Wire Rope Corporation of America (“WRCA”) during the period of review.

<sup>12</sup> The following nine companies are current members of the Committee: Bergen Cable Technology, Inc.; Bridon American Corporation; Carolina Steel & Wire Corp.; Continental Cable Company; Loos & Co., Inc.; Paulsen Wire Rope Corporation; Sava Industries, Inc.; Strandflex, a Division of MSW, Inc.; and WRCA. Committee Prehearing Brief at 1.

<sup>13</sup> See Explanation of Commission Determination on Adequacy in, Steel Wire Rope from Japan, Inv. No. AA1921-124 (Review), and Carbon Steel Wire Rope from Korea and Mexico, Inv. Nos. 731-TA-546-547 (Review) (1999) (“Adequacy Explanation”).

<sup>14</sup> 19 U.S.C. § 1677(4)(A).

<sup>15</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); 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). See also S. Rep. No. 96-249 at 90-91 (1979).

## Japan

Steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 3712.109030, 7312.109060, and 7312.109090.<sup>16</sup>

## Korea

Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000.<sup>17</sup>

## Mexico

Carbon steel wire rope includes ropes, cables and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire. The subject merchandise is classifiable under subheadings 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS).<sup>18</sup>

Although they differ in some respects, each description encompasses the carbon steel wire rope that makes up the vast majority of the subject imports.<sup>19 20</sup>

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<sup>16</sup> 64 Fed. Reg. 35626 (July 1, 1999).

<sup>17</sup> 64 Fed. Reg. 43166 (Aug. 9, 1999).

<sup>18</sup> 64 Fed. Reg. 42905 (Aug. 6, 1999).

<sup>19</sup> We regard the scope of the review as to Mexico to include steel wire strand produced in Mexico by Camesa and imported into the United States for use in the production of steel wire rope. Commerce expanded the scope of the Mexican antidumping duty order to include such strand pursuant to an anticircumvention proceeding. 60 Fed. Reg. 10831 (Feb. 28, 1995). In a subsequent administrative review, Commerce reiterated that the scope includes the Camesa strand. 63 Fed. Reg. 46753 (Sept. 2, 1998). Although the scope of the notice of the results of Commerce's five-year review does not address the Camesa strand, a Commerce employee designated to provide information about the five-year review indicated that \*\*\*. (Staff notes of telephone call to International Trade Administration, November 15, 1999). Moreover, no party objected to the Commission's requiring the parties to report imports of Camesa strand in the draft and final Commission questionnaires. On the foregoing basis, the Commission regards strand produced in Mexico by Camesa and imported into the United States for use in the production of steel wire rope to be within the scope of the reviews. However, the volume of imports of Camesa strand is relatively small, and its inclusion is not a determinative factor in our analysis.

<sup>20</sup> Commissioner Crawford concurs that the scopes of the orders differ in some respects, which is important to the question of whether the subject imports are eligible for cumulation with each other. In these reviews, the definition of the subject merchandise from Japan (*i.e.*, the scope of the finding) includes both carbon and stainless

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In the original investigations on steel wire rope from Mexico and Korea, the Commission considered whether there were two like products (wire rope made of stainless steel and carbon steel), or one like product defined as all steel wire rope. The Commission determined that there was only one like product, steel wire rope.<sup>21</sup> The Tariff Commission did not define a domestic like product in the original investigation as to Japan, although it defined the domestic industry as “the operations of the U.S. facilities producing steel wire rope.”<sup>22</sup>

The record of these investigations demonstrates that general physical characteristics of carbon and stainless steel wire rope are similar. Common industry specifications and standards apply equally to all steel wire rope and manufacturing facilities and production related factors are similar and common for carbon and stainless steel wire rope.<sup>23</sup> The channels of distribution of the two products are also similar.<sup>24</sup> Carbon and stainless steel wire rope are functionally interchangeable for many uses,<sup>25</sup> although the large price difference between the two products often makes interchangeability impractical. Indeed, price appears to be the most important difference between carbon and stainless steel wire rope. Consistent with past Commission practice, however, we do not consider price differences alone when defining the like product.<sup>26</sup> Moreover, we do not require complete interchangeability to include products in one like product.<sup>27</sup>

No information gathered in these reviews indicates that we should depart from our previous determinations and now find separate like products for wire rope made of stainless steel and carbon steel. Nor did any of the parties advocate a change in this regard. Accordingly, we find a single like product consisting of both wire rope made of stainless steel and carbon steel.<sup>28</sup>

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<sup>20</sup> (...continued)

steel wire rope, and thus differs from the definition of the subject merchandise from Korea and Mexico (*i.e.*, the scopes of the orders), neither of which includes stainless steel wire rope. The definitions of the subject merchandise from Korea and Japan are not identical, but nevertheless cover the same products, *i.e.*, carbon steel wire rope with certain products excluded. Therefore, Commissioner Crawford finds that the definitions of the subject merchandise from Korea and Mexico are the same for purposes of whether the subject imports from these two countries are eligible for cumulation with each other.

<sup>21</sup> Original Mexico and Korea Determination at 8.

<sup>22</sup> Original Japan Determination at 3.

<sup>23</sup> CR at I-20; PR at I-17.

<sup>24</sup> CR at I-23; PR at I-19.

<sup>25</sup> Stainless steel wire rope generally is used instead of the carbon steel product in applications where a low magnetic field is required or in areas that require corrosion resistance, such as near radar and compass units for minesweeping, on aircraft, or as rigging on yachts. CR at I-22; PR at I-18.

<sup>26</sup> E.g., Steel Wire Rope from Argentina and Mexico, Inv. Nos. 731-TA-476 and 479 (Final), USITC Pub. 240 at 9 (Aug. 1991).

<sup>27</sup> Id.

<sup>28</sup> The like product does not include steel wire rope that is fitted with fittings or made up into articles (“fitted wire rope”). Commerce expressly excluded those products from the Korea and Mexico reviews, and we believe it to be excluded from the Japan review as well. The subject import volumes at issue in the Original Japan Determination did not include fitted wire rope. Original Japan Investigation Staff Report at 9, and at Appendix A, Tables 4 and 5 at n.1. Additionally, none of the HTS item numbers provided in Commerce’s scope cover fitted rope. Although the HTS numbers listed in the scope are not dispositive, we believe they constitute further evidence that the scope does not include fitted rope. The Committee and Camesa agree that fitted wire rope is outside the scope of the Japan investigation and should not come within the domestic like product in these reviews. Because

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## B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>29</sup> In these five-year reviews, as in the original determinations, we determine that the domestic industry consists of all producers of the domestic like product.<sup>30</sup>

### III. CUMULATION<sup>31</sup>

#### A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>32</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>33</sup> We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>34,35</sup> For these reviews,

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<sup>28</sup> (...continued)

fitted rope is outside the scope of these reviews, and absent record information or argument indicating that such rope should be included in the domestic like product, we decline to expand the domestic like product to include it.

<sup>29</sup> 19 U.S.C. § 1677(4)(A).

<sup>30</sup> Awarco, a domestic producer, is a related party because it is owned by Camesa, a Mexican exporter of the subject product. However, because \*\*\*, it did not reach a decision as to whether appropriate circumstances exist to exclude the company. Awarco is estimated to account for a \*\*\* of domestic production. CR and PR Table I-3.

<sup>31</sup> Chairman Bragg does not join section III of this opinion. *See* Separate and Dissenting Views of Chairman Lynn M. Bragg.

<sup>32</sup> 19 U.S.C. § 1675a(a)(7).

<sup>33</sup> 19 U.S.C. § 1675a(a)(7).

<sup>34</sup> Vice Chairman Miller and Commissioners Hillman and Koplán note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test

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our “no discernible adverse impact analysis” is focused on subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the order is revoked.<sup>36</sup>

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<sup>34</sup> (...continued)

for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year review provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

<sup>35</sup> Commissioner Crawford concurs that, even if reviews are initiated on the same day, under the statute cumulation is discretionary in five-year reviews. In Commissioner Crawford’s view, the statutory framework presents four distinct, sequential analyses that are required when determining whether or not to cumulate subject imports from different countries, in addition to the requirement that the reviews are initiated on the same day. First, the definitions of the subject merchandise under review (*i.e.*, the scopes of the findings or orders) must be the same for the subject imports to be eligible for cumulation. *See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada*, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 at 43 (Sept. 1999). Second, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1675a(a)(7). Thus, it is necessary first to determine that the subject imports are eligible for cumulation and that the statute does not preclude cumulation before determining whether to exercise the discretion to cumulate, which is the third analysis required. The statute simply states that the Commission *may* cumulate if the competition requirement is met. However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, there is no statutory or analytical presumption of cumulation. Fourth, even if the discretion to cumulate is exercised, cumulation is only allowable if the subject imports “would be likely to compete with each other and with domestic like products in the United States market.” 19 U.S.C. § 1675a(a)(7). As noted *infra*, Commissioner Crawford follows this framework in her decision not to cumulate the subject imports from Japan, Korea or Mexico with each other.

<sup>36</sup> Commissioner Askey notes that the language of section 752(a)(7) of the Tariff Act of 1930 (the “Act”), as amended, clearly states that the Commission has the discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) also clearly states, however, that the Commission is *precluded* from exercising this discretion if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7).

Thus, under this provision, the Commission must find that the subject imports from a country will have a “discernible adverse impact on the domestic industry” after revocation of the order before cumulating those imports with other subject imports. Accordingly, the Commission’s task under this provision is a straightforward one. To determine whether the Commission is precluded from cumulating subject imports from a particular country, the Commission must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. If the impact of the imports is not discernible, then the Commission is precluded from cumulating those imports with other subject imports. *See Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>37 38 39</sup> Only a “reasonable overlap” of competition is required.<sup>40</sup> In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.<sup>41</sup>

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<sup>37</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 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.

<sup>38</sup> Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. *E.g.* U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

<sup>39</sup> *See e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>40</sup> *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996)).

<sup>41</sup> *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

## B. Discussion <sup>42</sup>

The requirement that all three reviews be initiated on the same day is satisfied. The Committee urged the Commission to cumulate subject imports from Japan, Mexico, and Korea.<sup>43</sup> Both Kumho and Camesa argued that Korean and Mexican imports should not be cumulated with each other or with other subject imports because the subject imports from these countries are likely to have no discernible adverse impact on the domestic industry if the applicable order is revoked.<sup>44</sup> Given the increasing volume of imports from Japan, Korea, and Mexico over the period of investigation, the likely volume of such imports in the reasonably foreseeable future (as discussed below), and the price sensitive nature of the product, we do not find that subject imports from Japan, Korea, and Mexico are likely to have no discernible adverse impact on the domestic industry if the order is revoked.<sup>45</sup> However, for the reasons set forth below, we have not exercised our discretion to cumulate the subject imports from any of the subject countries.<sup>46</sup>

In determining whether to exercise our discretion to cumulate subject imports from Japan, Mexico and Korea, we examined whether, upon revocation of the antidumping duty orders, subject imports from these countries would likely compete with each other in the U.S. market under similar conditions of competition and with the domestic like product. As an initial matter, we considered the likelihood of a reasonable overlap of competition among the products from Japan, Mexico, Korea and the United States. In the original determination on steel wire rope from Mexico and Korea, the Commission found that the subject imports and the domestic product were fungible and that there was reasonable overlap of competition between them.<sup>47</sup>

In these reviews, Camesa argued that subject imports from Mexico and Korea mainly compete with each other and with nonsubject imports but not with the domestic like product, and that any increase in imports from subject producers would have to come at the expense of the nonsubject imports, and not the

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<sup>42</sup> Commissioner Askey does not join in section III.B of this opinion. She finds that revocation of the order with respect to certain steel wire rope from Korea would have no discernible adverse impact on the U.S. industry and, therefore, does not cumulate subject imports from Korea with the subject imports of Japan and Mexico. In addition, Commissioner Askey has exercised her discretion under the statute and cumulates subject imports from Japan with those from Mexico. For a full discussion of her analysis on these issues, see her additional views.

<sup>43</sup> Committee Prehearing Brief at 4.

<sup>44</sup> Kumho Prehearing Brief at 2; Camesa Posthearing Brief, Attachment 1 at 5.

<sup>45</sup> As noted, *infra*, Commissioner Crawford finds that the subject imports from Korea are likely to have no discernible adverse impact on the domestic industry, primarily because the *increase* in the volume of subject imports from Korea would be minuscule if the order is revoked.

<sup>46</sup> Commissioner Crawford concurs in the decision not to cumulate any of the subject imports with each other. However, her decision is based on the sequential, four-step analysis discussed *supra*, and thus she does not join in the remainder of this discussion. Based on this analysis, the definition of the subject merchandise from Japan differs from the definitions of the subject merchandise from Korea and Mexico, and thus Commissioner Crawford finds that the subject imports from Japan are not eligible for cumulation with the subject imports from Korea or Mexico. The definitions of the subject merchandise from Korea and Mexico are the same, and thus the subject imports from these two countries are eligible for cumulation with each other. However, as noted, *infra*, Commissioner Crawford finds that the subject imports from Korea are likely to have no discernible adverse impact on the domestic industry, and thus cumulation of the subject imports from Korea and Mexico is precluded by the statute. Consequently, Commissioner Crawford does not cumulate any of the subject imports with each other. She does not reach the questions of whether to exercise her discretion to cumulate or whether the subject imports compete with each other and with the domestic like product.

<sup>47</sup> This finding was upheld on appeal. See Grupo Industrial Camesa, et al. v. United States, 853 F.Supp. 440, 444 (CIT 1994), *aff'd*, 85 F.3d 1577 (Fed. Cir. 1996).

domestic industry.<sup>48</sup> The Committee claimed that subject and nonsubject imports compete directly with each other and with the domestic product, evidenced by the domestic industry's loss of market share to imports as well as by the interchangeability of the domestic and imported products.

The record indicates that the subject imports and the domestic product are generally interchangeable and that the products are sold through similar channels of distribution.<sup>49</sup> Further, there is evidence that Camesa intends to seek MIL<sup>50</sup> certification in order to compete with domestic producers for certain government contracts.<sup>51</sup> Accordingly, we find that subject imports are likely to compete with each other and with the domestic like product. However, our cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition of the products in the U.S. market. To aid us in our decision whether to exercise our discretion to cumulate, we have also examined the overall similarities in the conditions of competition that would prevail if the finding and orders are revoked. We find that the conditions of competition would be significantly different for subject imports from Japan, Korea, and Mexico, under order revocation.

One factor that we have examined is differences in the import volumes from each of the subject countries. In 1998, subject imports from Japan totaled \*\*\* tons, while subject imports from Korea were \*\*\* tons and those from Mexico were \*\*\* tons. The composition of subject imports differs as well. Subject imports from Mexico include wire strand exported by Camesa, whereas subject imports from Korea and Japan do not include such strand.<sup>52</sup> These differences in import volumes and product composition among subject countries are likely to exist if the order is revoked.

Another factor that we considered in our analysis is the production capacity of the foreign producers. Japanese production data were unavailable for the time period covered in these reviews. However, the record suggests that some portion of the Japanese producers shifted their wire rope manufacturing operations to Korea shortly after the original Japanese finding went into effect.<sup>53</sup> This is supported by the relatively low level of Japanese exports to the U.S. market since the finding went into effect even though the Department of Commerce has since found *de minimis* antidumping margins for many Japanese exporters.<sup>54</sup>

Mexican production capacity was \*\*\* short tons in 1998. In interim 1999 (January-June) it was \*\*\* short tons, up from \*\*\* short tons in the same period in 1998.<sup>55</sup> Mexican capacity utilization was \*\*\* percent in 1998. In interim 1998 it was \*\*\* percent, compared to \*\*\* percent in interim 1999.<sup>56</sup> Korea's production capacity (for subject merchandise) in 1998 was \*\*\* short tons. In interim 1999 it was \*\*\* short tons, up from \*\*\* short tons in the same period in 1998.<sup>57</sup> Korea's capacity utilization in 1998 was \*\*\*

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<sup>48</sup> Camesa's Final Comments at 11.

<sup>49</sup> CR at I-22 and 23; PR at I-18 and 19.

<sup>50</sup> Certification for Military procurement contracts.

<sup>51</sup> Transcript of Commission Hearing of October 14, 1999 at 23, 24 (testimony of Charles W. Salanski, Committee Chairman and President and Chief Operating Officer of Wire Rope Corporation of America).

<sup>52</sup> CR at I-15 and I-16; PR at I-13-14.

<sup>53</sup> Transcript of Commission Hearing of October 14, 1999, at 89 (Testimony of Charles W. Salanski, Committee Chairman and President and Chief Operating Officer of Wire Rope Corporation of America), and 97 (testimony of Jeffrey M. Winton, counsel for Camesa).

<sup>54</sup> Camesa Prehearing Brief at 23; CR and PR Table I-1.

<sup>55</sup> CR and PR Table IV-4 (reporting producers' data).

<sup>56</sup> CR and PR Table IV-4

<sup>57</sup> CR and PR Table IV-3 (reporting producers' data).

percent. In contrast to Mexico, Korea's capacity utilization increased from \*\*\* percent in interim 1998 to \*\*\* percent in interim 1999.<sup>58</sup>

In addition, in February 1999 the European Union imposed a provisional antidumping duty of 56.4 percent on wire rope imports from Mexico. The provisional duties on Mexico have since been replaced by a price undertaking which commits Mexican producers to sell in the European Union at prices above a specified minimum.<sup>59</sup> These restraints on Mexican producers' ability to export and sell their wire rope to this major market, provides greater incentives for Mexican producers to export to the U.S. market. There are no known orders on subject product from Korea in any third markets.<sup>60</sup>

Thus, the conditions of competition would be significantly different for subject imports from Japan, Korea, and Mexico if the respective antidumping duty finding and orders were revoked. We consequently find that it is not appropriate to assess cumulatively the likely volume and effects of subject imports from any of these countries. Accordingly, we have not exercised our discretion to cumulate subject imports for purposes of determining whether revocation of the respective antidumping duty orders is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

#### **IV. LEGAL STANDARD AND CONDITIONS OF COMPETITION**

##### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."<sup>61</sup> The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding] . . . and the elimination of its restraining effects on volumes and prices of imports."<sup>62</sup> Thus, the likelihood standard is prospective in nature.<sup>63</sup> The statute states that "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."<sup>64</sup> According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will

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<sup>58</sup> CR and PR Table IV-3.

<sup>59</sup> CR at IV-9; PR at I-5.

<sup>60</sup> CR at IV-9; PR at I-5.

<sup>61</sup> 19 U.S.C. § 1675a(a).

<sup>62</sup> SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

<sup>63</sup> While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

<sup>64</sup> 19 U.S.C. § 1675a(a)(5).

exceed the ‘imminent’ time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations.”<sup>65 66</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>67</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>68 69</sup>

#### B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>70</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for steel wire rope.

The domestic steel wire rope market is mature and stable, showing slow, incremental changes in sales volumes, product markets and market shares. Demand for steel wire rope has increased by about 3 to 5 percent per year since 1996.<sup>71</sup> Demand for general purpose ropes is expected to decline as demand for higher-strength specialty ropes, which are produced predominantly abroad, increases.<sup>72</sup> Demand for domestic steel wire rope is expected to increase by about one percent per year in the foreseeable future with

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<sup>65</sup> Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” SAA at 887.

<sup>66</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>67</sup> 19 U.S.C. § 1675a(a)(1).

<sup>68</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>69</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in either the Japan, Korea or Mexico reviews.

<sup>70</sup> 19 U.S.C. § 1675a(a)(4).

<sup>71</sup> CR at II-5; PR at II-3.

<sup>72</sup> CR at II-5; PR at II-3.

most of the growth credited to specialty and higher-end steel wire rope constructed for longer life cycles and higher strength.<sup>73</sup>

Although information on the Japanese subject merchandise is not available, the record indicates that a moderate degree of substitutability exists between domestic and subject imported steel wire rope. Producers and importers reported that the U.S. merchandise and imported product are used interchangeably, except in certain high-risk uses.<sup>74</sup> Factors that tend to enhance the degree of substitution include the fact that steel wire rope from various countries is viewed as interchangeable in its uses and most purchasers found the subject imports to be similar with regard to their specific requirements.<sup>75</sup> Some U.S. producers and purchasers reported that steel wire rope from Korea is superior to the domestic product in some attributes, and comparable in others.<sup>76</sup> Some U.S. producers and purchasers reported that subject imports from Mexico are comparable to the domestic product in most attributes.<sup>77</sup> Finally, in most cases, purchasers considered steel wire rope from nonsubject sources such as Canada and Germany to be comparable, if not superior, to the U.S. product.<sup>78</sup>

Another factor affecting conditions of competition since the finding and orders went into effect is the dramatic increase in import volumes of nonsubject steel wire rope. Nonsubject imports held \*\*\* percent of the U.S. market in 1997, and rose to \*\*\* percent in 1998. Korean exporters of nonsubject product hold a large portion of the U.S. market, \*\*\* percent in 1997, and \*\*\* percent in 1998.<sup>79</sup> Of the small number of Korean exporters still subject to the order, Kumho makes up approximately \*\*\* percent of the volume of subject product.<sup>80</sup> Therefore, the levels of subject imports from Japan, Mexico, and Korea continue to be very low compared to the dominant share held by nonsubject imports.<sup>81</sup>

Based on the record evidence, we find that these conditions of competition in the U.S. steel wire rope market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. steel wire rope market provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping finding and orders within the reasonably foreseeable future.<sup>82</sup>

## **V. REVOCATION OF THE ANTIDUMPING DUTY FINDING ON STEEL WIRE ROPE FROM JAPAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>83</sup>**

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<sup>73</sup> CR at II-5; PR at II-3.

<sup>74</sup> CR at II-6 and 7; PR at II-4.

<sup>75</sup> CR at II-8; PR at II-6.

<sup>76</sup> CR at II-8; PR at II-6.

<sup>77</sup> CR at II-8 and 9; PR at II-6.

<sup>78</sup> CR at II-9; PR at II-6.

<sup>79</sup> CR and PR Table C-4.

<sup>80</sup> 1998 data. CR and PR Table C-4 and questionnaire responses.

<sup>81</sup> CR and PR Tables I-1, I-2, and IV-1.

<sup>82</sup> Commissioner Askey concurs in the overall conclusion that revocation of the antidumping finding and orders covering imports of certain steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, she provides her detailed analysis separately. See her additional views.

<sup>83</sup> Chairman Bragg and Commissioner Koplán do not join this section. Their analyses regarding Japan are set (continued...)

A. Likely Volume of Subject Imports from Japan

In evaluating the likely volume of imports of subject merchandise if the finding under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>84</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the 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 produce other products.<sup>85</sup>

In the original determination concerning Japan, the Commission found that subject imports from Japan had doubled over a five-year period, from \*\*\* net tons in 1968 to \*\*\* net tons in 1972.<sup>86</sup> It further found that the ratio of imports from Japan to domestic shipments rose from \*\*\* percent in 1970 to \*\*\* percent in 1972.<sup>87</sup> Even though the statute requires us to consider data from the original investigation in our analysis, we note that the condition and competition in the steel wire rope market today is substantially different than it was almost 30 years ago. While the overall size of the industry is similar to what it was during the original investigation, subject and nonsubject imports played a much smaller role in the original investigation than in our current analysis. U.S. producers accounted for a majority of domestic apparent consumption at that time; now nonsubject imports hold the largest share.

Imports from Japan decreased steeply after the finding went into effect because many Japanese producers are believed to have shifted their manufacturing operations to Korea.<sup>88</sup> This represents a fundamental change in the available capacity in the Japanese industry, and one that is unlikely to revert to prefinding status if the finding is revoked. In 1998, subject imports from Japan were 1,899 tons, representing \*\*\* percent of apparent consumption.<sup>89</sup> Moreover, many Japanese exporters have received zero or *de minimis* margins since it went into effect in 1973,<sup>90</sup> yet the volume of imports from Japan has remained small and constant.<sup>91</sup>

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<sup>83</sup> (...continued)

forth separately in their dissenting views.

<sup>84</sup> 19 U.S.C. § 1675a(a)(2).

<sup>85</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>86</sup> Original Japan Determination at 4.

<sup>87</sup> *Id.* at 5.

<sup>88</sup> Transcript of Commission Hearing of October 14, 1999, at 89 (Testimony of Charles W. Salanski, Committee Chairman and President and Chief Operating Officer of Wire Rope Corporation of America), and 97 (testimony of Jeffrey M. Winton, counsel for Camesa).

<sup>89</sup> CR and PR Tables I-1 and C-4.

<sup>90</sup> 47 Fed. Reg. 3395 (January 25, 1982); 48 Fed. Reg. 8524 (March 1, 1983); 49 Fed. Reg. 12294 (March 29, 1984); 52 Fed. Reg. 28585 (July 31, 1987); 54 Fed. Reg. 6737 (February 14, 1989); 54 Fed. Reg. 38541 (September 19, 1989).

<sup>91</sup> In 1997, Japanese subject imports were 1,565 tons, in 1998 they were 1,899 tons, and in interim 1999 they were 407 tons, down from 540 tons in interim 1998.

Further, many of those companies remaining under the finding have relatively low antidumping margins.<sup>92</sup> Accordingly, based on the facts in the record of this review, we conclude that the restraining effects of the finding are minimal and that the volume of subject imports from Japan is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty finding is revoked.

B. Likely Price Effects of Subject Imports from Japan

In evaluating the likely price effects of subject imports if the antidumping duty finding is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>93</sup>

In the original Japan determination, the Commission found significant underselling and price suppression caused by dumped imports from Japan.<sup>94</sup> Between the first quarter of 1970 and the second quarter of 1973, the Commission found that prices of five particular types of Japanese steel wire rope averaged \*\*\* to \*\*\* percent below the prices of the same types of domestically produced steel wire rope.<sup>95</sup> The Commission also found that, as a result of underselling, the U.S. producers of steel wire rope were prevented from increasing their prices in order to remain competitive.<sup>96</sup>

Even though we were unable to obtain current pricing data for imports from Japan, we find that the insignificant import levels of the Japanese subject product are likely to be too small to have significant effects on the domestic price of steel wire rope. Accordingly, we conclude that the Japanese product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

C. Likely Impact of Subject Imports from Japan

In evaluating the likely impact of imports of subject merchandise if the antidumping duty finding is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>97</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>98</sup> As instructed by the statute, we have

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<sup>92</sup> 54 Fed. Reg. 38541, (September 19, 1989).

<sup>93</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>94</sup> Original Japan Determination at 4-5.

<sup>95</sup> Id.

<sup>96</sup> Id.

<sup>97</sup> 19 U.S.C. § 1675a(a)(4).

<sup>98</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6).  
(continued...)

considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.<sup>99</sup>

The first step in our analysis of the likely impact of subject imports if the antidumping finding is revoked, is to determine whether the domestic industry is in a vulnerable state. Some primary indicia of the general condition of the domestic steel wire rope industry, namely market share, net sales and operating income, suggest that the industry has recently faced difficulties, especially in 1998.<sup>100</sup> Financial difficulties in recent years, including plant closings, are mainly attributable to factors such as protracted labor disputes and a “multitude of operational difficulties,” experienced in large part by two firms that are no longer in operation.<sup>101</sup> Certain equipment and facilities of these two failing companies were purchased by one of the \*\*\* and growing domestic firms, WRCA.<sup>102</sup> Market consolidation has made it unlikely that the adverse market conditions that certain members of the domestic industry experienced in recent years are likely to recur in the foreseeable future.

Despite these financial conditions and even though low-priced imports from nonsubject countries have increased significantly over the last eight years, the U.S. industry’s health appears to be significantly better than it was in 1973, or during the original investigations on Korea and Mexico. In 1991, the U.S. producers reported an average operating income of 3.0 percent of sales.<sup>103</sup> By contrast, they reported an average operating income of \*\*\* percent of sales in 1997, \*\*\* percent of sales in 1998, and \*\*\* percent of sales in interim 1999. Put in terms of dollars per ton, in 1991 average operating income was \$\*\*\* per ton, whereas in 1997 it was \$\*\*\* per ton and in interim 1999 \$\*\*\* per ton.<sup>104</sup> Moreover, this increase in operating income per ton sold is also reflected in the steady appreciation in the prices that the domestic industry was able to charge per ton of steel wire rope.<sup>105</sup> An additional factor that tends to indicate the relative health of the domestic industry is the level of capital expenditures. Domestic capital expenditures in 1998 were almost \*\*\* their 1997 levels, and the interim 1999 capital expenditures were almost equal to

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<sup>98</sup> (...continued)

The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Japan, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty finding on Japan were revoked ranges from 0.0 percent to 11.88 percent. 64 Fed. Reg. 35626 (July 1, 1999).

<sup>99</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>100</sup> CR Tables III-B-1, B-2, and B-3, PR Tables III-5-7.

<sup>101</sup> \*\*\* CR at III-B-2 FN 5; PR at III-3.

<sup>102</sup> CR at III-B-2; PR at III-3.

<sup>103</sup> Original Korea and Mexico Determination at I-37.

<sup>104</sup> CR Tables III-B-1, 2, and 3, PR Tables III-5-7. (Without \*\*\*). We looked at data excluding the two failing firms in order to assess the domestic industry’s health once the order is revoked. However, the inclusion of the \*\*\* data would not have affected the outcome of our analysis.

<sup>105</sup> In 1997 net sales per short ton were \*\*\* and in interim 1999 they were \*\*\*.

\*\*\*.<sup>106</sup> Accordingly, we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion outlined in the SAA.<sup>107</sup>

We found, above, that revocation of the antidumping duty finding is not likely to lead either to significant volumes of subject imports from Japan or to significant price effects. These findings in turn indicate that the volume and price of the subject imports from Japan are likely to be too small to have a significant impact on the domestic industry within the reasonably foreseeable future if the finding is revoked. Accordingly, we conclude that revocation of the antidumping duty finding on imports from Japan would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. We therefore find that revocation of the antidumping duty finding on Japan is not likely to lead to continuation or recurrence of material injury to the U.S. steel wire rope industry in the reasonably foreseeable future.

#### D. Conclusion

For the reasons stated above, we determine that revocation of the antidumping duty finding on steel wire rope from Japan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

### **VI. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON STEEL WIRE ROPE FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

#### A. Likely Volume of Subject Imports from Korea

In the original determination concerning Korea, the Commission found that subject imports from Korea increased from approximately \*\*\* tons in 1989 to a peak of \*\*\* tons in 1991, and that the ratio of subject imports from Korea to apparent domestic consumption rose moderately from \*\*\* percent in 1989 to \*\*\* percent in 1991.<sup>108</sup>

Since the original order went into effect the vast majority of Korean steel wire rope manufacturers that export to the U.S. market have been excluded from the order or have exited the market causing a rapid decline in Korean subject imports.<sup>109</sup> Kumho is the only Korean producer that was a party to these five-year review proceedings. It is the largest Korean exporter of subject merchandise to the U.S. market. Kumho accounts for over \*\*\* percent of subject imports from Korea. It received *de minimis* dumping margins (1.51 percent) in its last five administrative reviews at Commerce.<sup>110</sup> Korean subject imports have remained relatively steady since 1997. In 1997 they were \*\*\* tons or \*\*\* percent of apparent U.S. consumption, and in 1998 they were \*\*\* tons, but remaining at \*\*\* percent of apparent U.S.

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<sup>106</sup> In 1997 capital expenditures were \*\*\*, in 1998 \*\*\* and in interim 1999 \*\*\*. CR Table III-B-6, PR Table III-10.

<sup>107</sup> See SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . . .”).

<sup>108</sup> CR and PR Table I-2; Original Mexico and Korea Determination at I-23.

<sup>109</sup> CR at I-2, 3, and 10; PR at I-2; Camesa Prehearing Brief at 11.

<sup>110</sup> CR at I-11; PR at I-10; Kumho Prehearing Brief at 6.

consumption.<sup>111</sup> Interim 1998 (January-June) import volume was \*\*\* tons and interim 1999 volume was \*\*\* tons;<sup>112</sup> \*\*\* percent and \*\*\* percent of apparent U.S. consumption, respectively.<sup>113</sup>

In 1997, the Korean producers subject to the order were operating at a capacity utilization level of \*\*\* percent and in 1998 at \*\*\* percent. Korea's capacity utilization rate in interim 1999 was \*\*\* percent.<sup>114</sup> With such high capacity utilization, it is unlikely that subject Korean producers will be able to increase production significantly if the order is revoked.<sup>115</sup> <sup>116</sup> In addition, because the majority of Korean production is exported to the United States, and because Korea has no other significant export market for steel wire rope, we find that the potential volume of steel wire rope that may be shifted away from other export markets to the United States if the order is revoked is insignificant.

We therefore conclude that the volume of subject imports from Korea is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

#### B. Likely Price Effects of Subject Imports from Korea

In the original investigation, the Commission found significant underselling and price suppression by the subject Korean imports.<sup>117</sup> Imports of steel wire rope from Korea undersold the domestic product by margins ranging from \*\*\* to \*\*\* percent.<sup>118</sup>

Data for 1997 and 1998 indicate that prices for three of six types<sup>119</sup> of domestically produced product remained the same, whereas prices for the three remaining products fluctuated substantially.<sup>120</sup> Price comparisons between the domestic product and the Korean product were only possible for products 1,

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<sup>111</sup> CR and PR Table I-2.

<sup>112</sup> The interim 1999 imports accounted for \*\*\* percent of total imports. CR and PR Table I-2.

<sup>113</sup> CR and PR Table I-2.

<sup>114</sup> CR and PR Table I-2.

<sup>115</sup> Also, unlike Mexican steel wire rope, Korean firms are not restricted from other major markets like the European Union. On February 19, 1999, the European Commission terminated its investigation of steel wire rope from Korea, finding that the dumping margins on such imports were *de minimis*. Official Journal of the European Communities, Feb. 19, 1999, p.p. L217/1, L217/8.

<sup>116</sup> Commissioner Crawford concurs that subject Korean producers will not be able to direct significant volumes of steel wire rope to the U.S. market if the order is revoked. Indeed, given the \*\*\* high level of capacity utilization, available capacity is minuscule, accounting for considerably less than \*\*\* percent of U.S. consumption. Therefore, even if all the available capacity were directed to the U.S. market, the increase in the volume of the subject imports from Korea would be too small to have any effect on the domestic industry. Consequently, Commissioner Crawford finds that the subject imports from Korea are likely to have no discernible adverse impact on the domestic industry.

<sup>117</sup> Original Mexico and Korea Determination at 28.

<sup>118</sup> Id.

<sup>119</sup> Product 1 -- Galvanized wire rope, 1/8-inch 7x7 wire strand core;  
Product 2 -- Galvanized wire rope, 1/4-inch 7x19 wire strand core;  
Product 3 -- Bright wire rope, 9/16-inch 6x7 fiber core;  
Product 4 -- Bright wire rope, 5/8-inch 6x25 independent wire rope core;  
Product 5 -- Bright wire rope, 1-1/4-inch 6x37 independent wire rope core;  
Product 6 -- Stainless steel wire rope 1/8-inch 7x19.

<sup>120</sup> Prices of products 1, 2, and 6 remained constant but prices for product 3, 4, and 5 fluctuated. CR at V-7 through 12; PR at V-5 through 7. Thus, the price comparisons involving Korean imports were based upon the three products for which prices did not fluctuate substantially.

2, and 6.<sup>121</sup> Pricing data were mixed, with product 1 showing predominant \*\*\*, while products 2 and 6 showed mostly \*\*\*.

This mixed pricing data, coupled with the insignificant likelihood for increased import levels from Korea discussed above, indicates that if the order were revoked their subject imports will not likely have a significant effect on domestic pricing of steel wire rope. Accordingly, we conclude that the Korean product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

### C. Likely Impact of Subject Imports from Korea

The first step in our analysis of the likely impact of subject imports if the antidumping order is revoked, is to determine whether the domestic industry is in a vulnerable state.<sup>122</sup> Based on the record in these proceedings as discussed in the previous section on Japan,<sup>123</sup> we do not find that the domestic industry is in a weakened state,<sup>124</sup> as contemplated by the vulnerability criterion of the statute.<sup>125 126</sup>

We also found, above, that revocation of the antidumping duty order is not likely to lead either to significant volumes of subject imports from Korea or to significant price effects. We further find that the substantial increase in nonsubject imports since the original Korea determination, their greater presence in the U.S. market, and the high substitutability of steel wire rope in general, would dilute any effect of the

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<sup>121</sup> Prices for steel wire rope product 1 from Korea were higher than prices for the domestic product except during the second quarter of 1999, when Korean prices were below domestic prices. Margins of overselling for product 1 ranged from \*\*\* percent to \*\*\* percent; margins of underselling were \*\*\* percent during the second quarter of 1999.

Prices for steel wire rope product 2 from Korea were generally lower than prices for the domestic product except during the second quarters of 1997 and 1998, when Korean prices were above domestic prices. Margins of overselling for product 2 ranged from \*\*\* percent to \*\*\* percent; margins of underselling ranged from \*\*\* percent to \*\*\* percent. Prices for product 6 from Korea were lower than prices for the domestic product. Margins of underselling ranged from \*\*\* to \*\*\* percent. CR at V-7 through 12; PR at V-5 through 7.

<sup>122</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Korea, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Korea were revoked is 0.0 percent for Kumho and 1.51 percent for all others. 64 Fed. Reg. 43166 (August 9, 1999).

<sup>123</sup> Chairman Bragg does not join the section on Japan. She concurs that the domestic industry is not vulnerable. *See* Separate and Dissenting Views of Chairman Lynn M. Bragg.

<sup>124</sup> *See* Section V above.

<sup>125</sup> *See* SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . . .”)

<sup>126</sup> Commissioner Koplan finds the domestic industry is in a weakened state as contemplated by the vulnerability criterion of the statute. *See* Commissioner Koplan’s Dissenting Views. However, since he found, above, that revocation of the antidumping duty order is not likely to lead to either significant volumes of subject imports from Korea or to significant price effects, he finds that the revocation of the antidumping duty order is not likely to lead to significant adverse impacts on the domestic industry.

small potential increase in Korean exports, as the Korean product would compete with the much larger quantities of nonsubject steel wire rope as well as with the domestic product. These findings in turn indicate that the subject imports from Korea are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked, particularly in light of the expected growth in the U.S. market.<sup>127</sup> Accordingly, we conclude that revocation of the antidumping duty order on subject imports from Korea would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. We therefore find that revocation of the antidumping duty order on Korea is not likely to lead to continuation or recurrence of material injury to the U.S. steel wire rope industry.

#### D. Conclusion

For the reasons stated above, we determine that revocation of the antidumping duty order on steel wire rope from Korea is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>128</sup>

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<sup>127</sup> Vice Chairman Miller and Commissioners Hillman and Koplan note that while they found above that the subject imports from Korea are not likely to have no discernible adverse impact within the reasonably foreseeable future if the order is revoked, they find the subject imports from Korea are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked, for the reasons discussed above.

<sup>128</sup> As noted *supra*, Commissioner Crawford finds that the subject imports from Korea are likely to have no discernible adverse impact on the domestic industry. It therefore follows that revocation of the order will not have a material effect on the domestic industry either. Consequently, Commissioner Crawford concurs that revocation of the antidumping duty order on steel wire rope from Korea is not likely to lead to continuation or recurrence of material injury within a reasonable foreseeable time.

**VII. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON STEEL WIRE ROPE FROM MEXICO IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>129</sup>**

**A. Likely Volume of Subject Imports from Mexico**

In the original determination concerning Mexico, the Commission found that subject imports from Mexico increased from 2,417 tons in 1989 to 3,113 tons in 1991 and that the ratio of subject imports from Mexico to apparent domestic consumption remained less than \*\*\* percent and rose little from 1989 to 1991.<sup>130</sup>

Subject imports from Mexico to the United States peaked at \*\*\* tons in 1990.<sup>131</sup> Subsequently, they declined while imports from other countries increased.<sup>132</sup> In 1997, U.S. imports from Mexico were 39 tons and rose to 403 tons in 1998.<sup>133 134</sup> However, imports from Mexico have never been substantially more than \*\*\* percent of apparent domestic consumption, even prior to the order. A return to pre-order import levels, therefore, would likely be insignificant, especially when compared to the current volume of nonsubject imports.

Another factor we considered in our analysis of potential import volumes is excess capacity. Although Mexican producers had substantial excess capacity throughout the period of this review, the evidence indicates that Mexican producers are not likely to direct significant volumes of steel wire rope to the U.S. market, even if the order were revoked. The Mexican industry's excess capacity did not substantially result in increased exports to the U.S. even though it received zero percent dumping margins in its two most recent administrative reviews by Commerce.<sup>135 136</sup> Thus, we do not find the existence of excess capacity in Mexico alone dispositive of future increases of export levels to the U.S. market.

We therefore conclude from the facts in the record that the volume of subject imports from Mexico is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

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<sup>129</sup> Commissioner Koplan does not join this Section. His analysis is set forth separately in his dissenting views.

<sup>130</sup> CR and PR Table I-2; Original Mexico and Korea Determination at I-23.

<sup>131</sup> CR and PR Table I-2.

<sup>132</sup> CR and PR Table I-2.

<sup>133</sup> CR and PR Table I-2. U.S. shipments of imports from Mexico were \*\*\* tons in interim 1999 compared to 58 tons in interim period 1998.

<sup>134</sup> A \*\*\* portion of Camesa's recent exports to the U.S. were of subject wire strand to \*\*\*. \*\*\*. Nothing in the record suggests that Camesa is likely to ship exports to the U.S. market to the detriment of its U.S. subsidiary.

<sup>135</sup> 63 Fed. Reg. 46735 (September 2, 1998); 64 Fed. Reg. 40549 (July 27, 1999).

<sup>136</sup> According to Camesa, Mexican producers entered into a price undertaking with the European Union in February of 1999. Mexico had stopped exporting steel wire rope to the European market after the issuance of preliminary dumping margins by the European Commission, but the price undertaking has made it possible for Mexican producers to resume selling their product on the European market, even though such exports would be somewhat more difficult than if there were no undertaking at all. Transcript of Commission Hearing of October 14, 1999 at 107; Camesa Posthearing Brief, Attachment 1 at 8.

## B. Likely Price Effects of Subject Imports from Mexico

In the original Mexico investigation, the Commission found significant underselling and that dumped imports from Mexico caused price suppression.<sup>137</sup> Imports of steel wire rope from Mexico undersold the domestic product by margins ranging from \*\*\* percent to \*\*\* percent.<sup>138</sup> The Commission also found that the domestic producers had lost sales and revenues due to low-priced imports from Mexico.<sup>139</sup>

However, in these reviews only two price comparisons were possible from purchaser questionnaire data, and none from importer questionnaire data.<sup>140</sup> The limited pricing data was due mostly to the low import volumes from 1997 to the present and differences in product mix between domestic and subject merchandise from Mexico. Because of this limited and inconsistent price data, we are unable to make a conclusive determination on the price effects of the Mexican subject imports should the order be revoked.

Nevertheless, we find the likely insignificant volume of Mexican imports, discussed above, dispositive of the issue of potential price effects on the domestic market. Absent additional comparable sales evidencing significant price effects, likely insignificant import volumes suggest that subject imports from Mexico are not likely to have a negative effect on domestic prices for steel wire rope if the order were revoked. Accordingly, we conclude that the Mexican product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

## C. Likely Impact of Subject Imports

The first step in our analysis of the likely impact of subject imports if the antidumping order is revoked, is to determine whether the domestic industry is in a vulnerable state.<sup>141</sup> Based on the record in these proceedings, and as discussed in the section on Japan,<sup>142</sup> we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute.<sup>143</sup>

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<sup>137</sup> Original Mexico and Korea Determination at 28.

<sup>138</sup> Original Mexico and Korea Investigation Staff Report at I-100.

<sup>139</sup> Id.

<sup>140</sup> Purchaser prices for products 4 and 5 from Mexico were lower than for domestic products 4 and 5 for the two quarters for which data were reported. The margin of underselling for product 4 during the second quarter of 1999 was \*\*\* percent and that for product 5 during the first quarter of 1997 was \*\*\* percent. CR at V-7; PR at V-7. Prices of products 1, 2, and 6 remained constant but prices for products 3, 4, and 5 fluctuated. Thus, the price comparisons involving subject imports from Mexico were based on products for which prices fluctuated substantially.

<sup>141</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Mexico, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Mexico were revoked is 111.68 percent (the margin is from the Original Investigation). 64 Fed. Reg. 42905 (August 8, 1999).

<sup>142</sup> Chairman Bragg does not join the section on Japan. She concurs that the domestic industry is not vulnerable. *See Separate and Dissenting Views of Chairman Lynn M. Bragg.*

<sup>143</sup> *See* SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or

(continued...)

We found above that revocation of the antidumping duty order is not likely to lead either to significant volumes of subject imports from Mexico or to significant price effects. We further find that the substantial increase in nonsubject imports, their greater presence in the U.S. market since the original Mexico determination, and the general substitutability among sources of imported steel wire rope would dilute any effect on the domestic industry of the small potential increase in Mexican exports, as the Mexican product would compete with other imported products as well as with domestic steel wire rope. These findings in turn indicate that the subject imports from Mexico are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked, particularly in light of the expected growth in the U.S. market. Accordingly, we conclude that revocation of the antidumping duty order on imports from Mexico would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. We therefore find that revocation of the antidumping duty order on Mexico is not likely to lead to continuation or recurrence of material injury to the domestic steel wire rope industry in the reasonably foreseeable future.

D. Conclusion

For the reasons stated above, we determine that revocation of the antidumping duty order on steel wire rope from Mexico is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty finding and orders on steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury to the U.S. steel wire rope industry within a reasonably foreseeable time.<sup>144</sup>

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<sup>143</sup> (...continued)

subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . . .”)

<sup>144</sup> Chairman Bragg dissenting with respect to Japan, and Commissioner Koplán dissenting as to Japan and Mexico.

## ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

I concur in the determination of the Commission that revocation of the antidumping finding and orders covering imports of certain steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, I write separately to explain: (1) my conclusion that imports of certain steel wire rope from Korea are not likely to have a discernible adverse impact on the domestic industry if the antidumping order were revoked; (2) my decision to cumulate imports of certain steel wire rope from Japan and Mexico; and (3) my analysis with respect to the subject imports from Japan, Korea, and Mexico.

### I. Cumulation

I note that the language of section 752(a)(7) of the Tariff Act of 1930 (“the Act”), as amended, states that the Commission has the discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) also states, however, that the Commission is precluded from exercising this discretion if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order.<sup>1</sup>

Thus, under this provision, the Commission must find that subject imports from a particular country will have a “discernible adverse impact on the domestic industry” after revocation of the order before cumulating those imports with other subject imports. Accordingly, the Commission’s task under this provision is a straightforward one. To determine whether the Commission is precluded from cumulating subject imports from a particular country, the Commission must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, i.e., by assessing their negligibility after revocation of the order. If the impact of the imports from a particular country is not discernible, then the Commission is precluded from cumulating those imports with other subject imports.<sup>2</sup> Accordingly, I assess whether the volume and other effects of the subject imports from that country on the industry will be discernible if the order is revoked.

#### A. No Discernible Adverse Impact of the Subject Imports from Korea<sup>3</sup>

I find that subject imports of certain steel wire rope from Korea are likely to have no discernible adverse impact on the U.S. industry if the order is revoked, and therefore, I do not cumulate subject imports from Korea with the subject imports of Japan and Mexico. First, the record indicates that the subject Korean producers do not have the ability to direct significant volumes of steel wire rope to the U.S. market if the order is revoked. Available record data indicate that the capacity utilization of the subject Korean producers is currently \*\*\* high (\*\*\*) percent.<sup>4</sup> Even if the limited unused capacity were directed to the U.S. market, the increase in volume of subject imports from Korea would be too small to have any

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<sup>1</sup> 19 U.S.C. § 1675a(a)(7).

<sup>2</sup> See, Additional Views of Commissioner Thelma J. Askey in *Potassium Permanganate from China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

<sup>3</sup> In these investigations, I note that the requirement that the reviews of the finding and orders on certain steel wire rope be initiated on the same day is satisfied.

<sup>4</sup> CR at IV-7, PR at IV-4.

discernible volume effect on the domestic industry.<sup>5</sup> Accordingly, I find that the subject imports from Korea are unlikely to change discernibly if the order is revoked. Second, the subject imports from Korea oversold the U.S. product in many instances where comparisons were possible.<sup>6</sup> In light of this, and given the minimal levels of Korean imports that are likely to enter the market upon revocation of the order, I also find that the subject imports are unlikely to have discernible price effects on domestic prices. Finally, I find that the impact of any small additional amounts of subject imports from Korea would be further attenuated by the somewhat limited substitutability of the Korean product and the domestic like product<sup>7</sup> and the significant and growing presence of nonsubject imports from Korea.<sup>8</sup>

On the whole, given the fact that it is unlikely that the subject imports from Korea will have discernible volume and price effects on the industry within the reasonably foreseeable future, I find that revocation of the order with respect to certain steel wire rope from Korea is likely to have no discernible adverse impact on the U.S. industry within the foreseeable future.

#### B. Exercise of Discretion to Cumulate Subject Imports from Japan and Mexico

In determining whether to exercise my discretion to cumulate the subject imports from Japan and Mexico, I examine whether, upon revocation of the antidumping duty finding and order, the subject imports and the domestic like product are likely to compete in the U.S. market under similar conditions of competition in the reasonably foreseeable future.<sup>9</sup> First, I note that steel wire rope is produced to one of several standards established by a number of government and independent groups.<sup>10</sup> The standards typically specify the materials to be used and the various properties and dimensions of the products.<sup>11</sup> In addition, the basic principles of wiremaking and ropeforming have remained relatively unchanged for several decades, except for certain advances in coating techniques.<sup>12</sup> In general, little difference appears to exist between the production process in domestic facilities and those abroad.<sup>13</sup> This is reflective of a mature industry and attributable to the diffusion of process technology, techniques, and equipment on a world-wide basis; the similarity of engineering requirements for specific end uses; product liability concerns; and the commonality of design or procurement standards.<sup>14</sup>

Moreover, although information on the Japanese subject merchandise is limited, the record indicates that at least a moderate degree of substitutability exists between domestic and subject imported steel wire rope from Japan and Mexico. Producers and importers reported that the U.S. merchandise and

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<sup>5</sup> It would only represent a negligible share of interim 1999 U.S. consumption (\*\*\*) percent).

<sup>6</sup> CR and PR at Table V-2.

<sup>7</sup> CR at II-8; PR at II-5.

<sup>8</sup> Non-subject imports from Korea rose from \*\*\* percent of the U.S. market in 1997, to \*\*\* percent by the first half of 1999. Memorandum INV-W-261 at Table I-5.

<sup>9</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 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.

<sup>10</sup> CR at I-20; PR at I-16.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> CR at I-22; PR at I-17.

<sup>14</sup> *Id.*

imported products are used interchangeably, except in certain high-risk uses.<sup>15</sup> Factors that tend to enhance the degree of substitution include the fact that steel wire rope from various countries is viewed as interchangeable in its uses and most purchasers found the subject imports to be similar with regard to their specific requirements.<sup>16</sup> As a result, I find that the record suggests there would likely be a reasonable level of fungibility between U.S. production and the subject imports from Japan and Mexico if the finding and order were revoked.

Second, the record also indicates that the channels of distribution for domestic and imported wire rope generally are the same for carbon steel wire rope. About 75 to 80 percent of carbon steel wire rope is sold to distributors, whether subject merchandise or domestically produced.<sup>17</sup> As for stainless steel wire rope, domestic producers sell almost entirely to end users, whereas importers sell almost entirely to distributors.<sup>18</sup> However, the volume of stainless steel wire rope is very small compared to the carbon steel wire rope, both among the subject imports from Japan and Mexico and the domestically produced product.<sup>19</sup> Accordingly, I find that it is likely that the subject imports from Japan and Mexico will be sold in similar channels of distribution upon revocation of the finding and order.

Third, subject merchandise from Japan and Mexico were present in the market simultaneously, given that imports are reported for each country during the years examined in the original investigations and in this review.<sup>20</sup> Moreover, the record indicates that there is a nationwide market for steel wire rope.<sup>21</sup> Consequently, I find that the record indicates that subject imports and the domestic merchandise would likely be simultaneously present in the market and likely be sold in the same or similar geographic markets within the reasonably foreseeable future.

In light of these considerations, I find that there is likely to be a reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product in the reasonably foreseeable future. Accordingly, I exercise my discretion to cumulate the likely volume and effects of subject imports of steel wire rope from Japan and Mexico.

## **II. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON STEEL WIRE ROPE FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

As discussed above, I find that the subject imports from Korea are not likely to have a discernible adverse impact on the domestic industry if the antidumping order covering these imports were revoked. Consequently, in accordance with the language of section 1675a(a)(7) of the Act, I have not cumulated the subject imports from Korea for purposes of my review analysis. Moreover, for the same reasons that I discussed above, I find that subject imports from Korea are not likely to have a significant volume, price or other impact on the domestic industry after revocation of the antidumping order on Korea. Accordingly, I find that revocation of the antidumping duty order on steel wire rope from Korea is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

## **III. REVOCATION OF THE ANTIDUMPING DUTY FINDING AND ORDER ON STEEL WIRE ROPE FROM JAPAN AND MEXICO IS NOT LIKELY TO LEAD TO**

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<sup>15</sup> CR at II-6-7; PR at II-5.

<sup>16</sup> CR at II-8; PR at II-5.

<sup>17</sup> CR at I-23; PR at I-17.

<sup>18</sup> *Id.*

<sup>19</sup> *Compare* Memorandum INV-W-261 at Table C-2 *with* Table C-3.

<sup>20</sup> *Id.* at I-3 to I-5, Tables I-1 and I-2.

<sup>21</sup> There is no record information indicating that imports from any of the countries were limited to a particular geographic region of the United States.

## CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

### A. Likely Volume of Subject Imports from Japan and Mexico

In evaluating the likely volume of imports of subject merchandise if the finding or order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>22</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the 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 produce other products.<sup>23</sup>

In performing my analysis, I have taken into account the Commission’s previous volume findings with respect to the subject imports from Japan and Mexico. In the original determination concerning Japan, the Commission found that subject imports from Japan had doubled over a five-year period, from \*\*\* net tons in 1968 to \*\*\* net tons in 1972.<sup>24</sup> It further found that the ratio of imports from Japan to domestic shipments rose from \*\*\* percent in 1970 to \*\*\* percent in 1972.<sup>25</sup> In the original determination concerning Mexico, the Commission found that subject imports from Mexico increased from 2,417 tons in 1989 to 3,113 tons in 1991 and that the ratio of subject imports from Mexico to apparent domestic consumption remained \*\*\* and rose little from 1989 to 1991.<sup>26</sup> The volume of the subject imports from Mexico to the United States peaked at 4,466 tons in 1990.<sup>27</sup> With respect to Mexican imports, I note that the Commission cumulated the volume effects of the subject imports from Mexico with those from Korea in its original determination.

I note that the volume levels of the subject imports from Japan and Mexico have declined since imposition of the original finding and order. Imports of subject merchandise from Japan and Mexico were \*\*\* tons (or \*\*\* percent of U.S. apparent consumption) in 1997; \*\*\* tons (or \*\*\* percent of U.S. apparent consumption) in 1998; and \*\*\* tons (or \*\*\* percent of U.S. apparent consumption) in interim 1999.<sup>28</sup> Nonetheless, I also note that many Japanese producers have been excluded from the order since it went into effect in 1973,<sup>29</sup> and that the volume of imports from Japan appears to have remained small and constant despite these exclusions. As a result, the record indicates that the subject Japanese are not likely to increase their volume levels significantly if the finding is revoked. Similarly, the subject imports from Mexico have never had a significant share of the U.S. market, even prior to the order.<sup>30</sup> Therefore, it is unlikely that the subject Mexican producers will increase their import volumes above more than minimal

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<sup>22</sup> 19 U.S.C. § 1675a(a)(2).

<sup>23</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>24</sup> Original Japan Determination at 4.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> CR and PR at Table I-2; Original Mexico and Korea Determination at I-23.

<sup>27</sup> *Id.*

<sup>28</sup> Memorandum INV-W-261 at Tables I-1 and C-4.

<sup>29</sup> 47 Fed. Reg. 3395, (January 25, 1982); 48 Fed. Reg. 8524, (March 1, 1983); 49 Fed. Reg. 12294, (March 29, 1984); 52 Fed. Reg. 28585, (July 31, 1987); 54 Fed. Reg. 6737, (February 14, 1989); 54 Fed. Reg. 38541, (September 19, 1989).

<sup>30</sup> Subject imports from Mexico held 1.2 percent in 1989, 2.4 percent in 1990, and 1.7 percent in 1991, of the U.S. market. Memorandum INV-W-261 at Table I-2.

levels if the order were revoked. Accordingly, current and past volume trends indicate that the subject import levels from Japan and Mexico would likely be insignificant if the order were revoked, especially when compared to the current significant volume of nonsubject imports.<sup>31</sup>

In addition, the record of these reviews does not suggest that existing inventories or unused capacity in Japan and Mexico are likely to be used to increase subject import volumes to the United States significantly within the reasonably foreseeable future.<sup>32</sup> In this regard, the record indicates that most Japanese producers have shifted their manufacturing operations to Korea.<sup>33</sup> This represents a fundamental change in the available capacity in the Japanese industry and one that is unlikely to revert to preorder status if the finding is revoked. Similarly, although the subject Mexican producers have some available capacity, they operated at reasonably high capacity utilization rates in full year 1997 and 1998.<sup>34</sup> Moreover, despite the existence of some available capacity, the Mexican producers have not used that capacity to significantly increase their exports to the United States, even during a period when the major Mexican producer Camesa was subject to zero margins as a result of its two most recent administrative reviews by Commerce.<sup>35</sup>

Finally, I note that the European Union (“EU”) imposed a preliminary dumping duty of 56.4 percent on steel wire rope from Mexico in early 1999. However, Mexican producers recently entered into a price undertaking with the EU.<sup>36</sup> According to Camesa, the price undertaking has made it possible for producers to resume exporting to that market, even though such exports would be somewhat more difficult than if there were no undertaking at all.<sup>37</sup> Given this, I find that the existence of the preliminary duties in the EU will not cause the subject Mexican producers to shift significant volumes of merchandise to the United States.<sup>38</sup>

Accordingly, based on the record of these reviews, I conclude that the volume of subject imports from Japan and Mexico is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty finding and order are revoked.

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<sup>31</sup> Nonsubject imports held over \*\*\* percent of the U.S. market throughout the period of investigation with \*\*\* tons in 1997, rising to \*\*\* tons in 1998. Memorandum INV-W-261 at Table C-4.

<sup>32</sup> The Commission was unable to obtain data on inventories of subject merchandise from Japan. U.S. importers inventories of subject merchandise from Mexico are negligible as compared to U.S. consumption. Moreover, end-of-period inventories of Mexican producers, although increasing, represent less than \*\*\* percent of U.S. apparent consumption. CR and PR at Table IV-2 and Table IV-4.

<sup>33</sup> Transcript of Commission Hearing of October 14, 1999 at 89 (Testimony of Charles W. Salanski, Committee Chairman and President and Chief Operating Officer of Wire Rope Corporation of America), and 97 (Testimony of Jeffrey M. Winton, Counsel for Camesa).

<sup>34</sup> Mexican capacity utilization was \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent in interim 1999. CR and PR at Table IV-4.

<sup>35</sup> 63 Fed. Reg. 46735 (September 2, 1998); 64 Fed. Reg. 40549 (July 27, 1999).

<sup>36</sup> CR at IV-9; PR at IV-5.

<sup>37</sup> Transcript of Commission Hearing of October 14, 1999 at 107.

<sup>38</sup> There is no significant record evidence that subject producers have facilities that are currently being used to produce other products, which then could be used to produce the subject merchandise. Consequently, I find that product shifting is not likely to occur if the finding and order are revoked.

B. Likely Price Effects of Subject Imports from Japan and Mexico

In evaluating the likely price effects of subject imports if the antidumping duty finding and order are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>39</sup>

In performing my analysis, I have taken into account the Commission's previous price findings. In the original Japan determination, the Commission found significant underselling and price suppression caused by LTFV imports from Japan.<sup>40</sup> The Commission also found that, as a result of underselling, the U.S. producers of steel wire rope were prevented from increasing their prices in order to remain competitive.<sup>41</sup> Similarly, in the original Mexico investigation, the Commission found significant underselling and that LTFV imports from Mexico caused price suppression.<sup>42</sup>

Nonetheless, I find that it is unlikely that the subject imports from Japan and Mexico will have significant adverse effects on domestic prices within the reasonably foreseeable future.<sup>43</sup> As I stated earlier, it is unlikely that the subject imports from Japan and Mexico will likely increase their volume levels in a more than minimal fashion in the reasonably foreseeable future. Accordingly, I find that it is unlikely that these minimal import volumes will have a significant adverse impact on domestic prices if the finding and order are revoked.<sup>44</sup>

C. Likely Impact of Subject Imports from Japan and Mexico

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>45</sup>

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<sup>39</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[C]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>40</sup> Between the first quarter of 1970 and the second quarter of 1973, the Commission found that prices of five particular types of Japanese steel wire rope averaged \*\*\* to \*\*\* percent below the prices of the same types of domestically produced steel wire rope. Original Japan Determination at 4-5.

<sup>41</sup> *Id.*

<sup>42</sup> Original Mexico and Korea Determination at 28. Imports of steel wire rope from Mexico undersold the domestic product by margins ranging from \*\*\* percent to \*\*\* percent. Original Mexico and Korea Investigation Staff Report at I-100.

<sup>43</sup> The Commission was unable to obtain current pricing data for subject imports from Japan and only sporadic price comparisons for subject imports from Mexico. The limited pricing data for subject imports from Mexico was due mostly to the low import volumes over the period of investigation. CR at V-6-12; PR at V-5-7.

<sup>44</sup> In this regard, I note that recent import statistics show that the average unit value of the Japanese product is substantially higher than the average unit values of all other subject and nonsubject imports. CR and PR at Table I-1.

<sup>45</sup> 19 U.S.C. § 1675a(a)(4).

All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>46</sup>

As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty finding or order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>47</sup> Although recent indicia of the general condition of the domestic steel wire rope industry, namely market share, net sales and operating income, suggest an industry experiencing financial difficulties in recent years.<sup>48</sup> These difficulties include plant closings, are mainly attributable to factors such as \*\*\* These difficulties were, moreover, experienced in large part by two firms that are no longer in operation.<sup>49</sup> Certain equipment and facilities of these two failing companies were purchased by one of the \*\*\* and growing domestic firms, WRCA.<sup>50</sup> I believe that the purchase of these assets by one of the more successful domestic firms indicates that the industry is unlikely to continue experiencing similar difficulties in the reasonably foreseeable future. Moreover, consolidation of the industry makes it even more unlikely that the adverse market conditions that plagued certain members of the domestic industry in recent years will affect other producers significantly in the foreseeable future.

In this regard, when one excludes these two firms from the industry's financial results, the U.S. industry's performance appears to be significantly better than it was during the original investigations on Japan or Mexico. In 1991, the U.S. producers reported an average operating income of 3.0 percent of sales.<sup>51</sup> By contrast, when one examines the domestic industry (excluding the two companies that were purchased by another domestic producer) the remaining firms reported a significantly improved average operating income of \*\*\* percent of sales in 1997, \*\*\* percent of sales in 1998, and \*\*\* percent of sales in interim 1999.<sup>52</sup> Moreover, this increase in operating income is also reflected in the steady appreciation in the prices that the domestic industry was able to charge per ton of steel wire rope.<sup>53</sup> Finally, domestic

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<sup>46</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Japan, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty finding on Japan were revoked ranges from 0.0 percent to 11.88 percent. 64 Fed. Reg. 35626, 35628-29 (July 1, 1999). In its final five-year review determination regarding steel wire rope from Mexico, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Mexico were revoked is 111.68 percent (the margin is from the Original Investigation). 64 Fed. Reg. 42905 (August 8, 1999).

<sup>47</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>48</sup> CR at Tables III-B-1, B-2, and B-3, PR at Tables III-5-7.

<sup>49</sup> \*\*\* CR at III-B-2 FN 5; PR at III-3 FN 7.

<sup>50</sup> CR at III-B-2; PR at III-3.

<sup>51</sup> Original Korea and Mexico Determination at I-37.

<sup>52</sup> CR at Table III-B-3, PR at Table III-7. I used data excluding the two failing firms in order to get a more realistic picture of the domestic industry's performance once the order is revoked. However, the inclusion of the \*\*\* data would not have affected the outcome of my analysis. I acknowledge that these data are for all steel wire rope, and not for steel wire rope, excluding fitted with fittings.

<sup>53</sup> Net sales per ton were \*\*\* in 1997, and they were \*\*\* in interim 1999. CR at Table III-B-3, PR at Table III-

capital expenditures rose considerably in 1998, as compared to their 1997 levels (almost \*\*\*), and in interim 1999, capital expenditures were almost equal to \*\*\*.<sup>54</sup> Accordingly, I do not find that the domestic industry is vulnerable to the likely future effects of the subject imports from Japan and Mexico, as contemplated by the Act.<sup>55</sup>

As I determined above, I find that revocation of the antidumping duty finding and order are not likely to result in significant volume or price effects by the subject imports from Japan and Mexico. These findings in turn indicate that the subject imports from Japan and Mexico are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the finding and order are revoked. Accordingly, I conclude that revocation of the antidumping duty finding and order on imports from Japan and Mexico would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. Moreover, I further find that the substantial increase in nonsubject imports coupled with the moderate substitutability of steel wire rope in general, would dilute the effect of the small potential increase in subject imports from Japan and Mexico, as the Japanese and Mexican product would compete with other imported products and with domestic steel wire rope. Therefore, I find that revocation of the antidumping duty finding and order on Japan and Mexico are not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

## CONCLUSION

For the foregoing reasons, I determine that revocation of the antidumping duty finding and orders on certain steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury to the U.S. steel wire rope industry within a reasonably foreseeable time.

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<sup>53</sup> (...continued)

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<sup>54</sup> Capital expenditures were \*\*\* in 1997, \*\*\* in 1998, and \*\*\* in interim 1999. CR at Table III-B-6, PR at Table III-10.

<sup>55</sup> See SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury ... . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order... .”).

## SEPARATE AND DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

As noted in the *Views of the Commission*, I join in the majority's background discussion and analysis of the domestic like product and domestic industry, as well as the legal standard in sunset reviews and the conditions of competition evident in the instant grouped review. I also join in the majority's determination that revocation of the antidumping duty orders on subject imports from Korea and Mexico would not be likely to lead to continuation or recurrence of material injury to the domestic steel wire rope industry within a reasonably foreseeable time. However, because I employ a different analytical framework for addressing the issue of cumulation in the context of grouped sunset reviews, and because I reach an affirmative determination with regard to Japan, I provide my separate and dissenting views below.

Specifically, I first determine that subject imports from Korea and Mexico, *individually*, are likely to have no discernible adverse impact on the domestic industry in the event of revocation of the respective antidumping duty orders on Korea and Mexico. Second, I determine that even when assessed *in the aggregate*, subject imports from Korea and Mexico are likely to have no discernible adverse impact on the domestic industry if the orders are revoked. As a result, I determine that cumulation of subject imports in this grouped review is barred pursuant to statute.

Although the majority employs a different analytical framework for addressing the issue of cumulation, ultimately the majority also engages in a country-specific, rather than cumulative, analysis, for each of the subject countries. I am, therefore, able to join the majority's negative determinations with regard to Korea and Mexico. With regard to Japan, however, I determine that revocation of the antidumping finding would be likely to lead to continuation or recurrence of material injury to the domestic steel wire rope industry within a reasonably foreseeable time. Accordingly, I respectfully dissent from the majority's determination with regard to Japan.

### Cumulation

As an initial matter, I note that each of the instant reviews was instituted on the same day; thus, the first statutory prerequisite to cumulation is satisfied.

I have set forth my analytical framework for addressing the issue of cumulation in the context of grouped sunset reviews as *Separate Views* in the Commission's sunset review determination in *Potassium Permanganate from China and Spain*.<sup>1</sup> In sum, I first assess whether, in the event of revocation of the orders, there is likely to be a reasonable overlap of competition among subject imports and between subject imports and the domestic like product. Only if I conclude that there is likely to be a reasonable overlap of competition do I turn to the question of whether subject imports are likely to have no discernible adverse impact on the domestic industry in the event of revocation. Significantly, I view this latter inquiry as requiring both a country-specific and an aggregate analysis.

#### *Reasonable Overlap of Competition—*

I note with regard to the antidumping finding on Japan, no respondent interested party has participated in this grouped review; consequently, most of the information of record concerning the Japanese product comes from the original investigation and the determination on Japan rendered by the

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<sup>1</sup> See *Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 at 27-30 (October 1999).

Tariff Commission.<sup>2</sup> I further note, however, that in its sunset review, Commerce identified over 100 firms as potential exporters of steel wire rope from Japan to the United States.<sup>3</sup> In Commerce's last administrative review involving Japan (completed in 1989), 31 manufacturers and/or exporters of steel wire rope were identified.<sup>4</sup> Finally, in response to the Commission's notice of institution, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("Committee") identified 17 firms in Japan that have produced and/or exported steel wire rope.<sup>5</sup>

The Commission generally considers the following factors in assessing whether subject imports compete with each other and with the domestic like product: (1) the degree of fungibility among subject imports from different countries, and between subject imports and the domestic like product; (2) the presence of sales or offers to sell, in the same geographical markets, of subject imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and, (4) whether subject imports are simultaneously present in the market.<sup>6</sup> This list is not exhaustive, and no single factor is dispositive.<sup>7</sup> Only a reasonable overlap of competition is required.<sup>8</sup> Of course, the focus in a sunset review is prospective in nature, and thus the relevant inquiry is whether, upon revocation of the orders, there would likely be a reasonable overlap of competition among subject imports and between subject imports and domestic like products, even if none currently exists.

Evidence available on the record in this grouped review indicates that subject imports and the domestic like product are generally interchangeable, and are sold through similar channels of distribution.<sup>9</sup> In each of the original investigations, the domestic like product and wire rope imports from the subject country under investigation were sold in the same geographical markets and enjoyed a simultaneous presence in the U.S. market.<sup>10</sup> None of the evidence developed in the instant grouped review indicates that these phenomena would not be likely to recur in the event of revocation; to the contrary, the record indicates that subject imports from each of the subject countries continued to enter the United States in 1997, 1998, and interim 1999, albeit in relatively small volumes.<sup>11</sup>

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<sup>2</sup> *Steel Wire Rope from Japan*, Inv. No. AA1921-124, TC Pub. 608 (Sept. 1973) ("Original Japan Determination" and accompanying "Report").

<sup>3</sup> See CR at IV-5, PR at IV-5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., 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 1988), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>7</sup> *Id.*

<sup>8</sup> See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996); Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required.").

<sup>9</sup> CR at I-22 to I-23, PR at I-22 to I-23; Original Japan Determination, Report at 3-4, 11, 26-29.

<sup>10</sup> See Original Japan Determination, Report at 39. With respect to Korea and Mexico, I note that the Commission's original determination was affirmed on appeal with respect to its finding that the subject imports from Korea and Mexico and the domestic like product were fungible, and that there existed a reasonable overlap of competition among them. Grupo Industrial Camesa v. United States, 853 F. Supp. 440, 444 (Ct. Int'l Trade 1994), *aff'd*, 85 F.3d 1577 (Fed. Cir. 1996).

<sup>11</sup> Table I-4.

Based upon all of the foregoing, I find that there is likely to be a reasonable overlap of competition among subject imports and between subject imports and the domestic like product in the event of revocation of the antidumping finding and orders under review. Accordingly, I proceed to the second step of the analysis, *i.e.*, whether subject imports are likely to have no discernible adverse impact in the event of revocation.

#### *No Discernible Adverse Impact—Individual Country Analyses*

With respect to *Japan*, I again note that no respondent interested party has participated in the instant grouped review. I further note that the statute authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record; or (2) an interested party, or any other person, withholds information requested by the agency, or fails to provide such information in the time or in the form or manner requested, or significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Tariff Act of 1930, as amended.<sup>12</sup> The statute further authorizes the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information.<sup>13</sup> Such adverse inferences may include selecting from information contained in the record of the original investigation or any other information placed on the record in a review.<sup>14</sup>

Based upon the record in this grouped review, I infer that the conditions which existed prior to the imposition of the finding are likely to recur if the antidumping finding on Japan is revoked. Accordingly, I find that subject imports from Japan are likely to have a discernible adverse impact on the domestic industry in the event of revocation.

With respect to *Korea*, I note that in the original determination there were five sources of exports from Korea to the United States.<sup>15</sup> Only two of these five firms are currently subject to the order, *i.e.* Kumho and Dong-II. With regard to Dong-II, however, the record in this grouped review indicates that \*\*\*.<sup>16</sup> Kumho now accounts for approximately \*\*\* percent of the minimal volume of subject imports that continue to enter the United States from Korea.<sup>17</sup>

As for Kumho, the record indicates that even if Kumho were to operate at 100 percent capacity utilization and exported 100 percent of its production to the United States (*i.e.*, the broad assumption being that Kumho sold neither to its home market in Korea nor to third-country export markets), this volume would be equivalent to only \*\*\* percent of apparent U.S. consumption in 1998, as well as only \*\*\* percent of total imports into the United States in 1998.<sup>18</sup>

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<sup>12</sup> 19 U.S.C. § 1677e(a).

<sup>13</sup> 19 U.S.C. § 1677e(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Steel Wire Rope from Mexico and Korea*, Inv. Nos. 731-TA-546-547 (Final), USITC Pub. 2613 (March 1993) (“Original Korea and Mexico Determinations” and accompanying “Report”), Report at I-72.

<sup>16</sup> Correspondence from Elizabeth Hafner, Esq. (counsel to Kumho) to Olympia Hand (USITC), via e-mail dated November 19, 1999.

<sup>17</sup> Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9, *and* Questionnaire Responses. I note that Commerce has determined that the likely margin of dumping for the “all others” category of imports from Korea is 1.51 percent. CR at I-10, PR at I-10.

<sup>18</sup> *See* Table C-4 (revised), INV-W-261 (Nov. 23, 1999) and questionnaire responses. I note that Commerce has determined that Kumho’s likely margin of dumping in the event of revocation is 0.0 percent. CR at I-10, PR at I-10.

The likely volume of imports from Kumho would be \*\*\* less; the record indicates that only about \*\*\* percent of Korean production of subject merchandise in 1998 and interim 1999 was directed to the United States.<sup>19</sup> Based upon all the foregoing, I find that subject imports from Korea are likely to have no discernible adverse impact in the event of revocation of the antidumping duty order on Korea.

With respect to *Mexico*, I note that production capacity stood at \*\*\* short tons in interim 1999, up from \*\*\* short tons in interim 1998, and capacity utilization stood at \*\*\* percent in interim 1999, down from \*\*\* percent in interim 1998.<sup>20</sup> I find, however, that interim 1999 data is not representative of likely future conditions due to provisional antidumping duties of 56.4 percent imposed upon Mexico by the European Union on February 19, 1999,<sup>21</sup> which led to a cessation of exports from Mexico to the European Union. These provisional duties on Mexico have been replaced, effective August 12, 1999, by a price undertaking.<sup>22</sup> As a result, it is now feasible for Mexican producers to resume exporting to the European Union, even if it is somewhat more difficult under the regime of a price undertaking.<sup>23</sup>

Consequently, I begin with an examination of data for calendar year 1998. Total subject imports from Mexico were 403 short tons in 1998, constituting \*\*\* percent of apparent U.S. consumption and 0.3 percent of total imports during that year.<sup>24</sup> Unused production capacity in Mexico during 1998 was equivalent to \*\*\* percent of apparent U.S. consumption and \*\*\* percent of total imports, during that year.<sup>25</sup> In light of the particular facts on the record in this grouped review, however, I find that even these latter figures provide a vastly overstated indication of the likely import volume from Mexico in the event of revocation.

First, I note that during the original investigation, imports from Mexico never accounted for more than 2.4 percent of apparent U.S. consumption, peaking at 4,466 short tons in 1990.<sup>26</sup> Even if this peak pre-order import volume were to recur, it is equivalent to only \*\*\* percent of apparent U.S. consumption in 1998.<sup>27</sup>

Second, I note that of the three Mexican producers of steel wire rope that have been identified, only two appear to export steel wire rope to the United States, and of these two producers, Camesa is the largest.<sup>28</sup> Indeed, during the original investigation, Camesa accounted for \*\*\* subject imports from Mexico into the United States.<sup>29</sup> A \*\*\* portion of Camesa's recent exports to the United States were of subject<sup>30</sup> steel wire strand to \*\*\*, which manufactures steel wire rope for sale on the U.S. market.<sup>31</sup> Nothing on the record in this grouped review suggests that, in the event of revocation, Camesa would begin exporting to the U.S. market to the detriment of its U.S. subsidiary.

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<sup>19</sup> See Table IV-3 (revised), INV-W-261 (Nov. 23, 1999) at IV-7.

<sup>20</sup> Table IV-4, CR at IV-8, PR at IV-8.

<sup>21</sup> CR at IV-9, PR at IV-9.

<sup>22</sup> *Id.*

<sup>23</sup> Transcript of Commission Hearing at 107 (Oct. 14, 1999).

<sup>24</sup> Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9.

<sup>25</sup> *Cf.* Table IV-4, CR at IV-8, PR at IV-8 with Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9.

<sup>26</sup> Table I-2, CR at I-5, PR at I-5.

<sup>27</sup> See *id.* and Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9.

<sup>28</sup> See CR at IV-5 to IV-6, PR at IV-5 to IV-6.

<sup>29</sup> Original Korea and Mexico Determinations, Report at I-73.

<sup>30</sup> CR at I-16 n.15, PR at I-16 n.15.

<sup>31</sup> *Id.*, CR at IV-6, PR at IV-6.

Third, notwithstanding the availability of excess capacity during the period of review, and the fact that Camesa received a 0.0 percent cash deposit rate in the two most recent administrative reviews conducted by Commerce,<sup>32</sup> subject exports to the United States have increased only modestly, and remain insubstantial in absolute terms.<sup>33</sup> Based upon all the foregoing, I find that subject imports from Mexico are likely to have no discernible adverse impact in the event of revocation of the antidumping duty order on Mexico.

### *No Discernible Adverse Impact—Aggregate Analysis*

As I discussed in my *Separate Views* in the Commission's sunset review determination in *Potassium Permanganate from China and Spain*, I believe that if a country-specific assessment leads to the conclusion that subject imports from two or more subject countries are *individually* likely to have no discernible adverse impact on the domestic industry in the event of revocation of the respective orders, the statute requires a further examination of whether such imports, *in the aggregate*, are likely to have no discernible adverse impact on the domestic industry. Thus, I turn to the question of whether subject imports from Korea and Mexico, when considered together, are likely to have no discernible adverse impact in the event of revocation of the orders on these two countries.

First, notwithstanding certain difficulties unrelated to subject imports encountered by two domestic producers in 1998 and interim 1999,<sup>34</sup> I find that the domestic steel wire rope industry is not in a weakened state, as contemplated by the vulnerability criterion of the statute.<sup>35</sup> To the contrary, notwithstanding the substantial presence of nonsubject imports in the U.S. market which accounted for \*\*\* of apparent U.S. consumption during the period of review,<sup>36</sup> financial indicia for current members of the domestic industry appear relatively strong.<sup>37</sup>

Although the assets of the two troubled domestic producers were sold to a third domestic producer during the period of review,<sup>38</sup> it does not appear likely that the adverse conditions confronted by these two former members of the domestic industry will recur in the reasonably foreseeable future. Consequently, based upon the entirety of the record in this review, I find that the domestic industry is currently not in a vulnerable condition.

Second, as noted, I find the likely individual import volumes from Korea and Mexico, in the event the respective orders are revoked, to be insignificant. Even when considered in the aggregate, the likely import volume from these two countries combined is, in my view, minimal, and is unlikely to result in any

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<sup>32</sup> 63 Fed. Reg. 46735 (Sept. 2, 1998); 64 Fed. Reg. 40549 (July 27, 1999).

<sup>33</sup> See Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9.

<sup>34</sup> See CR at III-B-1 to III-B-2, PR at III-2-3.

<sup>35</sup> *Statement of Administrative Action to the Uruguay Round Agreements Act* at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of the order . . .”).

<sup>36</sup> See Table C-4 (revised), INV-W-261 (Nov. 23, 1999) at C-9.

<sup>37</sup> See CR Table III-B-3, PR at Table III-6. In particular, I note that operating margins for the current members of the domestic industry ranged between \*\*\* percent and \*\*\* percent during the period of review. *Id.* In contrast, operating margins for the domestic industry in the investigations of Korea and Mexico declined from 5.1 percent in 1989 to 3.0 percent in 1991. Original Korea and Mexico Determinations, Report at Table D-1.

<sup>38</sup> CR at III-B-1, PR at III-2.

adverse impact to the domestic industry, particularly when considered in light of the healthy condition of the domestic industry.

Based upon all of the foregoing, I find that subject imports from Korea and Mexico, when considered together, are likely to have no discernible adverse impact in the event of revocation of the orders on Korea and Mexico. Accordingly, I do not cumulate subject imports from any of the three subject countries for purposes of my analysis in this grouped review.

Although I determine not to engage in a cumulative analysis for reasons which differ from the majority, I nevertheless join the majority's views with regard to Korea and Mexico, and find that revocation of the orders on Korea and Mexico will not lead to continuation or recurrence of material injury within a reasonably foreseeable time. With regard to Japan, however, I determine for the following reasons that revocation of the antidumping finding would be likely to lead to continuation or recurrence of material injury to the domestic steel wire rope industry within a reasonably foreseeable time.

### **Revocation of the Antidumping Finding on Japan is Likely to Lead to Continuation or Recurrence of Material Injury to the Domestic Steel Wire Rope Industry Within a Reasonably Foreseeable Time**

I reiterate that I do not find the domestic industry to be in a vulnerable condition. I also reiterate that, with regard to Japan, no respondent interested party has participated in the instant grouped review; as a result, the Commission is authorized to choose from among the facts otherwise available in reaching its determination. I again note that the Commission is authorized to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information; such adverse inferences may include selecting from information contained in the record of the original investigation or any other information placed on the record in a review.

With regard to the likely *volume* of imports if the antidumping finding on Japan is revoked, I first note that the original investigation uncovered a significant surge in subject import volume, from \*\*\* net tons in 1968 to \*\*\* net tons in 1972.<sup>39</sup> Indeed, Japan accounted for \*\*\* percent of total imports into the United States in 1972,<sup>40</sup> capturing a \*\*\* percent share of the U.S. market that year.<sup>41</sup> I also note that the record in this grouped review indicates there continue to be a substantial number of producers and exporters of steel wire rope in Japan.<sup>42</sup>

I infer that, in the absence of the antidumping finding, Japanese producers would revert to their historical emphasis on exporting to the United States evidenced in the original investigation. Based upon the record in this grouped review, I find that this renewed emphasis will likely result in significant volumes of subject imports into the United States if the finding is revoked.

With regard to the likely *price effects* of imports if the antidumping finding on Japan is revoked, I note that the original investigation uncovered significant underselling and concomitant price suppression by reason of subject imports from Japan.<sup>43</sup> I infer that, in the absence of the antidumping finding, Japanese producers and exporters would revert to aggressive pricing practices with regard to their steel wire rope exports to the United States, as evidenced in the original investigation. Based upon the record in this grouped review, I find that such aggressive pricing practices would again result in significant underselling and concomitant price suppression or depression in the U.S. market if the finding is revoked.

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<sup>39</sup> Original Japan Determination at 4.

<sup>40</sup> Original Japan Determination, Report at 21.

<sup>41</sup> Original Japan Determination, Report at 25.

<sup>42</sup> See CR at IV-5, PR at IV-5.

<sup>43</sup> Original Japan Determination at 5.

With regard to the likely *impact* of imports if the antidumping finding on Japan is revoked, I note that in the original determination, the increasing volumes of low-priced imports from Japan, sold at less-than-fair-value, were found to have contributed to six plant closures in the United States as well as numerous lost sales for domestic producers.<sup>44</sup> Based upon the record in this grouped review, I find that the likely significant volumes of imports, which are likely to enter the U.S. market at prices which will result in significant price suppression or depression, will have a significant adverse impact on the levels of production, shipments, sales, and revenues, of the domestic industry. I further find that this reduction in the industry's production, sales, and revenues, would have a direct adverse impact on the domestic industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, I find that if the antidumping finding is revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

*Conclusion—*

For the foregoing reasons, and based upon the entirety of the record in this grouped review, I find that revocation of the antidumping finding on steel wire rope from Japan would be likely to lead to continuation or recurrence of material injury to the domestic steel wire rope industry within a reasonably foreseeable time.

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<sup>44</sup> Original Japan Determination at 6.

## DISSENTING VIEWS OF COMMISSIONER STEPHEN KOPLAN WITH REGARD TO JAPAN AND MEXICO

I have joined with the Commission in determining that revocation of the antidumping order on steel wire rope from Korea is not likely to lead to material injury within a reasonably foreseeable time. I join sections I, II, III, IV and VI of the Views of the Commission. However, based on the record in these five-year reviews, I dissent with the Commission and find that revocation of the antidumping order on steel wire rope from Japan and Mexico is likely to lead to material injury within a reasonably foreseeable time. In making my determinations in five-year reviews, I do not consider the age of the original order a factor.

### I. **Revocation of the Antidumping Finding on Steel Wire Rope from Japan is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**

#### A. Likely Volume of Subject Imports from Japan

In evaluating the likely volume of imports of subject merchandise if the finding or order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>1</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increase in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the 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 produce other products.<sup>2</sup>

In the Original Japan Determination, the Commission found that subject imports from Japan had doubled over a five year period, from \*\*\* net tons in 1968 to \*\*\* net tons in 1972.<sup>3</sup> In 1972, imports from Japan were \*\*\* percent of U.S. apparent consumption. Imports from Japan decreased sharply after the antidumping finding went into effect. In 1997, imports of steel wire rod from Japan were \*\*\* tons or \*\*\* percent of domestic apparent consumption; in 1998 imports were \*\*\* tons comprising \*\*\* percent of apparent consumption.<sup>4</sup>

Data for the Japanese producers are unavailable for the time period of this five-year review. No Japanese interested party has participated in this five-year review. While the record suggests that some portion of the Japanese producers shifted their wire rope manufacturing operations to Korea shortly after the original finding with respect to Japan went into effect, the record also indicates that “{T}hey still have large manufacturers of wire rope in Japan, too, that I think would love to sell in this market....”<sup>5</sup> In its expedited sunset review, Commerce identified over 100 Japanese firms as potentially exporting steel wire rope to the United States, and in its latest administrative reviews, 31 Japanese manufacturers and/or exporters were examined and were assigned dumping margins.<sup>6</sup>

Based on the significant increase in imports prior to the original finding, the continuing presence in

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<sup>1</sup> 19 U.S.C. § 1675a(a)(2).

<sup>2</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>3</sup> Original Japan Determination at 4.

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

<sup>5</sup> Hearing Transcript at 89 (Testimony of Mr. Salanski).

<sup>6</sup> CR at IV-5, PR at IV-3-4.

the domestic market of Japanese product, and the large number of Japanese producers available to export steel wire rope to the United States, I find that the volume of subject imports from Japan are likely to be significant within a reasonably foreseeable time if the antidumping finding is revoked.

B. Likely Price Effects of Subject Imports from Japan

In evaluating the likely price effects of subject imports if an antidumping finding or order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>7</sup>

In the original determination with respect to Japan, the Commission found significant underselling and price suppression caused by dumped imports from Japan.<sup>8</sup> Between the first quarter of 1970 and the second quarter of 1973, the Commission found that prices of five particular types of Japanese steel wire rope averaged \*\*\* to \*\*\* percent below the prices of the same types of domestically produced steel wire rope.<sup>9</sup> The Commission also found that, as a result of underselling, the U.S. producers of steel wire rope were prevented from increasing their prices in order to remain competitive.<sup>10</sup>

Though the Commission was not able to collect current pricing data for subject imports from Japan, the questionnaire responses of producers, importers, and purchasers indicate that price remains an important factor affecting purchasing decisions.<sup>11</sup> In addition, producers and importers reported that the domestic product and the imported product are still used interchangeably except in certain high-risk uses.<sup>12</sup> Given the importance of price to purchasing decisions, and the moderately high interchangeability of the subject imports and the domestic like product, I find that the Japanese product is likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product. The present record contains no contrary evidence.

C. Likely Impact of Subject Imports from Japan

In evaluating the likely impact of subject merchandise if the antidumping duty order or finding is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market shares, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>13</sup>

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<sup>7</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “{C}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>8</sup> Original Japan Determination at 4-5.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> CR at II-7. PR at II-5.

<sup>12</sup> CR at II-6. PR at II-4.

<sup>13</sup> 19 U.S.C. § 1675a(a)(4).

All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>14</sup> As required by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.<sup>15</sup>

I find that the domestic steel wire rope industry has been in a weakened state during the period of investigation (POI). From 1997 to 1998, the operating income to sales ratio fell from \*\*\* percent to \*\*\* percent. While the operating income to sales ratio improved between interim 1998 and interim 1999, several other indicia of the condition of the domestic industry have \*\*\* between the interim periods. In particular, between the interim periods, capacity utilization declined by \*\*\* percentage points, the number of production related workers declined by \*\*\* percent, the number of hours worked declined by \*\*\* percent, and wages paid fell by \*\*\* percent. Much of this decline is the result of two firms exiting the industry during the POI because of financial difficulties. While this market consolidation arguably may indicate that the industry is currently in a healthier condition than it was in 1998, I determine that this consolidation evidences that the domestic steel wire rope industry is subject to intense competition that makes it especially sensitive to the impact of dumped imports. Accordingly, I find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion outlined in the SAA.<sup>16</sup>

Since I found that revocation of the antidumping finding is likely to lead to significant volumes of subject imports from Japan and to significant price effects, and since I found that the domestic industry is vulnerable to material injury, I find that the subject imports from Japan are likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked. Accordingly, I conclude that revocation of the antidumping finding on imports from Japan would be likely to lead to significant declines in output, sales, market share, profits, productivity, and return on investments. I therefore find that revocation of the antidumping finding on Japan is likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

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<sup>14</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Japan, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping finding on Japan were revoked ranges from 0.0 percent to 11.88 percent. 64 Fed. Reg. 35626 (July 1, 1999).

<sup>15</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped and subsidized imports.” SAA at 885.

<sup>16</sup> *See* SAA at 855 (“The term ‘vulnerability’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury....If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order....”).

D. Conclusion

For the reasons stated above, I determine that revocation of the antidumping finding on steel wire rope from Japan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**II. Revocation of the Antidumping Duty Order on Steel Wire Rope from Mexico is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**

A. Likely Volume of Subject Imports from Mexico

In evaluating the likely volume of imports of subject merchandise if the finding or order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>17</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increase in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the 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 produce other products.<sup>18</sup>

In the Original Mexico Determination, the Commission found that subject imports from Mexico increased from \*\*\* tons in 1989 to \*\*\* tons in 1990, and they were \*\*\* tons in 1991.<sup>19</sup> In 1997 subject imports were \*\*\* tons and they increased to \*\*\* tons in 1998. Between the interim periods, subject imports from Mexico increased by \*\*\* percent, from 58 tons in interim 1998 to \*\*\* tons in interim 1999.<sup>20</sup>

Mexican production capacity increased from 1997 to 1998, from \*\*\* tons to \*\*\* tons. Capacity also increased between the interim periods, from \*\*\* tons in interim 1998 to \*\*\* tons in interim 1999. Capacity utilization decreased from 1997 to 1998, from \*\*\* percent to \*\*\* percent. Capacity utilization further decreased between the interim periods, falling from \*\*\* percent in interim 1998 to \*\*\* percent in interim 1999.<sup>21</sup> Therefore, there is substantial excess capacity.

This decline in capacity utilization is attributable in part to a decline in exports from Mexico to the European Union (EU) because of an antidumping investigation initiated by the EU against imports from Mexico.<sup>22</sup> In 1998, Camesa exported \*\*\* metric tons (\*\*\* tons) to the EU.<sup>23</sup> In February 1999, the European Communities imposed a provisional antidumping duty on imports of carbon steel wire rope from Mexico. In August 1999, the provisional duties were replaced by a price undertaking which commits Camesa to sell in the EU at prices above a specified minimum level.<sup>24</sup> Though Mexican exports are no

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<sup>17</sup> 19 U.S.C. § 1675a(a)(2).

<sup>18</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>19</sup> CR Table I-2; PR Table I-2; Original Mexico and Korea Determination at I-23.

<sup>20</sup> CR at Table C-4; PR at Table C-4.

<sup>21</sup> CR at Table IV-4; PR at Table IV-4.

<sup>22</sup> CR at IV-6; PR at IV-4. *See* Camesa Posthearing Brief at 12 fn. 17 (“The provisional antidumping duties of 56.1 percent caused Camesa to cease exports to the European Union while those measures were in effect.”).

<sup>23</sup> Camesa Posthearing Brief at 12, fn. 17.

<sup>24</sup> CR at IV-9; PR at IV-5.

longer subject to antidumping duties in the EU, they are still subject to the discipline of the price undertaking.

Given the excess capacity, the discipline of the price undertaking with the EU, and the relative proximity of the United States to Mexico (thereby minimizing transportation costs), I find that the volume of subject imports from Mexico are likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked.

#### B. Likely Price Effects of Subject Imports from Mexico

In evaluating the likely price effects of subject imports if the antidumping duty finding or order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>25</sup>

In the original determination with respect to Mexico, the Commission found significant underselling and price suppression caused by dumped imports from Mexico.<sup>26</sup> Imports of steel wire rope from Mexico undersold the domestic market by margins ranging from \*\*\* percent to \*\*\* percent.<sup>27</sup> The Commission also found that the domestic producers had lost sales and revenues to low-priced imports from Mexico.<sup>28</sup>

I note that the pricing data with respect to subject imports from Mexico is limited because it was reported for only 2 quarters. However, it does reflect purchaser prices for products from Mexico lower than the prices of the domestic product. The margin of underselling for product 4 during the second quarter of 1999 was \*\*\* percent and the margin of underselling for product 5 during the first quarter of 1997 was \*\*\* percent.<sup>29</sup>

Though the Commission was able to only collect limited pricing data for subject imports from Mexico, the questionnaire responses of producers, importers, and purchasers indicate that price is an important factor affecting purchasing decisions, as indicated in section I.B. of these dissenting views. Given the importance of price to the purchasing decision, and the moderately high interchangeability of the subject imports and the domestic like product, I find that the subject imports from Mexico are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.

#### C. Likely Impact of Subject Imports from Mexico

In evaluating the likely impact of subject merchandise if the antidumping duty order or finding is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market shares, profits, productivity, return on investments, and utilization of capacity; (2)

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<sup>25</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[C]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>26</sup> Original Mexico and Korea Determination at 28.

<sup>27</sup> Original Mexico and Korea Investigation Staff Report at I-100.

<sup>28</sup> Id.

<sup>29</sup> CR at V-12, fn.5.

likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>30</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>31</sup> As required by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>32</sup>

Since I find that revocation of the antidumping duty order is likely to lead to significant volumes of subject imports from Mexico and to significant price effects, and since I find that the domestic industry is vulnerable to material injury, I find that revocation of the antidumping duty order on imports from Mexico would be likely to lead to significant declines in the domestic industry's output, sales, market share, profits, productivity, and return on investments. I therefore find that revocation of the antidumping duty order on Mexico is likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

#### D. Conclusion

For the reasons stated above, I determine that revocation of the antidumping duty order on steel wire rope from Mexico is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

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<sup>30</sup> 19 U.S.C. § 1675a(a)(4).

<sup>31</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding steel wire rope from Mexico, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Mexico were revoked is 111.68 percent. 64 Fed. Reg. 42905 (August 6, 1999).

<sup>32</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped and subsidized imports.” SAA at 885.