

UNITED STATES INTERNATIONAL TRADE COMMISSION

CARBON STEEL WIRE ROD FROM ARGENTINA
Investigations Nos. 701-TA-A (Review) and 731-TA-157 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3270, January 2000)

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on and/or termination of the suspended countervailing duty investigation of carbon steel wire rod from Argentina 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.¹

I. BACKGROUND

On July 14, 1982, the Department of Commerce (“Commerce”) made a preliminary affirmative countervailing duty determination on carbon steel wire rod from Argentina.² Because Argentina was not a signatory to the GATT Subsidies Code in 1982, the Commission did not conduct an injury investigation.³ On September 27, 1982, Commerce published notice that it had entered into a suspension agreement based upon the elimination of subsidies on the production, manufacture, and export of wire rod.⁴

On September 27, 1984, the Commission determined, pursuant to a subsequent petition, that an industry in the United States was materially injured by reason of less than fair value (“LTFV”) imports of carbon steel wire rod from Argentina.⁵ Commerce imposed an antidumping duty order on imports of carbon steel wire rod from Argentina on November 23, 1984.⁶

On November 2, 1998, the Commission instituted five-year reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty order on and/or termination of the suspended countervailing duty investigation of carbon steel wire rod from Argentina would likely lead to the continuation or recurrence of material injury.⁷

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 interested parties (importers, exporters, foreign producers, trade associations, or subject country

¹ Chairman Bragg dissenting. See her separate and dissenting views. Chairman Bragg joins sections I, II.A.1, II.A.2, II.B., III.A. and III.B of these views. Commissioners Hillman and Okun not participating.

² 47 Fed. Reg. 30539 (July 14, 1982) (Carbon Steel Wire Rod from Argentina: Preliminary Affirmative Countervailing Duty Determination).

³ See 19 U.S.C. § 1303(a)(1) (1994). Under former section 303, the United States did not afford an injury test in countervailing duty investigations to countries that were not signatories to the GATT Subsidies Code or a comparable bilateral agreement. Section 303 was repealed by the Uruguay Round Agreements Act of 1994 (“URAA”).

⁴ 47 Fed. Reg. 42393 (Sept. 27, 1982) (Carbon Steel Wire Rod from Argentina: Suspension of Investigation).

⁵ Carbon Steel Wire Rod from Argentina and Spain, Invs. Nos. 731-TA-157 and 160 (Final), USITC Pub. 1598 (Nov. 1984) (“Original Determination”). The antidumping duty order on carbon steel wire rod from Spain was revoked in 1985. 50 Fed. Reg. 37560 (Sept. 16, 1985).

⁶ 49 Fed. Reg. 46180 (Nov. 23, 1984).

⁷ 63 Fed. Reg. 58756 (Nov. 2, 1998).

governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁸ 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 responses to the notice of institution on behalf of domestic producers accounting for virtually all U.S. production of carbon steel wire rod (the “domestic producers”) and on behalf of Acindar Industria Argentina de Aceros S.A. (“Acindar”), an Argentine producer accounting for all subject imports. Accordingly, on February 4, 1999, the Commission determined that both domestic and respondent interested party group responses were adequate and that it should proceed to full reviews in the subject five-year reviews.⁹

On August 3, 1999, the Commission held a hearing in these reviews, at which representatives of the domestic producers and Acindar appeared. The domestic producers filed briefs in support of continuation of the antidumping duty order and suspension agreement, and Acindar filed briefs urging revocation of the order and termination of the suspended investigation.

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.”¹⁰ 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.”¹¹

In its final five-year review determinations, Commerce defined the subject merchandise as follows:

a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.2 inches nor over 0.74 inches in diameter, not tempered, not treated, and not partly manufactured, and valued at over 4 cents per pound.¹²

The imported products covered by these review investigations are semifinished steel products produced by casting and hot rolling steel billets into irregularly wound coils that are then generally drawn into wire or made into small parts by downstream processors. Steel wire rod is differentiated by its

⁸ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁹ See Vote Sheets in Carbon Steel Wire Rod from Argentina, Invs. Nos. 701-TA-A (Review) and 731-TA-157 (Review) (Feb. 4, 1999); Notice of Commission Determination to Conduct Full Five-Year Reviews, 64 Fed. Reg. 8120 (Feb. 18, 1999); Explanation of Commission Determinations on Adequacy (Feb. 1999).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 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).

¹² 64 Fed. Reg. 53331 (Oct. 1, 1999) (CVD); 64 Fed. Reg. 53321 (Oct. 1, 1999) (AD).

chemistry, diameter, and mechanical properties. These variations are imparted by differences in the raw materials used to produce the steel and by variations in the production process.¹³

Most of the steel wire rod consumed in the United States is sold on the basis of its carbon content and certain industry-recognized “quality grades.” Most rod is produced from AISI 1000 series carbon steel, ranging from series 1006 to 1095, with higher numbers representing rod made of steel with higher carbon content. The industry-recognized quality grades refer to the intended end use of the wire rod, and include industrial quality, cold heading quality, welding quality, and others. Within these ranges, there are literally hundreds of different products, varying in their metallurgical, physical and mechanical properties. Moreover, end-users may request modifications of standard grade and quality specifications to achieve a specific performance.¹⁴

Because the original countervailing duty investigation did not include an injury investigation, the Commission never defined a like product in the original countervailing duty investigation. In the original antidumping duty investigation, the Commission found that the subject imports corresponded to two domestic like products: low and high carbon steel wire rod. It rejected the argument that free-machining carbon steel wire rod is a separate like product from other carbon steel wire rod.¹⁵ However, the scopes of the two original investigations were the same, as are the scopes of the two instant reviews.

For purposes of these five-year reviews, the domestic producers argue that the Commission should define a single domestic like product consisting of all carbon steel wire rod within the scope of these reviews, *i.e.*, low, medium-high, and high carbon steel wire rod as well as free-machining carbon steel wire rod.¹⁶ Acindar agrees that the Commission should define a single domestic like product, but contends that the like product should also include alloy steel wire rod, a product outside the scope of these reviews.¹⁷

Since the Commission’s original antidumping duty determination in 1984, the Commission has undertaken several more recent investigations of carbon steel wire rod.¹⁸ In each of those investigations, the Commission has found that all carbon and alloy steel wire rod is a single domestic like product.¹⁹ In

¹³ Confidential Report (“CR”) at I-14-I-15, Public Report (“PR”) at I-11.

¹⁴ CR at I-14, I-17-I-18, I-19 n.34, II-4 n.4, II-13 & n.18, PR at I-11, I-13-I-14 & n.34, II-3 n.4, II-8 n.18.

¹⁵ Original Determination at 4-5.

¹⁶ Domestic Producers’ Posthearing Brief at 14.

¹⁷ Acindar Posthearing Brief at 1.

¹⁸ See Certain Steel Wire Rod, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999) (“Section 201 Determination”); Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 and 731-TA-763-766 (Final), USITC Pubs. 3075 (Nov. 1997) (CVD) and 3087 (Mar. 1998) (AD) (collectively “1997 Determinations”); Certain Steel Wire Rod from Brazil and Japan, Invs. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 (Mar. 1994); Certain Steel Wire Rod from Belgium and Germany, Invs. Nos. 701-TA-359 and 731-TA-686-687 (Preliminary), USITC Pub. 2760 (Mar. 1994); Certain Steel Wire Rod from Brazil, Canada, Japan, and Trinidad and Tobago, Invs. Nos. 731-TA-646-649 (Preliminary), USITC Pub. 2647 (June 1993).

¹⁹ The scope of the current reviews is somewhat different, however. While the scope (and the domestic like product) in recent investigations has included alloy steel wire rod, the scope of the current reviews excludes these products. Moreover, while the scope of the current reviews includes free-machining wire rod, that product has been expressly excluded from the scope in more recent investigations and has not been included in the domestic like product. Certain niche products, such as valve spring quality wire rod, pipe-wrap quality wire rod, and 1080 tire cord quality wire rod, which are not produced in commercial quantities by the domestic industry, have also been excluded from the scope in more recent cases, but are not excluded here.

light of these subsequent developments in the Commission's like product treatment of carbon steel wire rod, the differences in scopes between these reviews and more recent investigations, and the parties' arguments, we have considered three like product issues: (1) whether low, medium-high, and high carbon steel wire rod are separate like products; (2) whether free-machining carbon steel wire rod is "like" other carbon steel wire rod; and (3) whether the like product includes alloy steel wire rod.²⁰ For the reasons discussed below, we find a single domestic like product consisting of all carbon steel wire rod within the scope (*i.e.*, low, medium-high, and high carbon and free-machining steel wire rod) as well as alloy steel wire rod.

1. Whether Low, Medium-High, and High Carbon Steel Wire Rod Are Separate Like Products

According to the like product definitions adopted in the original antidumping investigation, low carbon steel wire rod has a carbon content of up to 0.23 percent, medium-high carbon steel wire rod has a carbon content of 0.24 to 0.44 percent, and high carbon steel wire rod has a carbon content of over 0.44 percent.²¹ The carbon content of steel wire rod imparts strength and hardness to the product; the more strength and hardness is required in the end use application, the higher the carbon content of the rod must be. Thus, there are various end use applications for which wire rod with either a low, medium-high, or high carbon content is suited.²² However, carbon steel wire rod's suitability for a particular end use depends not just on carbon content, but also on other factors. Characteristics distinguishing different grades and qualities of carbon steel wire rod include the rod's size (diameter), dimensional precision, depth of decarburization, surface defects and seams, amount of mill scale, structural grain size, chemistry, tensile strength, and other physical properties. Ductility, hardness, and tensile strength of steel are positively correlated with carbon content. Other features are not.²³ There are literally hundreds of end uses for steel wire rod, each with its own specifications for carbon content and numerous other characteristics.²⁴

Since virtually all steel wire rod is produced to customer specifications for a particular end use, interchangeability is limited across the entire range of products.²⁵ All carbon steel wire rod, regardless of carbon content, is sold through the same channels of distribution, with more than 98 percent of domestic

²⁰ Although these reviews involve "carbon steel wire rod," the term "carbon steel wire rod" is not used in the HTS and has no meaning for tariff purposes. Rather, the HTS distinguishes between "alloy" and "non-alloy" steel wire rod, classifying them in separate headings based on the chemistry of the steel. For purposes of these views, the term "carbon steel wire rod" is used to refer to non-alloy steel wire rod. "Free-machining carbon steel wire rod" is a subset of carbon steel wire rod defined by its distinctive chemistry, discussed below. For purposes of these views, alloy steel wire rod includes AISI or SAE series 4000, 4100, 4600, 4700, 4800, 6100, 8100, 8600, 8700, 8800, and 9200 and excludes alloy steel containing by weight 24 percent or more of nickel (*i.e.* stainless steel, alloy tool steel, high-nickel steel, or ball bearing steel). This is consistent with the definition of alloy steel wire rod included in the scopes of the recent section 201 and 1997 investigations.

²¹ CR at I-17-I-18, PR at I-13-I-14; Original Determination, Report at A-10.

²² CR at I-17-I-18, PR at I-13-I-14.

²³ CR at I-14-I-16 & n.22, PR at I-11-I-12 & n.22.

²⁴ CR at I-13-I-16, II-4 n.4, II-13 & n.18, PR at I-10-I-12, II-2 n.4, II-7-II-8 n.18.

²⁵ CR at II-4 n.4, II-13 n.18, PR at II-2 n.2, II-8 n.18. There is no evidence to suggest that interchangeability is more limited within the low, medium-high, and high carbon categories than it is between products within those categories that differ with respect to carbon content or any other physical, chemical or mechanical characteristics.

production being sold to end users in 1998.²⁶ All carbon steel wire rod is produced on the same machinery and equipment by the same employees.²⁷ There is no record evidence that producers or customers perceive low, medium-high, and high carbon wire rod to be commercially meaningful distinctions, since customers purchase rod to their own particular specifications. Finally, the price of a steel wire rod product is a function of numerous factors, only one of which is its carbon content. Thus, some specialized low carbon products can be priced as high as or higher than some medium-high or high carbon products.²⁸

Accordingly, based on the record in these reviews, we find that carbon steel wire rod is a continuum of hundreds of different products with no clear dividing lines between them. We therefore find that carbon steel wire rod at all levels of carbon content constitutes a single domestic like product.

2. Whether Free-Machining Carbon Steel Wire Rod is Like Other Carbon Steel Wire Rod

Free-machining steels are carbon steels that are resulfurized (sulfur added), rephosphorized (phosphorous added), and/or have added lead, bismuth, selenium, or tellurium. Unlike other carbon steel wire rod, which is designated by AISI grades 1005 through 1095, free-machining carbon steel wire rod is designated by AISI leaded grades (for example, 10L18), grades 1108 to 1151 (the “1100 series” referred to in the original investigation, which includes resulfurized steels), or grades 1211 to 1215 (the “1200 series” referred to in the original investigation, which includes resulfurized and rephosphorized steels).²⁹

The addition of sulfur, phosphorus, lead, bismuth, selenium, and/or tellurium embrittles the steel and makes it more prone to cracking than steels of comparable carbon content in the 1000 series. This embrittlement enhances the machinability of the steel, because it makes smaller chips when machined and reduces machine tool wear.³⁰ Therefore, free-machining carbon steel wire rod is generally sold to cold finishers, who use it to make cold drawn bars. The bars are then used as inputs for the production of machined parts in automatic, high-speed lathes and used mostly by the automotive and appliance industries.³¹

²⁶ Of those end users, the large majority are wire drawers that purchase a wide variety of rod with different specifications and draw the rod into various kinds of wire and wire products. A relatively small percentage of domestic carbon steel wire rod is sold to cold finishers for use in the production of small parts. CR at I-17, PR at I-13; CR at II-1, PR at II-1.

²⁷ CR at I-14-I-16, I-19, PR at I-11-I-12, I-14. Domestic producers accommodate the need to produce multiple product variations by developing a quarterly rolling schedule after ascertaining the likely requirements of established customers. CR at V-4, PR at V-2-V-3.

²⁸ Transcript of Commission Hearing (July 15, 1999) (“Hearing Tr.”) at 50; Tables C-8-C-9, CR at C-17-C-20, PR at C-3 (showing that average unit values of domestic shipments of medium-high carbon steel wire rod *** those for high carbon steel wire rod during the period examined).

²⁹ CR at I-19 & n.34, PR at I-14 n.34. Free-machining carbon steel wire rod may be of either low or medium-high carbon content. Acindar Posthearing Brief, Exhibit 1 at 12, 21.

³⁰ CR at I-19, PR at I-14; Hearing Tr. at 51-52. Machinability refers to the speed by which steel can be removed when cold forming the rod.

³¹ CR at I-20, PR at I-14-I-15; Acindar Posthearing Brief, Exhibit 1 at 18; Hearing Tr. at 51-52.

Unlike most carbon steel wire rod in the 1000 series, free-machining carbon steel wire rod is not suited to the production of wire or wire products, because it is too brittle to be drawn efficiently into wire.³² There are, however, other carbon steel wire rod products, such as some grades of cold heading quality wire rod, that are also used to make parts rather than drawn into wire.³³ Free-machining carbon steel wire rod, like other carbon steel wire rod, is generally sold directly to end users³⁴ and is made on the same equipment by the same production workers.³⁵ As with other grades and types of carbon steel wire rod, purchasers seeking the specific qualities associated with free-machining carbon steel wire rod would be unlikely to view other grades and types of carbon steel wire rod as acceptable substitutes. Moreover, although domestic producers' prices for free-machining carbon steel wire rod were consistently higher during the period of investigation than those for industrial quality steel wire rod,³⁶ carbon steel wire rod is available at a wide range of prices, with certain specialty products commanding significant premiums over industrial quality grades.³⁷

Based on the commonality in production methods, equipment and employees, the fact that other carbon steel wire rod products can be used to make parts rather than wire products, and the existence of multiple specialty wire rod products that sell at premium prices, we find no clear dividing line between free-machining carbon steel wire rod and other carbon steel wire rod. We therefore find free-machining carbon steel wire rod and other carbon steel wire rod to be a single domestic like product.

³² Hearing Tr. at 51-52.

³³ Acindar Posthearing Brief, Exhibit 1 at 18.

³⁴ CR at I-20, PR at I-14; Acindar Posthearing Brief, Exhibit 1 at 20; Hearing Tr. at 51-52.

³⁵ Among the 15 domestic producers of carbon steel wire rod, four reported producing free-machining carbon steel wire rod. In addition to the equipment used in common in the production of carbon steel wire rod and free-machining carbon steel wire rod, production of free-machining carbon steel wire rod requires additional equipment in order to meet certain environmental and safety standards applicable to products that contain lead. CR at I-19-I-20, PR at I-14; Acindar Posthearing Brief, Exhibit 1 at 19; Hearing Tr. at 52.

³⁶ CR at I-20, PR at I-15.

³⁷ Hearing Tr. at 50. These differences are not reflected in the average unit value data collected in these reviews, because our data cover broad categories of products defined by carbon content and do not single out specialty products within each carbon content range.

3. Whether the Like Product Includes Alloy Wire Rod³⁸

Alloy steel wire rod has a different chemical composition from non-alloy (carbon) steel wire rod in that it contains additional alloying elements such as manganese and silicon. These alloying elements are added during the steelmaking process to impart various characteristics to the steel, depending on its intended end use.³⁹ Alloy steel wire rod is used in cold-finishing applications such as fasteners and bearings and is rarely drawn into wire.⁴⁰ Like carbon and free-machining steel wire rod, alloy wire rod is generally produced to customer specifications and sold to end users, although those end users are generally not wire drawers.⁴¹ Carbon and alloy steel wire rod are produced using the same equipment and employees.⁴² Finally, the average unit values of domestic producers' shipments of alloy steel wire rod over the period 1997 - interim (Jan.-Mar.) 1999 were consistently higher, by a substantial margin, than those for non-free-machining carbon steel wire rod, but only modestly higher than those for free-machining carbon steel wire rod.⁴³ Accordingly, we find that there is no clear dividing line between carbon steel wire rod, free-machining carbon steel wire rod, and alloy steel wire rod and find a single domestic like product in these reviews consisting of carbon and alloy steel wire rod.

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.”⁴⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant

³⁸ Chairman Bragg does not join this subsection. Chairman Bragg notes that, in contrast to the more recent investigations of steel wire rod imports conducted by the Commission, the scope in the instant reviews excludes alloy steel wire rod. Having identified the domestic products that are “like” the subject merchandise, *i.e.*, low, medium-high, and high carbon steel wire rod, as well as free-machining carbon steel wire rod, Chairman Bragg declines to include within the definition of a single domestic like product such additional products as alloy steel wire rod, which may be “most similar in characteristics and uses” with the subject merchandise. *See Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, Invs. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 at 6 n.21 (Nov. 1997). Accordingly, Chairman Bragg defines a single domestic like product commensurate with the scope definition in these reviews.

³⁹ CR at I-20, PR at I-15. While wire rod with a lead content of less than 0.4 percent is considered free-machining carbon steel wire rod, wire rod with a lead content of 0.4 percent or greater is considered alloy wire rod. Acindar Posthearing Brief, Exhibit 1 at 11-12.

⁴⁰ Acindar Posthearing Brief, Exhibit 1 at 10, 18, 26.

⁴¹ Acindar Posthearing Brief, Exhibit 1 at 18.

⁴² CR at I-21, PR at I-15. Six out of 15 domestic producers of carbon steel wire rod also produce alloy steel wire rod. Four of those six are the same producers that also manufacture free-machining carbon steel wire rod. CR at I-20-I-21 and n.42, PR at I-15 and n.42.

⁴³ Tables C-2, C-3 and C-5, CR at C-5-C-8, C-11-C-12, PR at C-3.

⁴⁴ 19 U.S.C. § 1677(4)(A).

market, provided that adequate production-related activity is conducted in the United States.⁴⁵ Consistent with our like product determination in these reviews, we find that the domestic industry consists of domestic producers of carbon and alloy steel wire rod.⁴⁶

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON AND/OR TERMINATION OF THE SUSPENDED COUNTERVAILING DUTY INVESTIGATION OF CARBON STEEL WIRE ROD FROM ARGENTINA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁴⁷

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping order or terminate a suspended countervailing duty investigation unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁸ The Statement of Administrative Action (“SAA”) to the URAA 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 order or termination of the suspended investigation] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴⁹ Thus, the likelihood standard is prospective in nature.⁵⁰ 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.”⁵¹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{52 53}

⁴⁵ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

⁴⁶ Consistent with her like product definition, Chairman Bragg defines the domestic industry as consisting of all domestic producers of carbon steel wire rod only.

⁴⁷ Chairman Bragg dissenting. See her separate and dissenting views.

⁴⁸ 19 U.S.C. § 1675a(a).

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 19 U.S.C. § 1675a(a)(5).

⁵² SAA at 887. 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

(continued...)

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 fundamental 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.”⁵⁴ 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.^{55 56}

For the reasons stated below, we determine that revocation of the antidumping duty order on and/or termination of the suspended countervailing duty investigation of carbon steel wire rod from Argentina would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁵⁷

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.”⁵⁸ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for carbon and alloy steel wire rod.⁵⁹

⁵² (...continued)

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.” *Id.*

⁵³ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “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, he considers 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, his 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.

⁵⁴ 19 U.S.C. § 1675a(a)(1).

⁵⁵ 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.

⁵⁶ 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 findings in the antidumping duty investigation subject to this review.

⁵⁷ Chairman Bragg dissenting. *See* her separate and dissenting views.

⁵⁸ 19 U.S.C. § 1675a(a)(4).

⁵⁹ Chairman Bragg has examined conditions of competition in the context of the U.S. market for carbon steel wire rod only.

U.S. apparent consumption of carbon steel wire rod has increased by more than 60 percent since the Commission's original determination, rising from fewer than 4.7 million tons in 1983 to more than *** million tons in 1998.⁶⁰ This rise in demand, which is largely attributable to general economic growth in the United States,⁶¹ has been accompanied by extensive capital investments by U.S. producers. In recent years, the domestic industry has developed two greenfield sites and modernized many older mills. Moreover, in response to customer demands for improved performance, standards of product quality have become higher across the entire range of wire rod products, creating an additional impetus for domestic producers to invest in modernized equipment and facilities.⁶² These additions and improvements to domestic producers' capacity have added about one million tons of supply to the U.S. market.⁶³

The years since 1983 have also been marked by significant changes in the composition of the domestic carbon steel wire rod industry. Since that time, minimills have markedly improved their production capabilities and efficiencies, expanding their product mix to include higher value added products, such as high-carbon wire rod and cold-heading quality wire rod. Thus, there has been a gradual trend towards minimills and away from integrated producers in the market, rendering the distinction between rimmed and cast wire rod obsolete.⁶⁴

Despite these improvements and additions to capacity, however, and in the face of rising demand, the domestic industry remains unable to fully supply the market and the United States remains a net importer of carbon steel wire rod.⁶⁵ The share of U.S. apparent consumption of carbon steel wire rod held by imports rose by about *** percentage points from 21.4 percent in 1982 to *** percent in 1998.⁶⁶ In 1998, nonsubject imports from about 30 countries were sold in the U.S. market.⁶⁷

As a result of developments in wire rod production technology since the original investigation, there is now little difference between the wire rod rolling mills in the United States, Argentina, and third countries. While individual producers may concentrate on different products and may produce coils of differing weight, U.S. purchasers generally can choose among multiple domestic and foreign sources that are likely to be technically able to meet their particular specifications.⁶⁸ Thus, although purchasers generally rank quality as the single most important determinant of a sale, it is usually not difficult for them to find several suppliers that can meet their quality requirements.⁶⁹ Nevertheless, purchasers have reported

⁶⁰ Table I-1, CR at I-3, PR at I-3. In making this comparison, we rely on data for carbon steel wire rod alone, because there is no data on alloy steel wire rod from the original investigation. We note that domestic apparent consumption declined slightly between 1997 and 1998.

⁶¹ CR at II-9, PR at II-5.

⁶² CR at I-15, PR at I-12.

⁶³ CR at II-10, PR at II-6.

⁶⁴ Compare CR at I-14, PR at I-11, with Original Determination at 4.

⁶⁵ Compare Table III-A-2, CR at III-A-3, PR at III-2, with Table I-3, CR at I-25, PR at I-18; Acindar Prehearing Brief at 10-11.

⁶⁶ Table I-1, CR at I-3, PR at I-3. In making this comparison, we rely on data for carbon steel wire rod alone, because there is no data on alloy steel wire rod from the original investigation.

⁶⁷ CR at II-1-II-2, PR at II-1.

⁶⁸ CR at I-15, PR at I-11-I-12.

⁶⁹ CR at II-13, PR at II-7-II-8.

that certain specialized grades or types of carbon steel wire rod are only available from one or a few producers worldwide.⁷⁰

Within the constraints of quality requirements, price is an important factor in determining which producer receives a sale.⁷¹ This is particularly true with respect to the most common grades and sizes of industrial quality wire rod.⁷² Purchasers, however, tend to consider price as part of a consideration of the total cost of importing, inventorying and using the product, which may include consideration of supplier reliability, lead time, minimum order size, level of breakage, and other factors. Thus, for example, purchasers report maintaining multiple qualified suppliers in order to minimize the impact of supply shortages that have plagued the domestic industry in the 1990s.⁷³ Similarly, purchasers also place a value on the flexibility to change or cancel orders up until the time of rolling (or shipment) and the smaller minimum order sizes that are offered by domestic (and Canadian) but not Argentine or other foreign producers.⁷⁴

We have also considered captive consumption as a condition of competition in our analysis of whether the industry is likely to be materially injured by subject imports if the antidumping duty order is revoked and/or the suspended countervailing duty investigation is terminated.⁷⁵ The domestic industry reported that in 1998 approximately 23 percent of its production was for internal consumption/company transfers, with the remaining 77 percent sold in the merchant market.⁷⁶ This represents a modest decline in the extent of internal consumption/company transfers since the original investigation, in which the Commission found that internal consumption/company transfers declined between 1981 and 1983, but still accounted for 27 percent of domestic production in 1983.⁷⁷ In these reviews, we see no evidence that the degree of captive consumption in the domestic carbon and alloy steel wire rod industry⁷⁸ is sufficiently high to have shielded the industry from import competition to any noticeable extent.⁷⁹

⁷⁰ CR at II-15, PR at II-9.

⁷¹ Chairman Bragg does not join in this paragraph. Chairman Bragg finds that within grades and types of carbon steel wire rod, merchandise of comparable quality competes largely on the basis of price.

⁷² CR at II-14, PR at II-8; Domestic Producers' Prehearing Brief at 3.

⁷³ CR at II-14-II-19, PR at II-8-II-11.

⁷⁴ CR at V-4-V-5, PR at V-2-V-3; Domestic Producers' Prehearing Brief at 3-4.

⁷⁵ See generally Melamine from Japan, Inv. No. AA1921-162 (Review), USITC Pub. 3209 at 8-9 (July 1999) and Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 at 7 n.26 (May 1999), in which we stated that the captive production provision is not applicable to five-year review investigations.

⁷⁶ CR at I-21, PR at I-17.

⁷⁷ Original Report at A-31.

⁷⁸ We take no position on whether transfers to a related company constitute internal transfers for the purpose of the captive production provision. While we are not applying the captive production provision in these reviews, we note that our conclusions would not differ even if we were to focus primarily on the merchant market for carbon steel wire rod.

⁷⁹ Chairman Bragg does not join this sentence. Chairman Bragg concurs in finding that the captive production provision is not applicable to five-year review investigations. Chairman Bragg further finds that it is within the Commission's discretion to consider captive production as a condition of competition in appropriate circumstances. Chairman Bragg does so in these reviews.

Based on the record evidence, we find that these conditions of competition in the U.S. market for carbon and alloy steel wire rod are not likely to change significantly in the reasonably foreseeable future.⁸⁰ Accordingly, we find that current conditions in the U.S. market for carbon and alloy⁸¹ steel wire rod provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty order and/or termination of the suspended countervailing duty investigation within the reasonably foreseeable future.⁸²

C. Likely Volume of Subject Imports⁸³

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked or the suspended investigation is terminated, 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.⁸⁴ 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.⁸⁵

In the original determination, the Commission found that imports from Argentina increased from 21,167 tons in 1981 to 68,335 tons in 1983 and were 61,990 tons in interim (Jan.-June) 1984 compared with 30,378 tons in interim 1983. The Commission further found that the share of U.S. open-market consumption held by imports from Argentina rose from 0.6 percent in 1981 to 1.8 percent in 1983 and 2.9 percent in interim 1984.⁸⁶ The Commission found this increase in imports to be significant, both in absolute terms and relative to U.S. open-market consumption.⁸⁷

After imposition of the antidumping duty order in 1984, subject imports from Argentina fell to zero in 1985 and have never exceeded 10,856 short tons annually since that time. Subject imports rose from 2,621 short tons in 1997 to 3,556 short tons in 1998, and were 237 short tons in interim (Jan.-Mar.) 1999,

⁸⁰ Chairman Bragg has examined conditions of competition in the context of the U.S. market for carbon steel wire rod only.

⁸¹ Chairman Bragg has examined conditions of competition in the context of the U.S. market for carbon steel wire rod only.

⁸² We recognize that presidential action in Certain Steel Wire Rod, Inv. No. TA-201-69, could change conditions of competition in this market. Although the parties have argued at length about the likely effects on conditions of competition of various presidential actions, we base our determinations on the record before us and decline to speculate about the likely effects on conditions of competition of presidential action in that case.

⁸³ Chairman Bragg does not join in the remainder of these views.

⁸⁴ 19 U.S.C. § 1675a(a)(2).

⁸⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁸⁶ Original Determination at 9.

⁸⁷ *Id.*

compared with 1,421 short tons in interim 1998.⁸⁸ Although Acindar testified that it has exported other wire rod products to the United States since imposition of the order, during the period examined in these reviews, subject imports consisted almost entirely of free-machining wire rod.⁸⁹ Subject imports' share of domestic apparent consumption was 0.1 percent in interim 1998 and was lower in all other periods for which data were collected in these reviews.⁹⁰ These low volumes of imports have continued despite the fact that the antidumping duty deposit rate on carbon steel wire rod from Argentina has been zero since 1991.⁹¹ For the following reasons, we find that subject imports are unlikely to significantly exceed current volumes if the order is revoked and the suspended investigation is terminated.

First, we find no likely increase in production capacity or significant existing unused production capacity in Argentina. Although there are four producers of carbon steel wire rod in Argentina, Acindar currently accounts for about 85 percent of the Argentine wire rod market and accounted for 100 percent of exports to the United States both during the original and current periods of investigation.⁹² Acindar's wire rod production capacity has declined since the original investigation from *** short tons in 1983 to *** short tons in 1998.⁹³ We find no evidence that its production capacity will increase in the foreseeable future.⁹⁴ Moreover, Acindar reported operating at between *** and *** percent capacity utilization during 1997 and 1998. Although its capacity utilization rate fell to *** percent in interim 1999, this decline is due in large part to Acindar's decision to shut down production for installation of a new coil compactor at the rolling mill.⁹⁵ Acindar reports that its capacity utilization recovered to *** percent in the second quarter of

⁸⁸ Figure I-1, CR at I-12, PR at I-9; Table IV-1, CR at IV-2, PR at IV-2. We note that these data, based on official import statistics, are somewhat different from the import data reported by ***, the only known current importer of carbon steel wire rod from Argentina. ***'s data, although showing a *** volume of imports, also show a declining trend. CR at IV-2-IV-3 and n.2, PR at IV-1 and n.2.

⁸⁹ CR at I-16, PR at I-12; Hearing Tr. at 89-90, 120.

⁹⁰ Table I-1, CR at I-3, PR at I-3.

⁹¹ CR at I-10, PR at I-8.

⁹² CR at II-5 and IV-3, PR at II-3 and IV-3; Hearing Tr. at 104. Mr. Pintabona of Acindar testified that one of the other three producers in Argentina uses equipment that produces wire rod in a coil size too small for the U.S. market, one consumes its production captively, and the third is located 1,000 miles from the nearest port that could accommodate exports to the United States. Hearing Tr. at 104.

⁹³ Table 14, Original Report at A-35; Table IV-3, CR at IV-7, PR at IV-5. Acindar produces rebar as well as wire rod on its rolling mill. We recognize that its reported production capacity represents an allocation of capacity between the two products and not the amount of wire rod Acindar could produce if the entire mill were devoted to that product.

⁹⁴ As of the date the record closed in these reviews, Acindar was in the process of purchasing a bar mill for installation either in Argentina or another South American country that was expected to become operational before the end of the year 2000. The evidence of record indicates that this mill, once installed, will produce straight bar. It could be used to produce carbon steel wire rod, but not without installation of a coil compactor, an additional expense of \$15-20 million, which Acindar indicates ***. Acindar Posthearing Brief, Exhibit 1 at 1; Domestic Producers' Posthearing Brief at Exhibit 3 (***)

⁹⁵ Hearing Tr. at 110, 134. Acindar reports that installation of the coil compactor closed the rolling mill from January 2, 1999, through February 2, 1999, and that, even after the mill was restarted, the production rate was below average for some time thereafter due to the learning curve associated with new equipment. Acindar Posthearing Brief, Exhibit 1 at 17.

1999.⁹⁶ By contrast, during the original investigation, Acindar's capacity utilization ranged from *** and *** percent, despite its higher level of exports to the United States.⁹⁷

About 70 percent of Acindar's wire rod production is currently captively consumed by nine company-owned wire rod finishing plants in the production of downstream products such as wire, nails, netting, cold drawn bars, and wire mesh.⁹⁸ By contrast, at the time of the original investigation, Acindar's captive consumption was under *** percent.⁹⁹ In addition to this high percentage of captive consumption, Acindar makes an additional *** percent of its shipments to unrelated customers in its home market. This leaves less than *** percent of total shipments that are exported to non-captive purchasers, principally existing customers in neighboring countries such as Brazil, Chile, and Uruguay.¹⁰⁰ Exports to the United States accounted for between *** and *** percent of Acindar's total shipments during the period examined.¹⁰¹

We reject the domestic producers' argument that the current allocation of Acindar's shipments is likely to shift dramatically away from captive and regional sales in the foreseeable future if the order is revoked or the suspended investigation is terminated. Although the domestic producers point to an economic downturn in Argentina in 1999 and currency problems in Brazil as signaling reduced regional demand for Acindar's products, economic forecasts of record predict modest economic growth in Argentina and Brazil in 2000.¹⁰² Thus, even if demand in Acindar's home and neighboring markets does not continue to expand at the rate that it has in recent years, the record does not support the domestic producers' contentions that current levels of captive and regional sales are unsustainable or that Acindar will need to find alternate export markets, such as the United States, for any significant quantity of production.

We further find that existing inventories of the subject merchandise are minimal and unlikely to result in increased U.S. shipments of the subject merchandise if the order is revoked and the suspended investigation is terminated. Although U.S. importers reported a *** ratio of inventories to U.S. shipments for the Argentine product as compared with nonsubject imports, the volumes held in inventory in the United States are *** in absolute terms.¹⁰³ Similarly, Acindar's inventories in Argentina are *** both relative to Acindar's shipments and relative to U.S. domestic consumption.¹⁰⁴ Acindar did build up significant inventories in the second half of 1998. These inventories, however, were built up to meet existing demand during the anticipated mill closure in the first quarter of 1999 and were significantly reduced during that

⁹⁶ CR at IV-6, PR at IV-4.

⁹⁷ Original Report at A-35, Table 14.

⁹⁸ Hearing Tr. at 105-06, 116; Acindar Posthearing Brief at 12 and Exhibit 1 at 6. Acindar's captive consumption of wire rod reached *** percent in the first half of 1999. It is in the process of bringing on line two additional downstream facilities (one each in Brazil and Chile) that will consume wire rod. Acindar Posthearing Brief, Exhibit 1 at 28.

⁹⁹ Hearing Tr. at 125-26; Acindar Posthearing Brief, Exhibit 1 at 6.

¹⁰⁰ Table IV-3, CR at IV-7, PR at IV-4; CR at IV-5, PR at IV-4; Hearing Tr. at 105.

¹⁰¹ Table IV-3, CR at IV-7, PR at IV-5.

¹⁰² Acindar Posthearing Brief, Exhibit 3 (IMF projects 3.0 percent growth in real GDP for Argentina in 2000 and 3.7 percent for Brazil).

¹⁰³ Table IV-2, CR at IV-4, PR at IV-3.

¹⁰⁴ Table IV-3, CR at IV-7, PR at IV-5.

quarter.¹⁰⁵ In any event, it is at best unclear that Acindar could sell to the U.S. market from existing inventory, given that most sales in the U.S. market are produced to customer specifications.¹⁰⁶

We find no barriers to the importation of the subject merchandise into countries other than the United States. The domestic producers argued that the Brazilian steel wire rod industry has been threatening to bring an antidumping case against Argentina. There is no evidence, however, that such a case has yet been brought. Nor does the devaluation of the Brazilian *real* constitute a barrier to importation within the meaning of the statute.

Finally, we find no potential for product shifting. As noted above, Acindar uses its rolling mill to produce both steel wire rod and rebar. At present, *** percent of Acindar's shipments of rebar are captively consumed by its ten company-owned rebar finishing plants in Argentina and neighboring countries.¹⁰⁷ Given the extent of Acindar's investments in these downstream facilities and the economic forecasts for Argentina and its neighboring markets for 2000, discussed above, we find that Acindar would not be likely to shift production from rebar to wire rod in the reasonably foreseeable future if the order is revoked or the suspended investigation is terminated.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty 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 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.¹⁰⁸

In the original determination, the Commission found that carbon steel wire rod, regardless of carbon content, is a fungible product. It found that, although quality may be a factor in some purchasers' decisions to purchase steel wire rod with a particular carbon content, once certain minimum quality requirements are satisfied, price becomes a major factor in the purchasing decision. The Commission noted that prices for carbon steel wire rod declined steadily during much of the period of investigation (1981-June 1984). Although domestic producers' prices began to show improvement in the fourth quarter of 1983, they did not regain their 1981 levels by the end of the period. The Commission found that prices of carbon steel wire rod from Argentina followed a similar declining trend and (when adjusted to reflect inland transportation costs from domestic producers to the U.S. West Coast) undersold the domestic product in most comparisons. The Commission concluded that the margins of underselling by the imports from Argentina were significant. The Commission also noted that the prices of imports from Argentina declined

¹⁰⁵ Table IV-3, CR at IV-7, PR at IV-5; Hearing Tr. at 110-11, 132; Acindar Posthearing Brief, Exhibit 1 at 3 and 17.

¹⁰⁶ CR at II-4 n.4, PR at II-3 n.4.

¹⁰⁷ Acindar Posthearing Brief, Exhibit 1 at 6.

¹⁰⁸ 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.

most sharply between the last quarter of 1982 and the first quarter of 1983, when the sharp increases in import volumes commenced, and that domestic producers had lost sales on the basis of price.¹⁰⁹

Domestic prices for industrial quality wire rod rose through 1997, peaked in the first quarter of 1998, and then declined through the first quarter of 1999. Because there were no imports of industrial quality wire rod from Argentina during this period, we were unable to obtain price comparisons. The only product for which comparisons could be obtained was product 3, a type of free-machining wire rod. These data show that the subject imports undersold the domestic like product in most comparisons, but by *** margins.¹¹⁰

We find that these data, together with other record information, suggest that the Argentine 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 if the order is revoked or the suspended investigation is terminated. First, in addition to being *** in absolute terms, the record suggests that margins of underselling by Argentine product 3 may be accounted for by longer lead times, language barriers to technical support, larger minimum order sizes, inability to cancel orders, and other factors that affect the total cost of the product to the purchaser.¹¹¹ Second, Acindar currently consumes internally virtually all of its production of low carbon, industrial quality wire rod and exports high carbon and free-machining wire rod.¹¹² Thus, there is little likelihood that imports from Argentina would take the form of “commodity” industrial grade products for which there is the most intense price competition in the U.S. market.¹¹³ Finally, as discussed above, we find that the likely volume of imports from Argentina resulting from revocation of the antidumping duty order and/or termination of the suspended countervailing duty investigation would be minimal and therefore unlikely to have a significant effect on domestic prices for carbon and alloy steel wire rod. Absent both a significant increase in subject imports and a change in the composition of those imports from specialty to commodity grades, we see no likelihood that subject imports will enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the 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

¹⁰⁹ Original Determination at 9-12.

¹¹⁰ Table V-2, CR at V-7, PR at V-5.

¹¹¹ CR at II-16 and V-4, PR at II-10 and V-3.

¹¹² Hearing Tr. at 120.

¹¹³ The domestic producers have not argued that adverse price effects to the domestic industry are likely as a result of imports of high carbon or free-machining steel wire rod from Argentina. In fact, they specifically argue that the price comparison data on free-machining wire rod are not representative of what would happen if the order were revoked and the suspended investigation were terminated. Rather, their theory depends on a significant increase in the volume of imports of low carbon, commodity grade wire rod products at dumped prices. *See* Domestic Producers’ Posthearing Brief at 10, 12-13.

efforts to develop a derivative or more advanced version of the domestic like product.¹¹⁴ 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.¹¹⁵ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order or suspension agreement at issue and whether the industry is vulnerable to material injury if the order is revoked.¹¹⁶

In its original determination, the Commission found that, despite improved performance in 1983 and interim 1984, the domestic carbon steel wire rod industry as a whole was experiencing problems, particularly in terms of financial performance, during most of the period of investigation and was continuing to exhibit signs of material injury.¹¹⁷

Given the myriad changes in the U.S. market for steel wire rod since imposition of the order and suspension agreement at issue, it is difficult to assess whether there has been any improvement in the condition of the domestic industry as a result of the order and agreement. We do find, however, that the domestic industry producing carbon and alloy steel wire rod is vulnerable to material injury if the order is revoked and the suspended investigation is terminated.¹¹⁸ We base this finding on the declines in the

¹¹⁴ 19 U.S.C. § 1675a(a)(4).

¹¹⁵ 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 or the magnitude of the net countervailable subsidy” 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 determinations, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order is revoked is 119.11 percent for Acindar and all other Argentine producers. 64 Fed. Reg. 53321 (Oct. 1, 1999). Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. § 1675a(b)(3). In its final five-year review determination, Commerce determined that the magnitude of the countervailable subsidy that is likely to prevail if the suspended countervailing duty investigation is terminated is 5.36 percent. 64 Fed. Reg. 53331 (Oct. 1, 1999).

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(6). In its final determination, Commerce found that the three Argentine programs at issue (reembolso, pre-export financing, and post-export financing) fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. 64 Fed. Reg. 53331 (Oct. 1, 1999).

¹¹⁶ 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.

¹¹⁷ Original Determination at 6-8.

¹¹⁸ Commissioner Askey notes that, although the domestic industry’s profitability indicates that they may have experienced economic difficulties in 1998, other factors, such as capital expenditures, that have resulted in substantially increased capacity and increased productivity enable the domestic industry to compete with imports

(continued...)

domestic industry's market share, production, employment, capital expenditures, and financial performance over the period examined in these reviews.¹¹⁹ In particular, we note that the industry's operating income as a percentage of net sales fell from *** percent in 1997 to negative *** percent in 1998, and was negative *** percent in interim 1999, compared with *** percent in interim 1998.¹²⁰

Nevertheless, because we have concluded that no significant adverse volume or price effects are likely to occur if the order is revoked and the suspended investigation is terminated, we likewise find no reasonable likelihood that subject imports from Argentina will have an adverse impact on the domestic industry.¹²¹ Therefore, we conclude that revocation of the antidumping duty order and/or termination of the suspended countervailing duty investigation would not be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, or likely negative effects on the domestic industry's development and production efforts within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on and termination of the suspended countervailing duty investigation of carbon steel wire rod from Argentina would not be likely to lead to continuation or recurrence of material injury to the domestic industry producing carbon and alloy steel wire rod within a reasonably foreseeable time.

¹¹⁸ (...continued)

from Argentina upon revocation of the orders. Tables I-1 and III-B-5, CR at I-3 and III-B-9, PR at I-3 and III-10. Commissioner Askey, therefore, finds that the domestic industry is not vulnerable to material injury upon revocation of the antidumping duty order or termination of the suspended countervailing duty investigation.

¹¹⁹ Table C-5, CR at C-11-C-12, PR at C-3.

¹²⁰ Table C-5, CR at C-12, PR at C-3.

¹²¹ Vice Chairman Miller and Commissioner Koplán reject the domestic producers' argument that their finding in the recent section 201 investigation that the domestic industry producing carbon steel wire rod is seriously injured requires them to presume that continuation or recurrence of material injury is likely in these reviews if the order is revoked or the suspended investigation is terminated. First, the statutory standards in section 201 investigations differ in a number of respects from the standards applicable to Title VII investigations. *See, e.g., Live Cattle from Canada and Mexico*, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 5-6 n.20 (Feb. 1999). Second, each Commission injury investigation is *sui generis*, and the Commission's obligation is to decide each case on its own unique record. *See, e.g., United States Steel Group v. United States*, 873 F. Supp. 673, 695 (Ct. Int'l Trade 1995), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996). Finally, the determination to be made in these reviews involves the likelihood of continuation or recurrence of material injury by reason of imports from Argentina alone, while the section 201 investigation involved imports from all countries.

SEPARATE AND DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

Except as otherwise noted, I join in the majority's discussion of the background, domestic like product and industry, applicable legal standard, and conditions of competition, in these reviews. However, because I find that revocation of the antidumping duty order and/or termination of the suspended countervailing duty investigation on carbon steel wire rod from Argentina would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time, I provide my separate and dissenting views below.

I. LIKELY VOLUME OF SUBJECT IMPORTS

During the original period of investigation (for the Commission's antidumping investigation), subject imports from Argentina increased from 21,167 short tons in 1981 to 68,335 short tons in 1983, or by 223 percent.¹ Non-subject imports increased from roughly 740,000 short tons in 1981 to 992,000 short tons in 1983, or by 34.2 percent.² Subject imports from Argentina accounted for 0.4 percent of U.S. market share in 1981, increasing to 1.5 percent in 1983, while non-subject imports accounted for 15.1 percent of U.S. market share in 1981, increasing to 21.3 percent in 1983.³

During the period of review and while the antidumping duty order was in place, subject imports from Argentina increased from 2,621 short tons in 1997 to 3,556 short tons in 1998, while interim data evidence a decline from 1,421 short tons in interim 1998 to 237 short tons in interim 1999.⁴ Non-subject imports increased from roughly 1.9 million short tons in 1997 to 2.0 million short tons in 1998, or by 5.4 percent, while interim data evidence an increase from roughly 522,000 short tons in interim 1998 to 533,000 short tons in interim 1999, or by 2.1 percent.⁵ Non-subject imports accounted for *** percent of U.S. market share in 1997, increasing to *** percent in 1998, while interim data show that the market share of non-subject imports increased from 25.7 percent in interim 1998 to 27.0 percent in interim 1999.⁶

Clearly, then, imports have had a longstanding presence in the U.S. market for carbon steel wire rod. In my view, however, the foregoing data do not fully indicate the likely volume of imports from Argentina in the event of revocation and/or termination, and in particular, do not fully indicate the potential for increased exports to the United States by the Argentine producer Acindar.

First, I note that most subject imports from Argentina between January 1997 and March 1999 consisted of free-machining wire rod.⁷ Yet, free-machining wire rod accounts for only a minimal share of Acindar's total carbon steel wire rod production; indeed, the record indicates that Acindar's carbon steel wire rod production and production capacity are directed almost exclusively to industrial grade products.⁸

¹ Confidential Report ("CR") and Public Report ("PR") at Table I-1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ CR and PR at IV-1.

⁸ *Cf.* CR and PR Tables E-1, E-2, E-3, and E-4; *see also* Hearing Tr. at 116, 120, 139.

I further note that Acindar's exports of subject merchandise to the United States during the original period of investigation examined by the Commission were comprised primarily of industrial grade products.⁹

Second, I note that Acindar's exports of carbon steel wire rod to markets other than the United States declined *** over the period of review,¹⁰ and that the record is mixed with regard to whether demand will grow in the reasonably foreseeable future.¹¹ Demand for the industrial grade product is tied to the health of the construction sector of the economy; in this regard, even Acindar notes that the recent economic deterioration in Brazil has had an adverse effect on Acindar's capacity utilization.¹² Acindar's argument that it was shielded from the effects of the devaluation of the Brazilian real as a result of having downstream captive consumption in Brazil¹³ ignores the fact that captive consumption cannot shield a producer from a decline in demand for the downstream article(s); in fact, many of the downstream articles produced by Acindar from carbon steel wire rod are also used in the construction industry, and thus demand for such articles is also affected by any weakness in that sector of the economy.¹⁴

Third, I note that Acindar itself has expressed its interest in serving the U.S. carbon steel wire rod market in the future.¹⁵ Although Acindar has had a zero percent deposit rate since 1991, the volume of subject imports from Argentina since that time has been minimal. Given the importance placed by Acindar on export markets for carbon steel wire rod,¹⁶ this suggests that the order and suspended countervailing duty investigation have had an ongoing disciplining effect.

The record thus reflects that Acindar has the expressed interest, the ability, and the incentive, to increase its exports of subject merchandise to the United States in the event of revocation and/or termination.

In addition, I note that Acindar's production capacity for carbon steel wire rod may very well increase significantly in the reasonably foreseeable future. The record indicates that Acindar is in the process of increasing its total production capacity by 250,000 tons through the acquisition of a new bar/rod mill.¹⁷ Evidently Acindar would need to invest in additional equipment in order to utilize this new mill for the production of the subject merchandise. However, even if this new mill is employed solely in the production of bar, it may very well afford Acindar the opportunity to increase its production of carbon steel wire rod at Acindar's existing rod mill as a result of product shifting.

Finally, I note that total apparent U.S. consumption declined from roughly *** million short tons in 1997 to *** million short tons in 1998, or by *** percent, while interim data show a slight decline from roughly 2.03 million short tons in interim 1998 to 1.97 million short tons in interim 1999, or by 2.8

⁹ See, e.g., Original Determination at 4.

¹⁰ See CR and PR at Table IV-3.

¹¹ See, e.g., Hearing Tr. at 78-79; Domestic Producers' Posthearing Brief at 8-9; Annex 1 (at 1-4); Annexes 1-A through 1-G.

¹² Hearing Tr. at 109-110.

¹³ Hearing Tr. at 123.

¹⁴ Hearing Tr. at 116, 120, 139.

¹⁵ Hearing Transcript at 130 (testimony of Mr. Pintabona).

¹⁶ As recently as 1997, *** percent of Acindar's shipments were in the form of exports. See CR and PR at Table IV-3. This is comparable to the ratio of total exports to production evidenced for Acindar in the original antidumping investigation. See Original AD Report at Table 14.

¹⁷ The domestic producers cite in this regard ***. *Domestic Producers' Posthearing Brief* at Annex 3. Indeed, Acindar itself has stated that its new bar mill will be operational in the year 2000, *Respondents' Posthearing Brief* at Annex 1.

percent.¹⁸ Thus, the potential increase in the presence of subject imports must be assessed in the context of slightly declining apparent U.S. consumption.¹⁹ Coupled with my findings that the domestic industry currently is in a vulnerable condition, and that subject imports from Argentina are likely to have a significant negative price effect in the U.S. market in the event of revocation and/or termination, I find the likely increase in subject import volume to be significant.

II. LIKELY PRICE EFFECTS OF SUBJECT IMPORTS

Quarterly pricing data collected by the Commission in these reviews indicate that subject imports from Argentina undersold the domestic like product in 7 out of 9 quarterly pricing comparisons, *i.e.* in 77.8 percent of comparisons.²⁰ The subject imports for which prices were reported were comprised solely of free-machining steel wire rod; these subject imports accounted for *** percent of U.S. shipments of subject imports in 1998.²¹

The record from the Commission's original antidumping investigation indicates that subject imports from Argentina were priced below domestic prices in 8 out of 12 comparisons, *i.e.* in 66.7 percent of comparisons.²²

Finally, I note that although U.S. price levels were relatively stable or rising during the period January 1997 through March 1998, U.S. prices began falling thereafter, and reached their lowest levels during interim 1999.²³

The record in these reviews thus indicates that, as was reflected in the Commission's original antidumping investigation, subject imports from Argentina predominantly undersell the domestic like product. As I note in the majority's discussion of conditions of competition, I find that within grades and types of wire rod, merchandise of comparable quality competes largely on the basis of price.²⁴ Viewed in the context of existing declines in U.S. price levels for carbon steel wire rod, as well as the current vulnerable condition of the domestic industry (discussed below), I find that likely increases in the volume of subject imports will likely have a significant depressing or suppressing effect on U.S. prices in the event of revocation and/or termination, within a reasonably foreseeable time.

III. LIKELY IMPACT OF SUBJECT IMPORTS

The likely impact of subject imports in the event of revocation and/or termination must be viewed in the context of the current vulnerable condition of the domestic industry. Specifically, I note that between 1997 and 1998, U.S. shipments by the domestic industry declined *** percent; net sales value on trade sales declined *** percent; gross profits declined more than *** percent; operating income declined more than *** percent, with the domestic industry posting an aggregate *** of over *** in 1998; the number of firms reporting operating losses increased from *** out of *** in 1997 to *** out of *** in 1998; the

¹⁸ CR and PR at Table I-1.

¹⁹ The record contains mixed evidence regarding the likely trend in apparent U.S. consumption within the reasonably foreseeable future. *See* CR at II-9 to II-11 and PR at II-5 to II-6.

²⁰ CR at V-9 and PR at V-5.

²¹ CR at V-6 and PR at V-4.

²² *See* Original AD Report at Table 22.

²³ CR at V-6 and PR at V-4.

²⁴ *See* CR at II-15 to II-18 and PR at II-9 to II-10.

operating margin of the domestic industry declined from *** percent in 1997 to *** percent in 1998; capital expenditures declined *** percent; total production declined *** percent; capacity utilization declined from *** percent in 1997 to *** percent in 1998; the number of production and related workers declined *** percent; productivity declined *** percent; and U.S. market share held by the domestic industry declined from *** percent in 1997 to *** percent in 1998.²⁵

A comparison of interim data shows that between interim 1998 and interim 1999, U.S. shipments by the domestic industry declined *** percent; net sales value on trade sales declined *** percent; gross profits declined more than *** percent; operating income declined almost *** percent, with the domestic industry posting an aggregate *** of over *** in interim 1999; the number of firms reporting operating losses increased from *** out of *** in interim 1998 to *** out of *** in interim 1999; the operating margin of the domestic industry declined from *** percent in interim 1998 to *** percent in interim 1999; capital expenditures declined *** percent; total production declined *** percent; capacity utilization declined from *** percent in interim 1998 to *** percent in interim 1999; the number of production and related workers declined *** percent; and U.S. market share held by the domestic industry declined from *** percent in interim 1998 to *** percent in interim 1999.²⁶

Thus, virtually every measure of the domestic industry's condition and performance depicts a dramatic deterioration in the condition of the domestic carbon steel wire rod industry between 1997 and 1998 and between interim 1998 and interim 1999. Based upon the foregoing, I find that the domestic industry currently is in a vulnerable condition.²⁷

In light of the current vulnerable condition of the domestic industry, I find that in the event of revocation and/or termination the likely increase in subject import volumes, at prices that are likely to have a significant depressing or suppressing effect on U.S. prices, will likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. Any such reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the 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 revocation and/or termination would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

IV. CONCLUSION

For the foregoing reasons, I determine that revocation of the antidumping duty order and/or termination of the suspended countervailing duty investigation on carbon steel wire rod from Argentina would be likely to lead to continuation or recurrence of material injury to the domestic carbon steel wire rod industry within a reasonably foreseeable time. I therefore dissent from the majority's negative determinations in these reviews.

²⁵ See CR at Tables C-1, III-B-1, and III-B-2 and PR at Tables C-1, III-5, and III-6.

²⁶ See CR at Tables C-1, III-B-1, and III-B-2 and PR at Tables C-1, III-5, and III-6.

²⁷ Indeed, my finding of vulnerability in these reviews is consistent with my finding in the Commission's recent 201 investigation of *Certain Steel Wire Rod* that the domestic industry currently is in a precarious financial condition. Certain Steel Wire Rod, USITC Pub. 3207 (July 1999) at I-25.