

UNITED STATES INTERNATIONAL TRADE COMMISSION

CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM
BRAZIL, CANADA, EGYPT, GERMANY, INDONESIA, MEXICO, MOLDOVA,
SOUTH AFRICA, TRINIDAD AND TOBAGO, TURKEY, UKRAINE, AND VENEZUELA
Investigations Nos. 701-TA- 417-421 and 731-TA-953-963 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3456, October 2001)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey of carbon and certain alloy steel wire rod² that are alleged to be subsidized by the Governments of Brazil, Canada, Germany, Trinidad and Tobago, and Turkey. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines,³ pursuant to section 771(24)(A) of the Act (19 U.S.C. § 1677(24)(A)), that imports of carbon and certain alloy steel wire rod from Egypt, South Africa, and Venezuela that are alleged to be sold in the United States at LTFV are negligible, and its investigations with regard to those countries are thereby terminated pursuant to section 733(a) of the Act.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary

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

² The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.0 mm or more, but less than 19.0 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States (HTS)* definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in the scope. The subject merchandise is provided for in *HTS* subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60.

³ Commissioner Lynn M. Bragg, however, further finds that subject imports of wire rod from Egypt, South Africa, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with respect to such imports.

determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On August 31, 2001, a petition was filed with the Commission and Commerce by counsel on behalf of Co-Steel Raritan, Inc., Perth Amboy, NJ; GS Industries, Inc., Charlotte, NC; Keystone Consolidated Industries, Inc., Dallas TX; and North Star Steel Texas, Inc., Edina, MN, alleging that an industry in the United States is materially injured by reason of subsidized imports of carbon and certain alloy steel wire rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey and LTFV imports of carbon and certain alloy steel wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. Accordingly, effective August 31, 2001, the Commission instituted investigations Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 10, 2001 (66 FR 47036). The conference was held in Washington, DC, on September 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of carbon and certain alloy wire rod (“wire rod”) from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey that are allegedly subsidized and by reason of imports of wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine that are allegedly sold in the United States at less than fair value (“LTFV”).

We also find that imports of wire rod from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at LTFV are negligible.¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁶

¹ Commissioner Lynn M. Bragg finds that imports from Egypt, South Africa, and Venezuela will imminently exceed the statutory negligibility threshold. She further finds that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from Egypt, South Africa, and Venezuela allegedly sold at LTFV.

² 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353 (Ct. Int’l Tr. 1996).

³ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

[C]ertain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.0 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulphur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

⁷ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0090, 7227.90.6051 and 7227.90.6058 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.^{11 12}

Wire rod is an intermediate industrial product used in a wide variety of other intermediate products and end-use products.¹³ There is a broad range of wire rod, from industrial or standard quality wire rod used to make nails and coat hangers, to specialized high-quality wire rod products used in piano wire, tire cord, and tire bead.¹⁴

C. Domestic Like Product Issues

Petitioners argue that there is a single domestic like product, certain wire rod, coextensive with Commerce's scope.¹⁵ Respondent Michelin North America, Inc. ("Michelin") argues that tire cord wire rod should be a separate domestic like product from other wire rod.¹⁶

Tire cord wire rod is a specialized high-carbon type of wire rod used to manufacture high-strength steel wire cord for tread reinforcement in steel-belted radial tires.¹⁷ Tire cord may be either regular-tensile (AISI 1070) or high-tensile (AISI 1080 or 1090). Tire cord has restrictive requirements for cleanliness and surface imperfections.¹⁸ Other types of high-quality wire rod, however, also have

¹¹ 66 Fed. Reg. 49931, 49931-49932 (Oct. 1, 2001) (initiation of countervailing duty investigations). 66 Fed. Reg. 50164 (Oct. 2, 2001) (initiation of antidumping duty investigations).

¹² On October 9, 2001, Petitioners Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, "Petitioners"), notified the Commission that they were requesting Commerce to exclude from the scope of these investigations certain grade 1080 tire cord and tire bead wire rod. However, Commerce has not acted on the request, and we must accept Commerce's scope as it presently stands for purposes of these preliminary investigations. See, generally, Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (1998), aff'd 865 F. 2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919, 109 S.Ct. 3244, 106 L.Ed.2d 590 (1989).

¹³ Confidential Staff Report ("CR") at II-1; Public Report ("PR") at II-1.

¹⁴ CR at II-9; PR at II-9.

¹⁵ Petitioners' Postconference Brief at 1-4.

¹⁶ Michelin Postconference Brief at 10. Goodyear also maintained at the preliminary conference that tire cord wire rod should be a separate domestic like product. Preliminary Conference Transcript (September 21, 2001) ("Tr.") at 128.

¹⁷ Michelin Postconference Brief at 5-6.

¹⁸ CR/PR at Table I-1.

specialized uses and stringent quality requirements. For example, music spring wire rod also has restrictive requirements for chemistry, cleanliness, and surface imperfections, and the springs it is made into are subject to high stress. Cold-heading and cold-finishing wire rod both require good surface quality. Cold-heading wire rod also requires internal soundness. Welding quality wire rod has restrictive requirements for uniform chemistry.¹⁹ As noted above, there is a broad range of wire rod products, ranging from industrial quality wire rod to specialized high-quality wire rod products.²⁰

Tire cord wire rod and other wire rod have similar channels of distribution, in that tire cord wire rod and most domestic and subject imported wire rod are sold directly to end users, and not through distributors.²¹ Michelin argues that the production of tire cord wire rod requires a technical production process beginning with billets produced from raw iron ore, not with steel scrap.²² The record reflects that this is also true of the cold-heading wire rod production process, another high-quality type of wire rod.²³ Petitioners maintain that the equipment necessary for production of all grades and qualities of wire rod is the same, from grade 1006 (very low grade, low carbon) all the way up through 1080 (tire cord).²⁴ Customers (tire manufacturers) view tire cord wire rod as a separate product from other wire rod.²⁵ Michelin maintains that tire cord wire rod commands a price premium, while Petitioners maintain that there is a continuum of prices for steel wire rod products and that pricing trends for tire cord wire rod follow those of other wire rod products.²⁶

We find a single domestic like product consisting of all certain wire rod corresponding to Commerce's scope in these investigations. The record reflects a continuum of wire rod products without clear dividing lines, including no clear dividing line between tire cord wire rod and other high quality specialized wire rod products. Under these circumstances, the Commission does not treat each item of merchandise to be a separate domestic like product that is only "like" its counterpart in the scope, but rather considers the continuum itself to constitute the domestic like product.^{27 28}

D. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product . . ."²⁹ In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the

¹⁹ CR at Table I-1.

²⁰ CR at Table I-1.

²¹ Michelin Postconference Brief at 14. CR at I-7; PR at I-6.

²² Michelin Postconference Brief at 12.

²³ Tr. at 117.

²⁴ Tr. at 51. See Michelin Postconference Brief at 11 for discussion of tire cord wire rod grades. Ductility, hardness, and tensile strength of the steel are positively correlated with carbon content. CR/PR at I-4.

²⁵ Michelin Postconference Brief at 12.

²⁶ Petitioners' Postconference Brief at 2, n.4 & 4.

²⁷ Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Preliminary), USITC Pub. 3075 (Nov. 1997), at 7.

²⁸ Commissioners Hillman and Devaney intend to gather additional information regarding differences between tire cord wire rod and other types of wire rod in any final phase of these investigations.

²⁹ 19 U.S.C. § 1677(4)(A).

domestic merchant market.³⁰ Based on our finding that the domestic like product consists of all wire rod included within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all domestic producers of wire rod.³¹

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.³² The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise, may not be considered negligible if there are several countries subject to investigation that account for less than three percent, and if the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.³³

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.³⁴ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.³⁵

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.³⁶

³⁰ See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

³¹ We have considered several related party issues in these investigations pursuant to 19 U.S.C. § 1677 (4)(B). *** imported subject merchandise during the period of investigation, and are thus related parties. *** imported only in *** and *** imported only in ***. Their ratio of imports to domestic production in 2000 were *** and ***. Calculated from CR/PR at Tables III-1 and IV-3. The interests of both ***. Therefore, we do not find that appropriate circumstances exist to exclude *** from the domestic industry.

*** purchased relatively small amounts of subject merchandise during the period of investigation that did not constitute a significant proportion of any importer's sales. We do not find these purchases large enough with respect to any importer to consider *** related parties.

Accordingly, we do not exclude any domestic producers as related parties for purposes of this preliminary phase of these investigations.

³² 19 U.S.C. § 1677(24)(A)(I)(I).

³³ 19 U.S.C. § 1677(24)(A)(ii).

³⁴ 19 U.S.C. § 1677(24)(A)(iv).

³⁵ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

³⁶ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

To evaluate negligibility, we considered official Commerce import statistics for the period August 2000 through July 2001.³⁷ Negligibility is an issue for three of the 12 countries with respect to the antidumping duty investigations.^{38 39} These subject countries are: Egypt, with a share of total imports of 1.4 percent; South Africa, 2.6 percent; and Venezuela, 2.1 percent.⁴⁰ Each of these countries is below the negligibility threshold of three percent of total imports, and the combined import share of these three countries, 6.1 percent, is below the aggregated negligibility level of seven percent prescribed by statute.

³⁷ CR/PR at Table IV-2. Petitioners argue that the Commission should examine imports from the July 2000-June 2001 period, because that is the time period in which Petitioners examined import levels in preparing the petition. However, the Commission has interpreted the statutory provision regarding the time period that the Commission should examine for negligibility purposes to end with the last full month prior to the month in which the petition is filed, if those data are available. Large Newspaper Printing Presses and Components Thereof from Germany and Japan, Inv. Nos. 731-TA-736-737 (Final), USITC Pub. 2988 (Aug. 1996) at 23, n.157 (“Moreover, since the statute indicates that the period to be used is the twelve-month period preceding the filing of the petition, it is reasonable to conclude that the language of the statute suggests that the 12 month period should end with the last full month prior to the month in which the petition is filed.”) See also Steel Authority of India, Ltd. v. United States, 146 F. Supp. 2d 900, 909 (Ct. Int’l Tr. 2001) (“Thus, the statute precisely specifies the applicable time period from which the agency is to collect data for negligibility purposes [the 12-month period preceding the filing of the petition or the self-initiation of an investigation].”) Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. Nos. 701-TA-404-408 (Preliminary) and 731-TA-898-908 (Preliminary), USITC Pub. 3381 (Jan. 2001) at 7, n.38 (“The data we have used, however, are the most recent and accurate data available for a 12-month period preceding the filing of the petition.”)

³⁸ Negligibility is not an issue in the countervailing duty investigations. In the case of countervailing duty investigations involving developing countries, the statute further provides that the negligibility limits are four percent and nine percent, rather than three percent and seven percent. 19 U.S.C. § 1677(24)(B). The statute defines “developing country” as any country so designated by the U.S. Trade Representative. 19 U.S.C. § 1677(36)(A). The subject countries with allegedly subsidized imports are Brazil, Canada, Germany, Trinidad and Tobago, and Turkey. The import market shares of all of these subject countries exceed the applicable negligibility level. The import market shares for Canada, Germany, and Turkey exceed three percent, and the import market shares for Brazil and Trinidad and Tobago, designated by the U.S. Trade Representative as developing countries, exceed four percent. 63 Fed. Reg. at 29948 (June 2, 1998). CR/PR at Table IV-2.

³⁹ German Respondents Brandenburger Electrostaahlwerke GmbH, Ispat Hamburger Staahlwerke GmbH, Ispat Walzdraht Hochfeld GmbH, Saarlstaahl AG, and Saarlstaahl Inc. (collectively “German Respondents”) maintain that we should exclude imports from certain German producers from our negligibility analysis in the German countervailable subsidy investigation, based on the fact that Commerce found in the 1997 wire rod countervailable duty investigations that these companies had not received more than de minimis subsidies, and the fact that Petitioners raised no new subsidy allegations regarding these companies in Commerce’s initiation of its countervailable subsidy investigations. German Respondents’ Postconference Brief at 2, 4-5. Commerce did not indicate in its notice of initiation of the subsidy investigation of imports from Germany in this case that any exports were to be deemed “non-subsidized.” 66 Fed. Reg. 49931 et. seq. (Oct. 1, 2001). Accordingly, for purposes of the preliminary phase of these investigations, we consider all subject imports from Germany to be “allegedly subsidized” and therefore “subject imports” until such time as Commerce informs us to the contrary. Commerce, and not the Commission, determines whether or not goods are subsidized. See, generally, e.g., Algoma Steel Corp. v. United States, 865 F. 2d 240, 242 (Fed. Cir. 1989). Therefore, for purposes of the preliminary phase of these investigations, the volumes of allegedly dumped subject imports from Germany and allegedly subsidized subject imports from Germany are the same. Allegedly subsidized imports from Germany, like allegedly dumped imports from Germany, are above the three percent statutory threshold and are thus not negligible. CR/PR at Table IV-2.

⁴⁰ CR/PR at Table IV-2.

We therefore find that subject imports from Egypt, South Africa, and Venezuela are negligible for purposes of our present material injury analysis.^{41 42}

We also do not find, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from Egypt, South Africa, and Venezuela will imminently account for more than three percent individually, or seven percent in the aggregate, of the total volume of wire rod imports.⁴³

Egypt. The share of subject imports accounted for by Egyptian wire rod for the period August 2000 - July 2001 was 1.4 percent. Egyptian subject imports' share of total imports was 2.0 percent in 1998, 0.8 percent in 1999, and 1.2 percent in 2000; the share was 0.9 percent in interim 2001.⁴⁴ Capacity utilization for the Egyptian industry was at *** percent in 2000, and is *** in both 2001 and 2002.⁴⁵

⁴¹ Petitioners maintain that their recent request that Commerce modify the present scope to exclude certain 1080 grade tire cord wire rod and 1080 grade tire bead wire rod, based on end-use, if adopted by Commerce, will render imports from Germany negligible, and aggregated subject imports that would otherwise be negligible would exceed the statutory aggregate negligibility threshold of seven percent, rendering imports from all subject countries non-negligible. Petitioners further argue that under American Lamb Co. v. United States, 785 F. 2d 994 (Fed. Cir. 1986), the Commission should not find any subject countries negligible in these preliminary investigations. Petitioners' Letter dated October 9, 2001 at 2-5.

Petitioners acknowledge that "the only record evidence" regarding the effect of this proposed scope exclusion is "Petitioners' good faith estimate, based on their market knowledge and discussion with industry participants." Petitioners' October 9, 2001 Letter at 5. Further, Petitioners state in the request to Commerce, attached to their October 9, 2001 letter, that they are "aware of the Department's (Commerce) general reluctance to use end-use to define scope coverage" Petitioners' October 9, 2001 Letter, Attachment at 4.

We find that it is speculative that Commerce will amend the scope as Petitioners wish. Moreover, it is speculative that amending the scope will likely result in finding that no country's subject imports are negligible. We make our negligibility determinations based on the scope and factual record before us, not speculation. We conclude that Petitioners' request to Commerce and their related assertions are not sufficient to conclude that contrary evidence to that already gathered on these issues, which soundly supports our negligibility determinations, would arise in any final phase of these investigations.

⁴² Commissioner Bragg does not join the preceding footnote.

⁴³ Commissioner Bragg finds that imports from Egypt, South Africa, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with regard to such imports. Import volumes from South Africa show sharply increasing trends over the period reviewed. CR/PR at Table VII-8. In addition, imports from Venezuela are projected to increase by at least *** short tons in 2001. CR/PR at Table VII-12. Commissioner Bragg further notes that only one South African subject producer, which did not export subject merchandise to the United States during the period reviewed and represented *** percent of South African wire rod production in 2000, responded to the Commission's questionnaires. CR at VII-5, PR at VII-4. There is no company-specific information on the record with regard to any other South African producer. Accordingly, Commissioner Bragg finds that imports from Egypt, South Africa, and Venezuela are not negligible, and are therefore amenable to cumulation.

⁴⁴ CR/PR at Table IV-1.

⁴⁵ CR/PR at Table VII-3. Data on the industry in Egypt are based on data submitted by Egyptian Respondent Alexandria National Iron & Steel ("Egyptian Respondent"). Exports by this firm in 2000 accounted for *** percent of U.S. imports of wire rod from Egypt in 2000, according to official Commerce statistics. Id. at n.1. Most of its exports are to non-U.S. markets. It projects U.S. export shipments of only *** tons in 2001 and 2002. CR/PR at Table VII-3. Egyptian Respondent states that it has ***. CR/PR at VII-3. The Egyptian Respondent had *** exports to the United States in interim 2000, and exports of *** short tons to the United States in interim 2001. CR/PR at Table VII-3.

Inventories in Egypt ***.⁴⁶ Given Egypt's very small share of total imports, *** level of capacity utilization, and ***, we conclude that subject imports from Egypt will not imminently exceed three percent of total imports.

South Africa. During August 2000-July 2001, subject imports from South Africa accounted for 2.6 percent of total imports. South African subject imports' share of total imports was 1.8 percent in 1998, 2.0 percent in 1999, and 2.4 percent in 2000; the share was 2.6 percent in interim 2001.⁴⁷ ⁴⁸ Although imports from South Africa have increased over the period of investigation, and were higher in interim 2001 as compared to interim 2000, they have remained well under the three percent threshold throughout the period of investigation. The record does not suggest that they will exceed that threshold in the imminent future.⁴⁹ Given South Africa's import share for the period August 2000-July 2001, 2.6 percent, and that its import share has not exceeded three percent at any time during the period of investigation, we find that South Africa's share of total imports will not imminently exceed three percent.

Venezuela. Venezuelan subject imports' share of total imports was 2.1 percent for the period August 2000 - July 2001. Venezuelan subject imports' share of total imports was 1.6 percent in 1998, 4.6 percent in 1999, and 2.7 percent in 2000; the share was 1.5 percent in interim 2001.⁵⁰ The volume of subject imports from Venezuela has decreased since its peak in 1999, and the volume of subject imports from Venezuela was significantly lower in interim 2001 (20,724 short tons) than in interim 2000 (48,440 short tons).⁵¹ Venezuelan production capacity was *** in 2000, and is projected to *** in 2001 and 2002.⁵² Inventories in Venezuela fell from 1998 to 2000, although they were higher in interim 2001 compared with interim 2000.⁵³ Given Venezuela's import share, decreasing volumes, *** capacity levels and *** inventories, we find that Venezuela's share of total imports will not imminently exceed three percent.⁵⁴

Aggregate. Given that we have found there is little potential for significant growth in the share of imports by any of the three subject countries, we conclude that the aggregate share of these three countries,

⁴⁶ CR/PR at Table VII-3.

⁴⁷ CR/PR at Tables IV-1-IV-2.

⁴⁸ The Commission only received information from one out of three producers of wire rod in South Africa, Scaw Metals. Scaw Metals reported that it accounted for *** percent of South African production of wire rod, and did not export to the United States during the period examined. CR at VII-5; PR at VII-4. Scaw Metals is not operating at a high level of capacity utilization, and its production is projected to increase *** in 2001 and 2002. However, it is projecting increased shipments to non-U.S. markets, and does not project that it will begin exporting to the United States. CR/PR at Table VII-8.

⁴⁹ CR/PR at Table IV-1.

⁵⁰ CR/PR at Table IV-1-IV-2.

⁵¹ CR/PR at Table IV-1.

⁵² CR/PR at Table VII-12.

⁵³ CR/PR at Table VII-12.

⁵⁴ The Commission has received data from Venezuelan producer and respondent Sidor ("Venezuelan Respondent" or "Sidor"), which accounted for *** percent of 2000 imports from Venezuela to the United States, according to official Commerce statistics. CR at VII-7; PR at VII-5 and CR/PR at Table VII-12, n.1. Sidor reported ***. CR at VII-7; PR at VII-5. Sidor reported projected increased exports to the United States in 2001 and 2002 (*** short tons in 2001, and *** short tons in 2002). CR at Table VII-12. Actual 2001 interim import data, however, show significantly lower levels in 2001 than the comparable period in 2000. In 2000, there were 84,957 short tons of subject imports from Venezuela, accounting for a 2.7 percent share of total imports. CR/PR at Table IV-1.

which was 6.1 percent for the period August 2000-July 2001, will not imminently exceed seven percent. Accordingly, pursuant to section 733(a)(1),⁵⁵ the antidumping duty investigations for Egypt, South Africa, and Venezuela are terminated by operation of law.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁵⁶ In assessing whether subject imports compete with each other and with the domestic like product,⁵⁷ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of 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 the subject imports are simultaneously present in the market.⁵⁸

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁵⁹ Only a “reasonable overlap” of competition is required.⁶⁰

⁵⁵ 19 U.S.C. § 1673b(a)(1).

⁵⁶ 19 U.S.C. § 1677(7)(G)(I).

⁵⁷ The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” Citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d 859 F.2d 915 (Fed. Cir. 1988).

⁵⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁶⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

Two of the four statutory exceptions to the general cumulation rule apply to these investigations.⁶¹ The first concerns countries with respect to which the investigation has been terminated.⁶² The antidumping duty investigations of Egypt, South Africa, and Venezuela are terminated by operation of law as a result of the Commission's negligibility finding with regard to allegedly LTFV subject imports from these three countries.⁶³ Therefore, imports of wire rod from these countries are not cumulated with any of the remaining subject countries.⁶⁴

The second statutory provision barring cumulation that applies in these investigations relates to Trinidad and Tobago. Trinidad and Tobago is a beneficiary country under the Caribbean Basin Economic Recovery Act ("CBERA"), and imports from Trinidad and Tobago may only be cumulated with imports from another CBERA country for purposes of determining material injury, or threat thereof, by reason of imports from the CBERA beneficiary country or countries.⁶⁵

Trinidad and Tobago is the only subject country in these investigations that is a CBERA country. Therefore, we consider whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of subject imports from Trinidad and Tobago individually. However, for purposes of determining whether the domestic industry is materially injured or threatened with material injury by reason of imports from other countries subject to investigation, imports from Trinidad and Tobago must be cumulated with other subject imports if the statutory prerequisites for cumulation are satisfied.⁶⁶

For purposes of these preliminary determinations, with respect to all remaining investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.

⁶¹ The other two exceptions concern imports from Israel and countries as to which Commerce has made preliminary negative determinations. 19 U.S.C. § 1677(7)(G)(ii)(I) & (IV).

⁶² 19 U.S.C. §1677(G)(ii)(II).

⁶³ None of these countries have pending countervailing subsidy investigations.

⁶⁴ Based upon her finding that subject imports from Egypt, South Africa, and Venezuela are not negligible for purposes of her threat analysis, and upon finding that all other cumulation criteria are satisfied, Commissioner Bragg cumulates imports from all subject countries for purposes of her threat analysis, with the exception of her separate analysis of imports from Trinidad and Tobago.

⁶⁵ 19 U.S.C. § 1677 (7)(G)(ii)(III).

⁶⁶ H.R. Conf. Rep. No. 650, 101st Cong., 2d Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 928, 1025. ("However, imports from CBI [Caribbean Basin Initiative] countries would continue to be aggregated with imports from non-CBI countries under investigation for purposes of determining whether imports from the non-CBI-countries are causing injury.")

B. Fungibility

Subject wire rod is imported within a range of product categories corresponding to different end uses. Wire rod sold in the United States is categorized according to end use. Subject imports of wire rod are generally used for the same purposes and by the same end uses, as domestic product.⁶⁷ In their questionnaires, domestic producers and importers provided the quantity of their U.S. shipments that corresponded to five different categories of certain wire rod: 1) industrial/standard quality rods; 2) high, medium-high carbon quality rods; 3) welding quality rods; 4) cold heading quality rods; and 5) all other carbon and certain alloy steel wire rod.⁶⁸

Almost half of domestic producers' U.S. shipments were in the industrial/standard quality wire rod category, and every subject country shipped subject imports in this category.⁶⁹ Shipments in this category comprised at least *** percent of domestic shipments and subject import shipments, with the exception of Moldova, Germany, and Canada. Nearly thirty percent of domestic shipments were in the high, medium-high carbon quality wire rod category, which also included *** percent of subject imports from Canada and at least *** percent of subject imports from Germany. This category included specialized high quality wire rod used to produce wire for various types of products including tire cord, prestressed concrete wire, and music wire.⁷⁰ Only Canada had an appreciable portion of its shipments (***) percent) in the welding quality wire rod category.

The record indicates significant portions of shipments in the industrial quality wire rod category for domestic product and all subject imports except for imports from Canada, Germany, and Moldova. The record indicates that the imports from these six countries (Brazil, Indonesia, Mexico, Trinidad and Tobago, Turkey, and Ukraine) and the domestic product are fungible to a significant degree, and that subject imports from these six countries are also fungible to a significant degree with each other.

The record also indicates significant portions of shipments for domestic product and subject imports from Canada and Germany of specialized high-quality wire rod. However, the record reflects more limited fungibility between subject imports from Canada and Germany and other subject imports, based on the narrower overlap in product mix within the surveyed categories. Further, the record contains little information regarding the product mix in Moldova at this time.⁷¹

⁶⁷ CR at I-4; PR at I-3 and I-5 & Table I-1.

⁶⁸ CR/PR at Appendix D. Petitioners maintain that subject imports are fungible with one another and with the domestic like product. Petitioners' Postconference Brief at 16-17. Canadian Respondents argue that imports from Canada are not fungible with other subject imports because the overwhelming majority of imports from Canada are high quality, high end products, in contrast to other subject countries' imports which are overwhelmingly industrial quality wire rod. Canadian Respondents' Postconference Brief at 4-7.

⁶⁹ Moldova reported ***. CR/PR at Appendix D.

⁷⁰ General Information, Instructions, and Definitions for Commission Questionnaires, Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary) (Sept. 2001). Approximately *** to *** percent of reported shipments from Canada and Germany, and 11 to 14 percent of reported domestic shipments, were in the cold-heading quality wire rod category. CR/PR at Appendix D.

⁷¹ We intend to gather additional information regarding fungibility in any final phase of these investigations with respect to Canada, Germany, and Moldova.

C. Geographic Overlap

U.S. wire rod producers are located throughout the United States.⁷² Four U.S. producers reported that they sell wire rod to customers in the entire United States. *** reported that it sells primarily on the West Coast. *** reported that they sell primarily in the Northeast and north central states. Importers tended to be more regional but covered large parts of the country, such as the East Coast, the West Coast, the Gulf Coast, the Great Lakes states, and the Mississippi River states.⁷³

Indonesian Respondent P.T. Ispat Indo (“Indonesian Respondent”) and Mexican Respondent SICARTSA (“Mexican Respondent”) argue that their sales are concentrated on the West Coast where there is little competition from either domestic producers or other subject imports, and therefore, imports from their respective countries should not be cumulated.⁷⁴ The Mexican Respondent acknowledges that while approximately half of subject imports from Mexico are shipped to California, they are also sold in the central United States where there are sales of other subject imports and domestic product.⁷⁵

The record indicates some overlap in geographic markets between domestic product and subject imports, and between subject imports from Mexico and Indonesia and other subject imports. Subject imports from both Mexico and Indonesia are sold in the Western United States where at least some domestic producers also compete. However, competition with other subject imports in the West appears to be limited.⁷⁶

D. Channels of Distribution

There are similar channels of distribution for the domestic like product and subject imports. The domestic like product and subject imports are overwhelmingly sold directly to the end user, with the exception of subject imports from Brazil which are sold both directly to the end user and through distributors.⁷⁷

E. Simultaneous Presence

Official Commerce import statistics indicate that the domestic like product and subject imports have been present in the U.S. market throughout the period examined.⁷⁸

⁷² CR/PR at III-1.

⁷³ CR at II-10; PR at II-6.

⁷⁴ The Indonesian and Mexican Respondents argue that domestic producers have abandoned the wire rod market in the Western United States. North Star has stopped producing wire rod at its Kingman, Arizona plant and GS Industries’ Kansas City, Missouri plant has closed. They maintain that the remaining domestic producers, Cascade and Rocky Mountain, have either switched to high-carbon wire rod, leaving the industrial carbon wire rod market to imports, or are switching to the production of alternative products. Indonesian Respondent Postconference Brief at 8. Mexican Respondent Postconference Brief at 10-12.

⁷⁵ Mexican Respondent Postconference Brief at 3, 14.

⁷⁶ We intend to gather additional information on where subject imports from each country are sold or offered for sale in the United States in any final phase of these investigations.

⁷⁷ CR at I-7; PR at I-6. ***.

⁷⁸ CR/PR at Table IV-1.

F. Conclusion

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, we note there is a generally high degree of product fungibility between the domestic like product and subject imports and between subject imports. However, there are product mix differences between some of the different subject countries. Similarly, while in general there is broad geographic overlap for sales and offers to sell the domestic product and subject imports, subject imports from each of the different subject countries are not sold in the Western United States. Nevertheless, we find that a reasonable overlap of competition exists.⁷⁹ We therefore cumulate subject imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine for purposes of our material injury analysis of all remaining subject countries, except for the determinations on Trinidad and Tobago.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV SUBJECT IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁸⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing wire rod is materially injured by reason of subject imports from Brazil, Canada, Germany, and Turkey that are allegedly subsidized, and by reason of imports of wire rod products from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, and Ukraine that are allegedly sold in the United States at less than fair value.⁸⁵ We further determine that there is a reasonable indication that the

⁷⁹ Commissioner Bragg also finds a reasonable overlap with respect to imports from Egypt, South Africa, and Venezuela.

⁸⁰ 19 U.S.C. § 1671b(a) and 1673b(a).

⁸¹ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁸² 19 U.S.C. § 1677(7)(A).

⁸³ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁵ We also cumulate imports from Trinidad and Tobago for purposes of these inquiries as to the above-listed
(continued...)

domestic industry producing wire rod is materially injured by reason of subject imports from Trinidad and Tobago that are allegedly subsidized or sold in the United States at less than fair value.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.⁸⁶

As a consequence of the Commission's section 201 investigation on wire rod in 1999, which included the same range of products covered by Commerce's scope in the instant investigations,⁸⁷ the President imposed import relief in the form of a tariff rate quota ("TRQ") on imports of steel wire rod. The President excluded certain specialty products from the TRQ including tire cord wire rod.⁸⁸ Imports of wire rod from Canada and Mexico have also been excluded from this global 201 import relief,⁸⁹ but these imports could also become subject to the TRQ or other import restrictions in the near future.⁹⁰

The TRQ is in effect for three years and one day, beginning on March 1, 2000. Each of the quota years runs from March through February. The quota trigger quantity for the first year of the program was 1.58 million short tons, which is equivalent to 1998 import levels of the product from the countries subject to the TRQ plus two percent to account for growth in demand. The quota amount is increased by an additional two percent in both the second and third years of the relief period. Over-quota duties decline over the relief period. In the first year, over-quota duties were ten percent, in the second year, 7.5 percent,

⁸⁵ (...continued)
countries.

⁸⁶ The staff report shows that approximately 13 percent of domestically produced wire rod was consumed in 2000 by U.S. wire rod manufacturers or by related redrawers in the production of downstream wire and wire rod products. CR at I-4, III-4-5 & Table III-3. None of the respondents have raised arguments with respect to the application of the captive production provision. Petitioners maintain that the captive production provision does not apply because the third criterion of the statutory provision has not been satisfied. Petitioners' Postconference Brief, Answers to Questions of Commission Staff, Question 2.

The record reflects that the third criterion of the captive production provision is not satisfied in these investigations because wire rod is used to make wire and wire products, whether internally consumed or sold to third party purchasers. CR at I-4, II-8. Petitioners' Postconference Brief, Answers to Questions of Commission Staff, Question 2. Therefore, we find the captive production provision is not applicable. 19 U.S.C. §1677(7)(C)(iv).

⁸⁷ Inv. No. TA-201-69, Certain Steel Wire Rod, USITC Pub. 3207 (July 1999) ("201 investigation") at I-9.

⁸⁸ Inv. No. TA-204-6, Certain Steel Wire Rod, (Aug. 2001) at I-1, n.3. In accordance with its statutory requirements under section 204(a) of the Trade Act of 1974, the Commission conducted a monitoring investigation in 2000 on the wire rod industry and the effectiveness of the 201 import relief. The Commission's 204 report was issued in August 2001.

⁸⁹ In the 201 investigation, the majority of those Commissioners making an affirmative determination made negative findings pursuant to section 311(a) of the NAFTA Implementation Act (19 U.S.C. § 3371(a)) with respect to imports of certain steel wire rod from Canada and Mexico, and recommended that such imports be excluded from any relief action. Commissioner Bragg dissented with respect to imports from Canada. The President excluded imports from Canada and Mexico from the relief action.

⁹⁰ The Commission recently determined that a surge in imports of certain steel wire rod from Canada and Mexico undermined the effectiveness of the global safeguard action of the President. Commission Views in Certain Steel Wire Rod, Inv. No. 312-NAFTA-1 (Aug. 2001). The President has not taken any action as a result of these Section 312 determinations.

and in the third year, 5.0 percent. These duties are in addition to the regular duties.⁹¹ The TRQ is administered such that each of the first three quarters of the quota year has an allocation equal to one-third of the annual quota. In the fourth quarter, importers can enter whatever remains of the total available quota for that quota year.⁹² Any amount of wire rod brought in that is in excess of the quarterly or annual quota is subject to the over-quota rate of duty. Subject import volumes have not declined under the TRQ. To the contrary, subject import volume has increased over the period of investigation.⁹³

Demand for wire rod, based on apparent U.S. consumption measured in quantity, increased from 1998 to 2000, but was lower in interim 2001 than in interim 2000.⁹⁴ Wire rod is an intermediate product, and its demand is tied closely to demand for the broad array of final downstream products it is used to produce, such as hangers, nails, fences, fasteners, electrical items, music wire, and tire cord.⁹⁵ There is virtually no substitute for wire rod.⁹⁶ As discussed earlier, there is a continuum of wire rod products, with a broad range of quality, end uses, and product specifications.⁹⁷ Different subject countries concentrate on different types of wire rod that range in end uses and quality.⁹⁸ Within product categories, there is a high degree of interchangeability between domestic and imported wire rod.⁹⁹ Imported wire rod is used for the same general end uses, by approximately the same end users, as the domestic product.¹⁰⁰

Wire rod is produced world-wide, using similar methods.¹⁰¹ The quality of wire rod produced is affected by the steel used to produce it. Ductility, hardness, and tensile strength of the steel are positively correlated with carbon content.¹⁰² Although some wire rod is produced from steel scrap, some high quality wire rod is made from iron ore.¹⁰³

Several domestic producers have declared bankruptcy or closed wire rod production facilities over the period of investigation.¹⁰⁴ GS Industries declared bankruptcy and closed its plant in Kansas City, Missouri in April 2001.¹⁰⁵ North Star stopped its production of wire rod at its Kingman, Arizona plant in June 2001. Northwestern Steel and Wire ended its wire rod production in May 2001. Birmingham Steel

⁹¹ CR at I-8-9; PR at I-6-7.

⁹² The TRQ may be affecting the timing of imports. We intend to gather additional information on this issue in any final phase of these investigations.

⁹³ Calculated from CR/PR at Table IV-1.

⁹⁴ CR/PR at Table IV-5. Measured in value, apparent U.S. consumption fell slightly from 1998 to 2000, and was lower in interim 2001 than in interim 2000.

⁹⁵ CR/PR at Table I-1, CR at II-8; PR at II-5.

⁹⁶ CR at II-9; PR at II-5.

⁹⁷ CR/PR at Table I-1. Certain types of wire rod, for example, tire cord wire rod, have different grades. Tire cord wire rod may be either regular-tensile (AISI 1070) or high-tensile (1080 or 1090). Michelin Postconference Brief at 11.

⁹⁸ CR at I-4 & Appendix D.

⁹⁹ CR at I-4; PR at I-3.

¹⁰⁰ CR at I-4; PR at I-4.

¹⁰¹ One source reports that over 70 countries produce wire rod. CR at I-4. Tr. at 51-52, 54-56.

¹⁰² Alloying elements can be added during the melt stage of the steelmaking process to convey various characteristics to the wire rod. CR at I-4; PR at I-3.

¹⁰³ Tr. at 54. Michelin Postconference Brief at 12.

¹⁰⁴ CR/PR at II-1.

¹⁰⁵ CR/PR at 1. AWPB Postconference Brief at 6-7.

closed its American Steel & Wire plant in Cuyohoga Heights, Ohio, in June 2001.¹⁰⁶ Combined, these closures could result in a decrease in *** of domestic capacity to produce wire rod, which is not yet reflected in our data.¹⁰⁷ There is also some evidence that the domestic industry is switching from production of lower to higher value wire rod products, and to the production of alternative products such as rebar that are either more profitable or have stronger demand.^{108 109}

Nonsubject imports in the domestic market for wire rod have been generally declining. Nonsubject imports, including imports from those countries found negligible, were less than 13 percent of consumption throughout the period of investigation, whether measured in quantity or value.¹¹⁰

B. Reasonable Indication of Material Injury By Reason of Allegedly Subsidized and/or LTFV Subject Imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Ukraine, and Turkey¹¹¹

1. Volume Effects of the Subject Imports

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹¹²

The volume of subject imports increased steadily from 1998 to 2000, and was slightly larger in interim 2001 compared to interim 2000. The volume of subject imports increased from 1.6 million short tons in 1998, to 2.0 million short tons in 1999, and further to 2.4 million short tons in 2000. The volume

¹⁰⁶ CR at II-1-2; PR at II-1-2.

¹⁰⁷ CR at III-3-4; PR at III-I and III-3. At the conference there was testimony to the effect that the closure of four wire rod production facilities would result in a reduction of 1.4-1.5 million tons of production capacity from the domestic market. Tr. at 68-69. We note that our data reflect significant unused production capacity by the domestic industry. The domestic industry had unused capacity of 1.86 million short tons in 1998, 1.64 million short tons in 1999, and 1.9 million short tons in 2000. It had unused capacity of 1.65 million short tons in interim 2001, compared to 929,268 short tons in interim 2000. CR/PR at Table C-1.

¹⁰⁸ AWPA and Caribbean Ispat purchasers maintain that domestic mills are moving from low carbon, industrial quality wire rod to higher value high-carbon and other value-added wire rod products, which are more profitable, causing supply concerns in the low carbon segment of the market. AWPA Postconference Brief at 11-12. Trinidad and Tobago Respondent Caribbean Ispat Limited (“Trinidad and Tobago Respondent”) Postconference Brief, Exhibit 9. Letter from Mid-South Wire Company dated September 25, 2001. The Mexican Respondent maintains that the domestic producers in the Western United States have shifted to the production of rebar and high carbon wire rod. Mexican Respondent Postconference Brief at 12. Canadian Respondents also argue that domestic producers have been shifting productive capacity away from wire rod, and into other products such as rebar where demand is currently stronger. Canadian Respondents’ Postconference Brief at 12-13. See also Tr. at 92-93.

¹⁰⁹ AWPA also maintains that increasing internal consumption by domestic producers is exacerbating a supply gap between domestic capacity and demand. AWPA Postconference Brief at 15-16.

¹¹⁰ Calculated from CR/PR at Table IV-5. Measured in quantity, nonsubject imports’ share of apparent U.S. consumption was 11.1 percent or lower during the period of investigation. Measured by value, it was 12.3 percent or lower during the period of investigation.

¹¹¹ As discussed earlier, this analysis includes data regarding imports from Trinidad and Tobago.

¹¹² 19 U.S.C. § 1677(7)(C)(I).

of subject imports was 1.11 million short tons in interim 2001, compared to 1.07 million short tons in interim 2000.¹¹³

The U.S. market share of subject imports rose steadily over the period of investigation, with subject imports gaining market share at the expense of domestic producers. Subject imports continued to gain market share in interim 2001, in the face of overall decreasing demand. Subject imports accounted for 20.5 percent of the total U.S. market in 1998, 24.1 percent in 1999, and 27.8 percent in 2000. Subject imports accounted for 31.9 percent of the U.S. market in interim 2001 compared to 25.6 percent in interim 2000.¹¹⁴ During that same period, the domestic producers' share of the market decreased from 68.5 percent in 1998 to 65.9 percent in 1999 and to 63.6 percent in 2000. The domestic producers' share of the U.S. market was 60.8 percent in interim 2001 compared to 67.6 percent in interim 2000.¹¹⁵

For purposes of the preliminary phase of these investigations, we therefore find the volume of subject imports, both absolutely and relative to consumption, to be significant.

2. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹⁶

As discussed earlier, the evidence gathered in these investigations indicates that there is a significant degree of substitutability between the subject merchandise and the domestic like product, within comparable product categories.¹¹⁷ The record also reflects that purchasers consider a variety of factors in making their purchasing decisions including: availability, quality, physical condition, cost of using the wire rod, and relationship with the supplier, as well as price.¹¹⁸ Most sales by domestic producers were on the spot market, with the remainder by contract. Sales of subject imports split approximately equally between spot sales and contract sales.¹¹⁹

¹¹³ Calculated from CR/PR at Table IV-1.

¹¹⁴ Calculated from CR/PR at Table IV-5.

¹¹⁵ Calculated from CR/PR at Table IV-5.

¹¹⁶ 19 U.S.C. § 1677(7)(C)(ii).

¹¹⁷ CR at I-4, II-10; PR at I-3; II-7.

¹¹⁸ Tr. at 82, 104. Michelin Postconference Brief at 14-15. Ivaco Inc., Ivaco Rolling Mills Limited Partnership and Ispat Sidbec, Inc.'s ("Canadian Respondents") Postconference Brief at 36-37.

¹¹⁹ CR at V-11; PR at V-11.

Of the 271 quarterly comparisons available in this record, subject imports undersold domestic products in 198 instances, or 73.1 percent of all comparisons.¹²⁰ Underselling margins in those quarterly comparisons ranged from *** to *** percent.¹²¹

The record also indicates that subject imports depressed prices in the U.S. market to a significant degree. U.S. prices declined over the period of investigation for products 1-5.¹²² Prices for subject imports also generally declined over the period of investigation.¹²³ U.S. prices for domestic wire rod declined even when demand was increasing from 1998-2000.¹²⁴ Although many of the lost sales allegations listed in the petition and investigated by the Commission were not corroborated,¹²⁵ on balance, the record reflects that subject imports have had significant price depressing effects on domestic prices.

We therefore find that there has been significant price underselling by subject imports of the domestic product, and that subject imports have depressed prices of domestically produced wire rod to a significant degree.

3. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹²⁶ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive

¹²⁰ Calculated from CR/PR at Table V-8.

¹²¹ CR/PR at Tables V-3-V-7.

¹²² CR/PR at Tables V-3-V-7.

¹²³ CR/PR at Tables V-3-V-7.

¹²⁴ Compare declining U.S. prices from 1998 to 2000, with apparent U.S. consumption from 1998 to 2000. CR/PR at Table IV-5. CR/PR at Figure V-13 and Tables V-3 -V-7. Therefore, we disagree with Canadian Respondents' claim that recent price declines are attributable to the recent decrease in apparent U.S. consumption. Canadian Respondents' Postconference Brief at 8.

¹²⁵ CR/PR at Table V-9.

¹²⁶ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at 885).

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹²⁷ ¹²⁸ ¹²⁹

The data show a domestic industry experiencing difficulties from 1998 to 2000, which worsened in interim 2001. Production capacity, and production grew slightly from 1998 to 2000, while capacity utilization fell slightly. Domestic production was significantly lower (by 29.1 percent) in interim 2001 as compared to interim 2000 levels, and capacity utilization also fell. Domestic capacity was 2.9 percent lower in interim 2001 as compared to interim 2000.¹³⁰ Further, approximately 1.4 to *** million short tons of domestic production capacity will close down this year, which is not yet reflected in the Commission’s questionnaire data.¹³¹ During the period examined, the number of production-related workers decreased 8.4 percent between 1998 and 2000, and was 13.8 percent lower in interim 2001 as compared to interim 2000.¹³² Hours worked by production-related workers decreased 1.9 percent between 1998 and 2000, and were 22.4 percent lower in interim 2001 compared to interim 2000.¹³³ Capital expenditures decreased by 14 percent from 1998 to 2000, and were 33.4 percent lower in interim 2001 compared to interim 2000.¹³⁴

¹²⁷ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

¹²⁸ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation of the antidumping duty investigations, Commerce stated that the estimated dumping margins were as follows for the remaining subject countries: Brazil, from 53.97 percent to 94.73 percent; Canada, from 3.72 percent to 15.91 percent; Germany from 37.79 to 99.32 percent; Indonesia, from 72.96 to 122.57 percent; Mexico, from 29.63 to 40.52 percent; Moldova, 172.89 percent; Trinidad and Tobago, from 60.12 to 87.27 percent; Ukraine, 101.92 percent, 66 Fed. Reg. 50164 et seq. (Oct. 2, 2001).

¹²⁹ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

¹³⁰ CR/PR at Table C-1. Domestic capacity was 7.3 million short tons in 1998, 7.2 million short tons in 1999, and 7.4 million short tons in 2000. In interim 2001, domestic capacity was 3.7 million short tons as compared to 3.8 million short tons in interim 2000.

Domestic production was 5.45 million short tons in 1998, 5.56 million short tons in 1999, and 5.46 million short tons in 2000. Domestic production was 2.0 million short tons in interim 2001 as compared to 2.8 million short tons in interim 2000.

Capacity utilization was 74.6 percent in 1998, 77.2 percent in 1999, and 74.2 percent in 2000. Capacity utilization was 55.0 percent in interim 2001 as compared to 75.4 percent interim 2000. Id.

¹³¹ CR at II-1-2, III-3-4; PR at II-1, III-1 and III-3. Tr. at 68-69.

¹³² CR/PR at Table C-1.

¹³³ CR/PR at Table C-1.

¹³⁴ CR/PR at Table C-1. R&D expenditures were relatively stable from 1998 to 2000, and were somewhat larger in interim 2001 as compared to interim 2000. CR/PR at Table VI-5.

The domestic industry's operating income margin showed a constant loss of 4 to 5 percent from 1998 to 2000, and a further deterioration to 9.1 percent in interim 2001, compared to 2.1 percent in interim 2000.^{135 136}

In sum, based on the significant increase in the volume of subject imports, the significant price underselling, the fact that subject imports have depressed prices to a significant degree, the closure of four domestic production facilities, and the adverse trends in the financial condition of the domestic industry, we find that the subject imports are having a significant adverse impact on the domestic industry producing wire rod.

C. Reasonable Indication of Material Injury By Reason of Allegedly Subsidized and/or LTFV Subject Imports from Trinidad and Tobago

1. Volume Effects of the Subject Imports

The volume of subject imports from Trinidad and Tobago increased from 257,720 short tons in 1998 to 341,815 short tons in 1999 and then fell back to 287,507 short tons in 2000. The volume of subject imports from Trinidad and Tobago was markedly higher, at 174,361 short tons in interim 2001, compared to 119,834 short tons in interim 2000.¹³⁷ This increase occurred as U.S. consumption fell. The U.S. market share of subject imports from Trinidad and Tobago rose from 3.3 percent in 1998 to 4.1 percent in 1999, before falling back to 3.4 percent in 2000. In interim 2001, the U.S. market share of subject imports from Trinidad and Tobago was significantly higher, 5.0 percent, than in interim 2000, 2.9

¹³⁵ CR/PR at Table C-1.

¹³⁶ Domestic producers' U.S. shipments and net sales measured by quantity and value declined from 1998 to 2000 and were lower in interim 2001 than in interim 2000.

Domestic producers' U.S. shipments were 5.4 million short tons valued at \$1.8 billion in 1998, 5.5 million short tons valued at \$1.7 billion in 1999, and 5.4 million short tons valued at \$1.6 billion in 2000. In interim 2001, domestic producers' U.S. shipments were 2.1 million short tons, valued at \$619 million, and in interim 2000, they were 2.8 million short tons, valued at \$875 million.

Domestic producers' net sales were 5.4 million short tons valued at \$1.8 billion in 1998, 5.4 million short tons valued at \$1.7 billion in 1999, and 5.3 million short tons valued at \$1.7 billion in 2000. In interim 2001, net sales were 2.1 million short tons valued at \$617 million, as compared to 2.8 million short tons valued at \$872 million in interim 2000.

Domestic producers' end of period inventories increased from 1998 to 2000. Their end of period inventories were 260,990 short tons in 1998, 303,257 short tons in 1999, and 343,604 in 2000. In interim 2001, their inventories were 214,067 short tons compared to 297,927 short tons in interim 2000. CR/PR at Table C-1.

¹³⁷ CR/PR at Table IV-1.

percent,¹³⁸ despite declining U.S. consumption.^{139 140} For purposes of the preliminary phase of these investigations, we therefore find the volume of subject imports from Trinidad and Tobago to be significant.

2. Price Effects of the Subject Imports

As stated earlier, price declines were significant based on the specific product pricing data obtained in these investigations, which also reflect significant underselling by subject imports from Trinidad and Tobago.

The Commission received price comparisons between subject imports from Trinidad and Tobago and domestically produced wire rod on products 1-4. Of the 42 quarterly comparisons available in this record, subject imports from Trinidad and Tobago undersold domestic products in 33 instances, or 78.6 percent of all comparisons.¹⁴¹ Underselling margins in those quarterly comparisons ranged from *** to ***.¹⁴² We find that there has been significant price underselling of the domestic like products by subject imports from Trinidad and Tobago.

We further find that subject imports from Trinidad and Tobago have depressed prices in the U.S. market to a significant degree.¹⁴³ U.S. prices declined over the period of investigation for products 1-4, even when consumption increased from 1998-2000.¹⁴⁴ Prices for subject imports from Trinidad and Tobago also generally declined over the period of investigation.¹⁴⁵

¹³⁸ The Trinidad Respondent argues that its imports in interim 2000 were “abnormally low” for Trinidad and Tobago, and thus artificially inflated the increase in interim 2001. It further argues that the increase in imports between the first and second quarters of 2001 reflects the distortion caused by the TRQ. Trinidad Respondent Postconference Brief at 16. We intend to review the effects of the TRQ on subject import levels in any final phase of these investigations.

¹³⁹ CR/PR at Table IV-5.

¹⁴⁰ Trinidad and Tobago was the second largest supplier of subject imports after Canada in 1998, 1999, and interim 2001. It was the third largest supplier in 2000. CR/PR at Table IV-1. Ukraine was the second largest supplier of subject imports in 2000, after Canada. Id. Trinidad and Tobago also had the largest increase in U.S. market share in interim 2001, compared to interim 2000, of any subject country. CR/PR at Table C-1.

¹⁴¹ CR at V-36; PR at V-12.

¹⁴² CR/PR at Tables V-3-V-6.

¹⁴³ We are mindful that we are here considering the effects on domestic prices of the subject imports from Trinidad and Tobago alone. However, we note that the price effects of those imports must be considered in light of the relevant conditions of competition, which here include the presence of significant quantities of subject imports from other countries, which are also adversely affecting prices. Given the significant quantities of subject imports from Trinidad and Tobago, and given that they themselves undersell the domestic like product to a significant degree, the record supports our conclusion, for purposes of these preliminary investigations, that these subject imports are themselves having significant adverse price effects on the domestic like product.

¹⁴⁴ Compare declining U.S. prices from 1998 to 2000, with apparent U.S. consumption from 1998 to 2000. CR/PR at Table IV-5. CR/PR at Figure V-13 and Tables V-3 - V-6. Although none of the lost sales allegations listed in the petition regarding imports from Trinidad and Tobago that were investigated by the Commission were confirmed, on balance, the record indicates that subject imports from Trinidad and Tobago have had significant price depressing effects on prices for domestically produced wire rod.

¹⁴⁵ CR/PR at Tables V-3-V-6.

We therefore find that there has been significant price underselling by subject imports from Trinidad and Tobago of the domestic product, and that subject imports have depressed prices of domestically produced wire rod to a significant degree.

3. Impact of the Subject Imports

As stated earlier, the data show a domestic industry experiencing difficulties from 1998 to 2000, which increased in interim 2001.

Based on the significant volume of subject imports from Trinidad and Tobago, particularly the increase in subject imports from Trinidad and Tobago in interim 2001 relative to declining consumption, significant price underselling, the fact that subject imports have depressed prices to a significant degree, the closure of four domestic production facilities noted earlier, and the adverse trends in the financial condition of the domestic industry, we find that the subject imports from Trinidad and Tobago are having a significant adverse impact on the domestic industry producing wire rod.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing wire rod is materially injured by reason of imports of wire rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey that are allegedly subsidized, and by reason of imports of wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine that are allegedly sold in the United States at less than fair value.

We also find that imports of wire rod products from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at less than fair value are negligible.¹⁴⁶

¹⁴⁶ Commissioner Bragg finds that when the analysis of threat of serious injury by reason of subject imports from Egypt, South Africa, and Venezuela is considered with the foregoing conclusions regarding the effects of subject imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, the record clearly provides a reasonable indication of the threat of material injury by reason of subject imports from Egypt, South Africa, and Venezuela. Commissioner Bragg therefore finds that there is a reasonable indication that the domestic industry producing wire rod is threatened with material injury by reason of imports from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at less than fair value.