

UNITED STATES INTERNATIONAL TRADE COMMISSION

CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM BRAZIL, CANADA,
GERMANY, INDONESIA, MEXICO, MOLDOVA, TRINIDAD AND TOBAGO, TURKEY,
AND UKRAINE

Investigations Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961, and 962 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3546, October 2002)

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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 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil and Canada of carbon and certain alloy steel wire rod² that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of Brazil and Canada. The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod that have been found by Commerce to be sold in the United States at less than fair value (LTFV).³ The Commission further determines, 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 Germany that have been found by Commerce to be subsidized by the Government of Germany and sold in the United States at LTFV are negligible, and its investigations with regard to that country are thereby terminated pursuant to sections 705(b) and 735(b) of the Act.⁴ With regard to imports of the subject merchandise from Moldova and Ukraine that were subject to affirmative

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 phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). Also excluded from the scope are grade 1080 tire cord and tire bead quality wire rod that comport with the specifications, definitions, and applications set forth in Commerce's revised scope language (see, for example, Commerce's final determination of sales at LTFV concerning Canada, 67 FR 55782, August 30, 2002). All products meeting the physical description of subject merchandise that are not specifically excluded are included in the scope of these investigations. The subject merchandise is provided for in *HTS* subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60.

³ Chairman Deanna Tanner Okun determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Trinidad and Tobago of carbon and certain alloy steel wire rod that have been found by Commerce to be sold in the United States at LTFV.

⁴ Commissioner Lynn M. Bragg determines that an industry in the United States is threatened with material injury by reason of imports from Germany of carbon and certain alloy steel wire rod that have been found by Commerce to be subsidized by the Government of Germany and sold in the United States at LTFV.

critical circumstances determinations by Commerce, the Commission determines that critical circumstances do not exist.⁵

BACKGROUND

The Commission instituted these investigations effective August 31, 2001, following receipt of petitions 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. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of carbon and certain alloy steel wire rod from Canada and Germany were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b))⁶ and imports of carbon and certain alloy steel wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 2, 2002 (67 FR 22105).⁷ The hearing was held in Washington, DC, on August 27, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁵ Commissioner Lynn M. Bragg makes affirmative determinations with regard to critical circumstances in the investigations concerning Germany, Moldova, and Ukraine.

⁶ Although Commerce made a preliminary negative countervailing duty determination with respect to Brazil, it subsequently made a final affirmative countervailing duty determination with respect to that country.

⁷ The Commission's schedule was subsequently revised on May 22, 2002 (67 FR 36022) and on September 12, 2002 (67 FR 57849).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine 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 and Canada, and less-than-fair-value (LTFV) imports of carbon and certain alloy steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago,¹ and Ukraine.^{2 3} We find subsidized and LTFV imports from Germany to be negligible.⁴ We do not find that critical circumstances exist with respect to subject imports from Moldova and Ukraine.⁵

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether 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.”⁶ 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.”⁷ 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”⁸

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.⁹ No single factor is dispositive, and the Commission

¹ Chairman Okun makes a negative determination with respect to subject imports from Trinidad and Tobago. See Dissenting Views of Chairman Deanna Tanner Okun with respect to Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago.

² Commission rule 207.68(b) provides that final party comments “containing new factual information shall be disregarded.” 19 C.F.R. § 207.68(b); see also 19 U.S.C. § 1677m(g). On September 27, 2002, the Commission notified one of the parties that its letter filed with the Commission on September 24, 2002, which contained quarterly reports for the operations of domestic producers Keystone and Co-Steel, was rejected as untimely filed. Because this submission was rejected and the quarterly reports contained therein are not otherwise on the record in these investigations, we have disregarded facts contained in these quarterly reports.

³ In reaching these affirmative determinations, we note that we have discounted the weight accorded to interim (first quarter) data for 2002 due to the pendency of these investigations. See 19 U.S.C. § 1677(7)(I).

⁴ Commissioner Bragg dissenting. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

⁵ Commissioner Bragg dissenting. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 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
(continued...)”)

may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹¹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

B. Product Description

Commerce’s final determinations defined the imported merchandise within the scope of these investigations as follows:

certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 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 sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of not more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 mm or better using European Method NFA 04-114; (v) having a surface quality with no surface defects

⁹ (...continued)

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 Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁰ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹¹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-749; 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.”).

¹² 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).

of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorous and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are current 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, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for

convenience and customs purposes, the written description of the scope of this proceeding is dispositive.¹³

Wire rod is a hot-rolled intermediate steel product of circular or approximately circular cross section, used in a wide variety of other intermediate products and end-use products. Wire rod is used to make a broad range of products including various types of wire (aluminum-coated wire, barbed wire, spring wire, and industrial wire), springs, nails, fasteners, clothes hangers, fencing material, construction mesh, tire bead, and tire cord.¹⁴

C. Domestic Like Product Issues

In its Preliminary Determinations in these investigations, the Commission found a single domestic like product comprised of all carbon and certain alloy steel wire rod that corresponded to Commerce's scope as it existed at the time.¹⁵ Commerce subsequently modified the scope in these investigations to exclude certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod.^{16 17}

Petitioners support the finding of a single domestic like product consisting of all carbon and certain alloy steel wire rod, including the 1080 tire bead and tire cord quality wire rod that has now been excluded from Commerce's scope.¹⁸ Respondents Michelin North America, Inc. ("Michelin") and Rubber Manufacturers Association ("RMA") argue that tire cord quality wire rod should constitute a separate like product.¹⁹ Canadian Respondents Ispat Sidbec, Inc., Ivaco, Inc., and Ivaco Rolling Mills, Inc. (collectively "Canadian Respondents") and Respondent Steel Fastener Working Group ("SFWG") argue that the Commission should find that cold-heading quality ("CHQ") wire rod that meets Industrial Fasteners Institute ("IFI") specification IFI-140 is a separate domestic like product.²⁰ Mexican Respondent Hylsa Puebla, S.A. de C.V. ("Hylsa") produces clean-steel precision bar-in-coils ("CSPBIC"), which it argues should be a separate domestic like product.²¹

¹³ Confidential Report ("CR")/Public Report ("PR") at Appendix A, 67 Fed. Reg. 55782 (August 30, 2002) (Canada) *et. seq.*

¹⁴ CR at I-6, II-1, II-14; PR at I-5, II-1, II-9; CR/PR at Table I-1.

¹⁵ Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary) USITC Pub. 3456 (Oct. 2001) ("Preliminary Determinations" or "USITC Pub. 3456"). In its Preliminary Determinations, the Commission considered and rejected arguments that it should find tire cord wire rod to be a separate domestic like product. USITC Pub. 3456 at 5-6.

¹⁶ 67 Fed. Reg. 17384 (April 10, 2002) (Germany).

¹⁷ The Commission explained that Commerce, not the Commission, determines the scope of subject merchandise, and that the Commission must accept Commerce's scope as it presently stood for purposes of its preliminary determinations. Preliminary Determinations at 5 & n.12.

¹⁸ Petitioners' Prehearing Brief at 10-14.

¹⁹ Michelin North America, Inc. ("Michelin") Prehearing Brief at 1, Michelin Posthearing Brief at 2, RMA Prehearing Brief at 4.

²⁰ SFWG Posthearing Brief at 1; Canadian Respondents Prehearing Brief at 23-31; Ispat Sidbec Posthearing Brief at 1.

²¹ Hylsa Prehearing Brief at 2-6.

As a general matter, the record demonstrates no clear demarcation between the various types of wire rod products, but rather indicates a continuum of at least 11 major categories of products, ranging from low carbon wire rod such as industrial wire rod used for nails and coat hangers, to medium to high carbon wire rod, such as that used for tire bead and prestressed concrete strand, to the highest-end products, including CHQ, CSPBIC, and tire cord wire rod.²² In cases such as the present one, where the domestically manufactured merchandise consists of a broad continuum of similar products, the Commission does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.²³

As discussed below, we find a single domestic like product consisting of all carbon and certain alloy steel wire rod included within Commerce’s scope, and including the grade 1080 tire bead and tire cord quality wire rod that has been excluded from Commerce’s scope.²⁴

1. Expanding the Like Product to Include Certain Grade 1080 Tire Cord Wire Rod and Grade 1080 Tire Bead Wire Rod

We first consider whether the domestic like product should include domestically produced 1080 tire cord and tire bead wire rod. The issue before us is whether domestic 1080 tire cord and tire bead wire rod are sufficiently “like” the domestic like products that correspond directly to the products included within the scope that these 1080 products should also be included within the domestic like product.²⁵ Commerce’s scope of investigation includes 1070 and 1090 tire bead and tire cord wire rod.

Respondent Michelin argues that the exclusion of 1080 tire cord quality wire rod reflects that tire cord wire rod is identifiable as a separate class and distinguishable in fundamental respects from the other wire rod products under investigation.²⁶ Petitioners have requested that the Commission include all wire rod, including all tire cord wire rod and tire bead wire rod, in the domestic like product.²⁷

Tire cord and tire bead wire rod, in general, are types of high or medium-high carbon wire rod. Grade 1080 is one particular grade of tire cord and tire bead wire rod. There is no information on the record indicating significant differences among grades of tire bead wire rod, and the record reflects only minimal differences among grades of tire cord wire rod. Tire cord wire rod may be either regular-tensile (AISI grade 1070) or high-tensile (AISI grade 1080 or 1090). Grade 1080 and grade 1090 tire cord wire

²² CR at I-6-I-7; PR at I-5-I-6; CR/PR at Table I-1.

²³ Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USTIC Pub. 3075 (November 1997) at 7.

²⁴ Commissioner Bragg dissenting. See Additional and Dissenting Views of Commissioner Lynn M. Bragg. Accordingly, Commissioner Bragg does not join section I.C.1 of these Views.

²⁵ The domestic industry produces 1070 and 1080 tire bead and tire cord wire rod, but not 1090 tire bead and tire cord wire rod. Petitioners’ Posthearing Brief, Exhibit 16.

²⁶ Michelin Prehearing Brief at 4. We disagree. Whether or not 1080 tire bead and tire cord wire rod should be included in the domestic like product is a separate issue from whether tire cord wire rod should be a separate domestic like product, and we treat the issues separately in these Views.

²⁷ We note that domestic production of 1080 tire bead and tire cord products is *** compared to domestic production of the like product corresponding to Commerce’s scope. Compare CR/PR Tables C-1 and C-2.

rod are finer grades of tire cord wire rod than 1070 grade, with more stringent specifications.²⁸ Respondent Michelin argues, and the record indicates, that no significant distinctions exist between grades 1070, 1080, or 1090 tire cord wire rod relevant to the Commission's like product analysis. Michelin states that all three grades have the same physical characteristics, uses, prices, channels of distribution and production processes. Michelin asserts that all three grades must satisfy the same restrictive requirements for cleanliness, segregation, decarburization, chemistry and surface imperfections that are not required in "ordinary" wire rod products.^{29 30}

We find that other domestic tire cord and tire bead wire rod products that correspond to products within the scope, such as 1070 tire cord wire rod and 1070 tire bead wire rod, closely share physical characteristics, uses, channels of distribution, production processes, and similarities in prices with 1080 tire cord wire rod and tire bead wire rod. Moreover, as discussed below, our traditional six factor analysis does not indicate that tire cord wire rod is a separate like product. This same analysis indicates that the like product should be defined as the broad continuum of wire rod products. Therefore, there is no basis to exclude 1080 tire bead and tire cord wire rod from the definition of the domestic like product, and we define the domestic like product to include 1080 tire cord wire rod and 1080 tire bead wire rod, in addition to the wire rod products corresponding to Commerce's scope of investigations.

2. Tire Cord Wire Rod, CHQ IFI-140 Wire Rod and CSPBIC Wire Rod as Possible Separate Like Products

Tire cord wire rod, CHQ IFI-140 wire rod, and CSPBIC wire rod are all high-end, specialized products that require high quality steel to produce, are expensive to make, and have stringent quality requirements. We have applied our traditional six factor like product analysis to determine whether any of these types of wire rod should be considered separate like products.

Physical Characteristics and End Uses. Respondent Michelin argues that tire cord wire rod is a separate "class" or type of wire rod, and should therefore be a separate domestic like product.^{31 32} Michelin argues that tire cord wire rod can be drawn into very fine wire sizes, and twisted into multi-filament tire cord without breakage. It has significant restrictive quality requirements.^{33 34} In response to

²⁸ Michelin Postconference Brief at 11.

²⁹ Michelin Prehearing Brief at 5.

³⁰ The record reflects that tire bead and tire cord wire rod are more similar to each other than to other wire rod products on the continuum. Domestic tire bead and tire cord wire rod are made by the same producers and have some (one-way) interchangeability. Domestic producer *** makes ***, while domestic producers ***. Petitioners' Posthearing Brief, Exhibit 16. Michelin purchases only tire cord quality wire rod, and uses it in the production of both tire bead and tire cord, indicating some limited interchangeability. Tr. at 254. Petitioners maintain that tire cord is similar to tire bead. Tr. at 272-273.

³¹ RMA appears on behalf of members Bridgestone/Firestone Americas Holding, Inc., Continental Tire North America, Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, and Michelin North America, Inc. RMA supports Michelin's arguments that tire cord wire rod should be a separate domestic like product. RMA Prehearing Brief at 4.

³² Tire cord wire rod purchaser Tokusen U.S.A., Inc. ("Tokusen") argues that the Commission should treat 1070 tire cord wire rod as a separate domestic like product. Tokusen Letter dated August 29, 2002.

³³ Michelin Prehearing Brief at 8-9.

³⁴ However, certain other types of wire rod are also drawn into fine wire sizes. Other types of wire rod such as
(continued...)

the Commission's statement in its Preliminary Determinations that other types of high-quality wire rod also have specialized uses and stringent quality requirements, Michelin responds that the record does not indicate that other forms of wire rod are held to the same number, type, and degree of quality standards. Michelin emphasizes that the primary reason that the requirements for tire cord wire rod are so rigorous is the paramount importance of quality to increase safety.³⁵

SFWG argues that CHQ IFI-140³⁶ should be a separate domestic like product because of its restrictive specifications, driven by safety concerns, due to its broad use in aerospace, automotive, and heavy equipment industries. CHQ is wire rod that has surface imperfection or seam depth of no greater than 1/3000th of an inch. Unlike most other wire rod, CHQ requires high quality billets made from selected scrap or iron sources such as pig iron.³⁷

CSPBIC also has exacting quality requirements. Production of the product requires iron ore, not scrap. The steel-making process must be carefully managed and requires specialized equipment to ensure high quality "clean" steel, with low levels of impurities. CSPBIC is produced to precise dimensional characteristics to meet customer requirements.³⁸

All categories of wire rod are intermediate circular, hot-rolled products that are sold in irregularly wound coils. Wire rod is primarily used for subsequent drawing and finishing into wire and wire products, but is also used to make fasteners and other products.³⁹ There is no clear demarcation between low-end and high-end wire rod products, but rather there is a continuum spanning at least 11 major categories of products, defined by end use, ranging from low carbon wire rod such as industrial wire rod used for nails and coat hangers, to medium to high carbon wire rod used for tire bead and prestressed concrete strand, to the highest-end products, including the more specialized high-end CHQ, CSPBIC, and tire cord wire rod.⁴⁰ The specialized uses, exacting quality requirements,⁴¹ and high quality billets necessary to manufacture these products reflect shared qualities of these specialized wire rod products that are on the high-end of the wire rod spectrum. In distinguishing their separate high-end wire rod products from low-end wire rod products, Respondents have demonstrated the shared qualities among high-end wire rod products. Moreover, Respondents have not demonstrated the absence of a continuum among wire rod products from low to medium to high-end products.

Interchangeability. Michelin argues that tire cord wire rod is not interchangeable with other types of wire rod because it is expensive, and it is not used in non-tire cord applications. Michelin noted that most purchasers responded that tire cord quality wire rod is not interchangeable with other types of wire rod because of its cost and its other properties, but one purchaser found that it "can easily be substituted

³⁴ (...continued)

music spring wire rod, welding quality wire rod and CHQ wire rod are also required to have internal soundness, good surface quality, and are subject to restrictive requirements for chemistry and cleanliness. CR/PR at Table I-1.

³⁵ Michelin Prehearing Brief at 8-10; Tr. at 219.

³⁶ SFWG defines CHQ using this standard. SFWG Posthearing Brief at 1.

³⁷ SFWG Posthearing Brief at 1, 5; Tr. at 211.

³⁸ Hylsa Prehearing Brief at 3-5.

³⁹ CR at I-6; PR at I-5.

⁴⁰ CR at I-6-I-7; PR at I-5-6; CR/PR at Table I-1.

⁴¹ Standards of product quality (e.g. tighter dimensional tolerances, control over residuals, and coil weight) have become higher across the entire range of wire rod products largely in response to customer demands for improved performance on the customer's equipment. CR at I-9-I-10; PR at I-8.

for alternative applications.”⁴² However, a Michelin representative testified at the hearing that it routinely uses tire cord wire rod in tire bead wire rod applications, reflecting at least some interchangeability with other wire rod.

Although low end products would not meet the specifications required for high end applications in which specialized wire rod is used, and high end wire rod would not be used in low end applications, either for cost reasons or because it would entail process adjustments,⁴³ there are 11 broad end-use categories between and within which there is an overlap of metallurgical qualities, chemistry, and physical characteristics, and a continuum of products with a wide variety of uses.⁴⁴ Although tire cord wire rod is one of those broad end-use categories, it remains part of the continuum of wire rod products. If we were to find a separate domestic like product for tire cord wire rod because it could not be used for music spring wire, we would also be obliged to find a separate domestic like product for music spring wire, which cannot be used for tire cord wire rod.⁴⁵ The foregoing approach could be applied repeatedly across the spectrum of wire rod products falling within the scope of these investigations, thus reinforcing our view that the continuum itself constitutes the domestic like product.

The record reflects that CHQ is produced to customer specifications, which limits interchangeability, but the same is true for CSPBIC and for tire cord wire rod, which have arduous qualification procedures.⁴⁶ Other wire rod products have to meet quality standards and customer specifications, although not the same standards and specifications. Respondents argue that a lower quality wire rod cannot be used in CHQ applications due to safety concerns, but do not state whether CHQ could be used in other applications.⁴⁷ SFWG defines CHQ as CHQ comporting with the specifications set forth in IFI-140; however, it is not clear whether other domestically produced CHQ could be used in the same applications as CHQ IFI-140 or if it could be used in applications using other CHQ.

Channels of Distribution. Almost all domestically produced wire rod is sold to end users, and is often tailored to customers’ needs for specific applications and quality requirements.⁴⁸ Like other forms of wire rod, tire cord wire rod is overwhelmingly sold directly to the end users, although Michelin posits this analysis defines channels of distribution too broadly because of the close relationship between suppliers of wire rod and tire cord producers.⁴⁹ Similarly, CHQ wire rod is sold primarily to fastener manufacturers and CSPBIC is sold to a single end user customer.⁵⁰

Common Manufacturing Facilities, Employees, and Methods. Although the manufacturing process for production of the different types of wire rod differ based on quality requirements, all wire rod shares a basic manufacturing process consisting of steelmaking, casting, hot-rolling, and coiling and cooling. Metallurgical properties may be imparted by adjusting the chemistry during steelmaking as well as by varying rolling and cooling practices. The wire rod rolling process determines the rod’s size and dimensional precision, depth of decarburization, surface defects and seams, amount of mill scale, and

⁴² Michelin Prehearing Brief at 12 & n.27. Michelin maintains that this purchaser does not manufacture tire cord.

⁴³ Michelin Prehearing Brief at 11-12.

⁴⁴ CR at I-6-I-7; PR at I-5-I-6; CR/PR at Table I-1.

⁴⁵ CR/PR at Table I-1.

⁴⁶ Michelin Prehearing Brief at 13-14; SFWG Posthearing Brief at 6; Hylsa Prehearing Brief at 6.

⁴⁷ Tr. at 214.

⁴⁸ CR at I-10; PR at I-8.

⁴⁹ Michelin Prehearing Brief at 15.

⁵⁰ Joint Canadian Respondents’ Prehearing Brief at 28; Hylsa Prehearing Brief at 6.

structural grain size, within limits set by the chemistry, tensile strength and other physical properties.⁵¹ Ispat Sidbec states that it is not possible to roll industrial quality wire rod and CHQ on the same mill unless the industrial quality product is rolled to the same requirements as the CHQ, and the lower quality wire rod could contaminate the machinery, leaving it unsuitable for CHQ.⁵² Some wire rod is made from scrap, and some more high quality wire rod from direct reduced iron or pig iron.⁵³ Tire cord wire rod is produced using billets from raw iron ore, not scrap.⁵⁴ Similarly, only high quality scrap or raw iron billets can be used to make CHQ, which also requires special processing and testing equipment, and trained metallurgists to ensure quality.⁵⁵ CSPBIC is made from iron ore, not steel scrap, and its manufacturing processes must also be carefully managed, and require special equipment.⁵⁶

Producer and Customer Perceptions. Customers differentiate their particular product even though they recognize that many different types of wire rod are used for similar uses. For example, at the Commission hearing, a metallurgist appearing for Respondents testified that “it’s hard to give [the Commission] a bright line distinction of what makes the cold heading distinctly different from the other products, because we’re talking about seams, which are involved in quality considerations for other products, as well.”⁵⁷ Purchasers of tire cord wire rod consider it to be a separate product from other wire rod, but domestic producers of tire cord wire rod disagree.

Domestic producers that make specialty products also make other types of wire rod. *** produce tire cord wire rod as well as several other high-quality wire rod products. *** all reported producing tire cord quality wire rod.⁵⁸ Five domestic producers reported producing CHQ IFI-140 wire rod, as well as several other wire rod products.⁵⁹ As for producer and customer specifications, CHQ has its own standard, *i.e.*, IFI-140, to clearly define CHQ. Other wire rod products also have standards and specifications, some of which are also restrictive such as the specifications for CSPBIC.⁶⁰

Hylsa has only one U.S. customer for CSPBIC, Bluff City Steel, which appears to consider CSPBIC as distinct from other wire rod due to its special requirements; however, the Petitioners disagree.⁶¹ Petitioners maintain that domestic producers can produce this product.⁶² Hylsa acknowledges that there may be a few U.S. producers who have the capacity to produce similar products.⁶³

⁵¹ CR at I-9; PR at I-8.

⁵² Ispat Sidbec Posthearing Brief at 4. We note that this appears to indicate similar manufacturing processes for industrial quality wire rod and CHQ, even if they are not rolled on the same machinery.

⁵³ CR at I-10; PR at I-8.

⁵⁴ Michelin Prehearing Brief at 19.

⁵⁵ SFWG Posthearing Brief at 6-7; Tr. at 211-212.

⁵⁶ Hylsa Prehearing Brief at 4-5.

⁵⁷ Tr. at 248-249.

⁵⁸ Petitioners’ Posthearing Brief, Ex. 16; CR/PR at Table D-3.

⁵⁹ CR/PR at Table D-3.

⁶⁰ Hylsa Prehearing Brief, Ex 1.

⁶¹ Hylsa Prehearing Brief, Ex. 2 at 2-3; Petitioners’ Prehearing Brief at 2-3.

⁶² Hylsa Prehearing Brief, Ex. 3 at 2-3 (attaching copy of Petitioners’ response to requests for scope amendments dated June 28, 2002).

⁶³ Hylsa Prehearing Brief at 2, 6-7.

Price. There is a continuum of prices for wire rod, with industrial grades at the lower end and higher carbon, specialty grades at the higher end.⁶⁴ Although the record reflects that tire cord wire rod commands a price premium over other wire rod products, the same can be said of CHQ compared to most wire rod products. The price for CHQ IFI-140 is “one quarter to one third higher than other types of steel wire rods.”⁶⁵ Welding quality wire rod is also more expensive than industrial quality wire rod.⁶⁶

All of the foregoing products are at the high end of the wire rod continuum, are made from high-quality billets with exacting specifications (both physical and metallurgical), have limited interchangeability with other wire rod products, have a limited customer base, and are priced higher than most types of wire rod. None of the Respondents have demonstrated a clear dividing line between any individual one of these products and other wire rod products. We find that the wire rod industry is composed of so many different products, used in so many different applications, that the only clear dividing line is between wire rod and other steel products. Many of the products have precise specifications, high quality standards (sometimes for safety reasons) and are expensive to manufacture. A lack of interchangeability between the products at either end of the continuum is not inconsistent with a finding of a single domestic like product when the products are all part of a continuum.

Therefore, based on the record in these investigations, we find a single domestic like product consisting of all wire rod, including the certain grade 1080 tire cord and grade 1080 tire bead wire rod products that Commerce excluded from the scope of the investigations.⁶⁷

⁶⁴ For example, the weighted-average domestic price for pricing product 1, industrial quality wire rod, was *** in fourth quarter 2001; the comparable price for product 4, wire rod for spring applications (mid-range wire rod), was *** and for product 5, CHQ (high-end), it was ***. CR/PR at Tables V-3, V-6, and V-7.

⁶⁵ Tr. at 215. Tire cord wire rod purchasers assert that tire cord wire rod is significantly more expensive than CHQ wire rod. Michelin Prehearing Brief at 22.

⁶⁶ CR/PR at Table V-9.

⁶⁷ Commissioner Bragg defines a single domestic like product consisting of all wire rod coterminous with the scope of these investigations. Accordingly, Commissioner Bragg does not include within her like product definition certain 1080 tire cord and 1080 tire bead wire rod products that have been excluded from the scope by Commerce. See Additional and Dissenting Views of Commissioner Lynn M. Bragg. Nevertheless, Commissioner Bragg notes that domestic production of 1080 tire bead and 1080 tire cord products is *** compared to domestic production of the like product corresponding to Commerce’s scope. Compare CR/PR Tables C-1 and C-2. As a result, the trends identified by the Commission majority in its analysis of the volume, price effects, and impact of subject imports on the domestic industry, are equally valid with respect to the domestic industry that she has defined. See infra n.70.

D. Domestic Industry and Related Parties

1. In General

Section 771(4) of the Act defines the relevant industry as “the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product.”⁶⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁶⁹ Based on our domestic like product determination, we find that there is a single domestic industry consisting of all U.S. producers of the domestic like product which, as stated above, consists of all wire rod corresponding to Commerce’s scope investigations as well as the certain grade 1080 tire cord and grade 1080 tire bead wire rod products that Commerce has excluded from the scope of the investigations.⁷⁰

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.⁷¹ No party has argued for exclusion of any domestic producer as a related party.⁷² ***. Domestic producer

⁶⁸ 19 U.S.C. § 1677(4)(A).

⁶⁹ 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).

⁷⁰ Commissioner Bragg defines a single domestic industry consisting of all U.S. producers of the domestic like product that she has defined, which excludes certain 1080 tire cord and 1080 tire bead wire rod products. Commissioner Bragg notes, however, that the U.S. producers encompassed by her definition of the domestic industry are identical to those identified by the majority because no U.S. producer of wire rod is engaged exclusively in the production of 1080 tire cord and 1080 tire bead wire rod products. See CR/PR at Table D-3.

⁷¹ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-1332 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission also has considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

⁷² Commissioner Miller agrees that appropriate circumstances do not exist to exclude the related parties from the
(continued...)

*** imported subject merchandise during the period examined, and is thus a related party. The ratio of *** subject imports to its production was *** percent in 2000, *** in 2001, and *** percent in interim 2002.⁷³ Based on operating income margins (operating income (loss) as a ratio of net sales), *** was *** than the average for the domestic industry until interim 2002. However, there is no indication ***. *** suggests that its interests ***. Thus, on balance, we do not find that appropriate circumstances exist to exclude *** from the domestic industry.

***. Domestic producer *** imported subject merchandise during the period examined, and is thus a related party.⁷⁴ The ratio of *** subject imports to its production was *** percent in 2000 and *** percent in 2001.⁷⁵ Based on operating income margins, *** was *** than the average for the domestic industry, including in interim 2002. However, there is no indication *** or to its relationships with importers and exporters of subject merchandise. *** suggest that its interests ***. Thus, on balance, we do not find that appropriate circumstances exist to exclude *** from the domestic industry.

***. *** imported subject merchandise during the period examined, according to the questionnaire response it submitted in the preliminary phase of these investigations. ***.⁷⁶ Thus, *** is a related party, ***. The ratio of *** subject imports to its production was *** in 1999, *** percent in 2000, and it reported *** imports in interim 2001.⁷⁷ Since ***, the question of excluding its data is essentially moot. The available data reflect that *** were concentrated in 2000, and that its interests ***. We do not exclude *** from the domestic industry.⁷⁸

***. While domestic producer *** purchased subject imports from ***, its purchases were not a predominant share of imports from any of these importers, and we do not consider *** to be a related party.⁷⁹

For the above-referenced reasons, we do not find that appropriate circumstances exist to exclude any domestic producer from the domestic industry. Accordingly, we define a single domestic industry in

⁷² (...continued)

domestic industry. She finds that the record does not indicate that the related parties currently are benefitting significantly from their relationships or are substantially shielded from the effects of import competition. Accordingly, inclusion of the related parties would not present a distorted picture for her analysis of the domestic industry. Commissioner Miller does not join the remainder of this section of the opinion.

⁷³ Calculated from CR/PR at Table IV-3. *** imported *** subject imports in 1999, *** in 2000, *** in 2001, and *** in interim 2002, as compared to *** in interim 2001.

⁷⁴ ***. CR/PR at Table III-1, n.8.

⁷⁵ Calculated from CR/PR at Table IV-3. *** imported *** subject imports in 1999, *** in 2000, *** in 2001, and *** short tons in interim 2002.

⁷⁶ CR/PR at Table III-1, n.1.

⁷⁷ *** imported *** of subject imports in 1999, *** in 2000, *** in January to June 2001, and an unknown quantity of subject imports in full year 2001 and interim 2002. Confidential Staff Report, preliminary investigations, at Table IV-3.

⁷⁸ CR/PR at III-1.

⁷⁹ *** would be a “related party” if its purchases of subject imports were so large as to amount to “direct or indirect control” of an importer or exporter of subject imports during the period examined. Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999) at 12. We do not find that the quantities of its purchases are large enough to warrant such a finding, nor is there any other basis for such a finding. See CR/PR at Table III-4. Consequently, we do not find that *** is a related party on the basis of its purchases.

these investigations, encompassing all U.S. producers of the domestic like product, which as stated above consists of all wire rod corresponding to Commerce's scope as well as the certain 1080 tire cord and 1080 tire bead wire rod products that Commerce has excluded from the scope of these investigations.⁸⁰

II. NEGLIGIBLE IMPORTS⁸¹

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 twelve months for which data are available preceding the filing of the petition shall be deemed negligible.⁸² 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 with negligible imports and 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.^{83 84} The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.⁸⁵

Under the statute, the applicable period for determining negligibility is the most recent 12-month period prior to the filing of the petition for which data are available, which, in these investigations, was August 1, 2000 through July 31, 2001.⁸⁶

⁸⁰ As noted, Commissioner Bragg does not include in her definition of the domestic industry any U.S. production of certain 1080 tire cord and 1080 tire bead wire rod products that Commerce has excluded from the scope of these investigations. See supra nn. 67 & 70.

⁸¹ Commissioner Bragg does not join Section II of these Views. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

⁸² 19 U.S.C. § 1677(24)(A)(i).

⁸³ 19 U.S.C. § 1677(24)(A)(ii).

⁸⁴ 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 ("USTR"). 19 U.S.C. § 1677(36)(A).

⁸⁵ 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").

⁸⁶ In Co-Steel Raritan, et al v. United States, Court No. 01-00955, Slip Op.02-59 at 4-9 (June 20, 2002), Judge Aquilino affirmed the Commission's analysis of negligibility using data that became available after the petition was filed, covering the 12-month period immediately prior to the filing of the petition, August 1, 2000 through July 31, 2001. Judge Aquilino found that the Commission's analysis was not precluded by statute, appeared to be consistent with the statutory language, and was in accordance with law. The Court also found that once the petition was filed, the authority to assess the salient facts is conferred on the Commission; the Court described the authority as the Commission's statutory responsibility. The Court further noted earlier Commission cases that were consistent with the Commission's analysis.

Petitioners continue to argue that the Commission should interpret the statutory language as meaning data for the most recent 12-month period available to the domestic industry when it files its petition, to improve predictability. See Tr. at 29-31; Petitioners' Prehearing Brief at 19, n.33. We continue to apply the methodology we used in the Preliminary Determinations, which the Court has found to be in accordance with law. See Steel Authority of India, Ltd. v. United States, 146 F. Supp. 2d 900, 909 (Ct. Int'l Tr. 2001) ("Thus, the statute precisely
(continued...)

Negligibility is an issue for only one of the eight subject countries in these antidumping duty investigations, Germany, with an import share at *** percent of total imports.⁸⁷ There are no other subject countries with negligible levels of imports with which to aggregate subject imports from Germany in these antidumping duty investigations.⁸⁸ We therefore find that subject imports from Germany are negligible with respect to the antidumping duty investigation for purposes of our present material injury analysis.

Germany is also the only country for which negligibility is an issue with respect to the countervailing duty investigations. Germany has an import share of *** percent of total imports of wire rod corresponding to Commerce's scope of investigations.⁸⁹ As with the antidumping duty investigations, there are no other subject countries with negligible levels of imports with which to aggregate subject imports from Germany in these countervailing duty investigations. We therefore find that subject imports

⁸⁶ (...continued)

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].”) See also 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.”)

⁸⁷ CR/PR at Table IV-2.

⁸⁸ The Court of International Trade recently affirmed the Commission's Remand Views which stated that subject imports of wire rod from Egypt, South Africa and Venezuela, based on Commerce's modified scope of investigation, were non-negligible, when aggregated with subject imports from Germany, because, in the aggregate under the revised scope of investigations, imports from all four countries exceed the seven percent statutory negligibility threshold in antidumping investigations. Co-Steel Raritan et al v. U.S. International Trade Commission, Court No. 01-00955, Slip Op. No. 02-113 (Sept. 13, 2002) (“Co-Steel Raritan.”) An appeal of Co-Steel Raritan has been lodged with the U.S. Court of Appeal for the Federal Circuit.

19 U.S.C. § 1516a (c)(3) provides that “[i]f the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority or the Commission, as appropriate, for disposition consistent with the final disposition of the court.” Emphasis added. Legislative history provides that “section 516A would provide in subsection (c)(3) that if the final disposition of an action instituted under the section is not in harmony with the challenged decision, the matter shall be remanded to the decision-maker for disposition consistent with the court's decision.” S. Rep. 249, 96th Cong., 1st Sess. 248 (1979). The published Preliminary Determinations of the Commission are the “challenged decision.”

We interpret 19 U.S.C. § 1516a (c)(3) to provide that the Commission's original published decision remains operative until final court disposition of the matter, which has not yet occurred given the filing of an appeal with the Federal Circuit Court of Appeals. In accordance with its customary practice, the Commission has not issued any Federal Register notice with respect to its Remand Views pending final judicial disposition of the matter. Therefore, the Commission's investigations of these countries remain terminated. As these investigations are terminated they are not subject to the aggregate negligibility provisions. See Hosiden Corp. v. Advanced Display Mfrs. Of America, 85 F. 3d 589 (Fed. Cir. 1996) (Federal Circuit held that antidumping duty order could not be revoked prior to final judicial disposition, applying 19 U.S.C. § 1516a(e)).

⁸⁹ CR/PR at Table IV-2 & n.1; CR at IV-9; PR at IV-7. The countervailing duty investigation pertaining to imports from Brazil is subject to the higher individual negligibility threshold of less than four percent of overall import volume. Since imports from Brazil are *** percent of total import volume, they exceed this negligibility threshold. Id.

from Germany are negligible with respect to the countervailing duty investigation for purposes of our present material injury analysis.

The statute provides that, even if subject 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 subject imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States.⁹⁰ We do not find such a potential. Subject imports of wire rod from Germany decreased absolutely from *** in 1999 to *** in 2000 and *** in 2001. Subject imports from Germany were lower in interim 2002 (***) than in interim 2001 (***)⁹¹ The share of total imports corresponding to Commerce's scope held by Germany also decreased steadily over the period examined, and was lower in interim 2002 than in interim 2001. The share of total imports held by Germany decreased from *** percent in 1999 to *** percent in 2000 and *** percent in 2001. Germany's share of total imports was *** percent in interim 2002 as compared to *** percent in interim 2001.⁹² While the German wire rod industry has capacity estimated at 6.2 million short tons in 2001 (including approximately one million tons of available capacity), ***,⁹³ and there is no basis on the record to conclude that this excess capacity would result in a reversal of this recent declining trend in imports from Germany, as a share of total imports corresponding to the scope.

Accordingly, pursuant to section 705(b) and 735(b),⁹⁴ the antidumping duty investigation and the countervailing duty investigation for Germany are terminated by operation of law.

III. CUMULATION

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 assess cumulatively the volume and effect of imports of the subject merchandise 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 the domestic like products in the U.S. market.⁹⁵ In assessing whether subject imports compete with each other and with the domestic like product,⁹⁶ the Commission has generally considered four factors, including:

⁹⁰ 19 U.S.C. § 1677(24)(A)(iv).

⁹¹ CR/PR at Table IV-1.

⁹² CR/PR at Table IV-1.

⁹³ CR/PR at Table VII-3; CR at II-7; PR at II-5. The data regarding the German industry are estimated to account for approximately *** percent of German production of subject wire rod and virtually all subject exports to the United States during 2001. CR at VII-5; PR at VII-2. Exports to the United States from Germany decreased from 1999 to 2001, and were lower in interim 2002 as compared to interim 2001, although they were projected to increase from 2002 to 2003. Germany's markets outside the United States appear to be concentrated in Europe. CR/PR at Table VII-3. None of the German firms planned to ***. CR at VII-5; PR at VII-2.

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

⁹⁵ 19 U.S.C. § 1677(7)(G)(i).

⁹⁶ The SAA expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA, H.R. Rep. 103-316, vol. I at 848 (1994), 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).

- (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.⁹⁷

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.⁹⁸ Only a “reasonable overlap” of competition is required.⁹⁹

Two of the four statutory exceptions to the general cumulation rule apply to these investigations.¹⁰⁰ The first concerns countries with respect to which the investigation has been terminated.¹⁰¹ The antidumping duty investigation and the countervailing duty investigation of Germany are terminated by operation of law as a result of the Commission’s negligibility finding with regard to LTFV and subsidized subject imports from Germany.¹⁰² Therefore, imports of wire rod from Germany are not cumulated with any of the remaining subject countries.

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.¹⁰³

Trinidad and Tobago is the only subject country in these investigations that is a CBERA country. Therefore, we consider whether 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

⁹⁷ 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) at 8 n.29, aff’d sub nom. Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁹⁸ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁹⁹ 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. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

¹⁰⁰ 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).

¹⁰¹ 19 U.S.C. §1677(G)(ii)(II).

¹⁰² Commissioner Bragg dissents with respect to Germany, and finds that subject imports from Germany are likely to imminently exceed the applicable negligibility threshold. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

¹⁰³ 19 U.S.C. § 1677 (7)(G)(ii)(III).

determining whether the domestic industry is materially injured or threatened with material injury by reason of imports from the 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.¹⁰⁴ We find that there is a reasonable overlap of competition among the subject imports from each of the subject countries and between subject imports from each of the subject countries and the domestic like product for the following reasons.

1. Fungibility

Foreign-produced subject wire rod generally is interchangeable with U.S.-produced wire rod and competes on the basis of the same or similar qualities. Although the types and qualities of imported wire rod vary to some extent among subject country sources, as a general matter wire rod is imported within the same range of grades and is used for the same general end uses by approximately the same end users as the domestic product. Most (60 out of 66) responses by purchasers reflected that subject imports could be used in the same applications as U.S. wire rod.¹⁰⁵ For most wire rod, there does not appear to be a high degree of differentiation between subject foreign- and U.S.-produced wire rod based on the type of production process or on the basis of quality.¹⁰⁶

Domestic producers and importers reported separately their U.S. shipments of low/medium-low carbon industrial/standard quality wire rod, high/medium-high carbon industrial/standard quality wire rod, welding quality wire rod, CHQ wire rod that meets IFI-140 specifications, other CHQ, other specialty wire rod, and all other wire rod.¹⁰⁷ The data gathered from these responses reflect significant product overlap for both domestic shipments and subject imports, and between subject imports from each of the subject countries.

Domestic producers. Over the period examined, the share of U.S. shipments in each of the categories surveyed did not change appreciably. The share of U.S. producers' shipments in the low/medium-low carbon industrial/standard quality category ranged from *** percent over the period examined.¹⁰⁸ The next highest percentage category for domestic U.S. shipments, the high/medium high-carbon industrial/standard quality category, ranged from *** percent over the period examined.¹⁰⁹ The share of domestic U.S. shipments of CHQ wire rod meeting IFI 140 specifications ***. The share of domestic U.S. shipments in the welding quality category ranged from *** percent over the period examined.

Brazil. The share of U.S. shipments in the low/medium-low carbon industrial/standard quality category from Brazil ranged from *** percent to *** percent over the period examined. Therefore, subject

¹⁰⁴ 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.”).

¹⁰⁵ CR at II-17; PR at II-11; CR/PR at Table II-4.

¹⁰⁶ CR at I-7; PR at I-6.

¹⁰⁷ These data were gathered through questionnaires and supplemental questionnaires issued on August 29, 2002 regarding CHQ and other specialty quality wire rod.

¹⁰⁸ CR/PR at Table D-1.

¹⁰⁹ CR/PR at Table D-1.

imports from Brazil have a particularly high degree of fungibility with domestic product and subject imports from Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.¹¹⁰

In addition, a significant share of wire rod import shipments from Brazil were in the high/medium-high carbon industrial/standard quality wire rod category in 1999 (***) percent) and 2001 (***) percent), although their share of subject imports from Brazil in this category in other periods was ***.¹¹¹

Canada. The share of U.S. shipments of CHQ meeting IFI-140 specifications from Canada ranged from *** percent to *** percent over the period examined.¹¹² The share of imports from Canada in the high/medium-high carbon industrial/standard quality wire rod category ranged from *** percent to *** percent over the period examined. The share of imports from Canada in this category was similar to that for domestic shipments, and importers of wire rod from Brazil, Germany, Indonesia, Trinidad and Tobago, and Mexico all reported a significant share of their U.S. shipments of wire rod in this category.¹¹³

Low/medium-low carbon industrial/standard quality wire rod as a share of Canadian importers' U.S. shipments ranged from *** percent to *** percent over the period examined.^{114 115}

Indonesia. *** reported shipments of subject imports from Indonesia were in two categories, low/medium-low carbon industrial/standard quality and high/medium-high carbon industrial/standard quality. The first category, as a share of Indonesian importers' U.S. shipments, ranged from *** percent to *** percent over the period examined, and the latter category ranged from *** percent to *** percent over the period examined. Thus, the record reflects a high level of fungibility between subject imports from Indonesia and the domestic product, and between subject imports from Indonesia and imports from each of the other subject countries.¹¹⁶

Mexico. U.S. shipments of subject imports from Mexico are concentrated in the low/medium-low carbon industrial/standard quality wire rod category. The share of U.S. shipments of subject imports from Mexico in this category ranged from *** to *** percent in the annual periods examined, but dipped to *** percent in interim 2002. The share of U.S. shipments of subject imports from Mexico in the high/medium-high carbon industrial/standard quality wire rod category ranged from *** percent to *** percent in the annual periods examined, but rose to *** percent in interim 2002. Moreover, there have been U.S. shipments of wire rod from Mexico in the CHQ wire rod category.¹¹⁷ Thus, the record reflects a high level of fungibility between subject imports from Mexico and the domestic product, and between subject imports from Mexico and imports from each of the other subject countries.¹¹⁸

¹¹⁰ CR/PR at Tables D-1 and D-2.

¹¹¹ CR/PR at Table D-2.

¹¹² OINV Memorandum INV-Z-163.

¹¹³ OINV Memorandum INV-Z-163; CR/PR at Tables D-1 and D-2.

¹¹⁴ OINV Memorandum INV-Z-163.

¹¹⁵ SFWG, and Canadian Respondents argue that imports from Canada should not be cumulated due to a lack of fungibility, because imports from Canada are concentrated in higher end products, in particular CHQ wire rod. SFWG Prehearing Brief at 7-8; Canadian Respondents' Prehearing Brief at 3-5. We disagree given the reasonable overlap in product mix between imports from Canada and the domestic product and the reasonable overlap in product mix between imports from Canada and each of the other subject countries, particularly in the high carbon industrial quality and low carbon industrial quality wire rod categories.

¹¹⁶ CR/PR at Table D-2.

¹¹⁷ CR/PR at Table D-2.

¹¹⁸ CR/PR at Table D-2.

Moldova. *** U.S. shipments of subject imports from Moldova were in the low/medium-low carbon industrial/standard quality wire rod category, ranging between *** of its shipments throughout periods examined. Thus, there is a high level of fungibility between subject imports from Moldova and domestic product and between subject imports from Moldova and subject imports from each of the other subject countries, although we acknowledge somewhat less overlap with imports from Canada.¹¹⁹

Trinidad and Tobago. *** of reported shipments of subject imports from Trinidad and Tobago were either in the low/medium-low carbon standard/industrial quality wire rod category, or the high/medium-high carbon industrial/standard quality wire rod category. The first category's share of Trinidad and Tobago importers' U.S. shipments ranged from *** percent to *** percent in all annual periods examined, although it dipped to *** percent in interim 2002. The second category's share ranged from *** percent to *** percent in the annual periods examined, and it was at *** percent in interim 2002. Thus, the record reflects a high level of fungibility between subject imports from Trinidad and Tobago and the domestic product, and between subject imports from Trinidad and Tobago and imports from each of the other subject countries.¹²⁰

Ukraine. The vast majority of U.S. shipments of subject imports from Ukraine were in the low/medium-low carbon industrial/standard quality wire rod category, with the share ranging from *** to *** percent over the period examined. Thus, there is a high level of fungibility between subject imports from Ukraine and the domestic product and between subject imports from Ukraine and subject imports from each subject country, with somewhat less overlap in product mix with imports from Canada.¹²¹

Although the record indicates varying degrees of overlap in product mix, and in particular somewhat less overlap between imports from Canada and imports from Moldova and Ukraine, we find that there is a reasonable level of fungibility between and among the domestic like product and wire rod from each of the subject countries.

¹¹⁹ CR/PR at Table D-2.

¹²⁰ CR/PR at Table D-2.

¹²¹ Ukrainian Respondent Krivorozhstal Iron & Steel Integrated Works ("Krivorozhstal") argues that due to actual or perceived differences in quality, imports of wire rod from Ukraine are not fungible with other subject countries or fungible with the domestic product. Krivorozhstal Prehearing Brief at 2. We note that purchasers ranked imports from Ukraine comparable in quality to domestic product twice and found the U.S. product superior three times. CR/PR at Table II-12. Moreover, purchasers stated in three out of four comparisons that subject imports of wire rod from Ukraine could be used in the same applications as the domestic product. CR/PR at Table II-4. These data reflect sufficient fungibility to support cumulation. As for wire rod from other subject countries, although there may be somewhat less product overlap between subject imports from Ukraine and subject imports from Canada, we find that based on the share of shipments of low carbon industrial quality wire rod from each of these subject countries, and the high interchangeability of wire rod within product categories, that there is sufficient fungibility between subject imports from Ukraine and subject imports from each of the subject countries to support cumulation.

2. Geographic Overlap

Wire rod producers are located throughout the United States.¹²² All domestic firms tend to supply wire rod regionally based on the locations of their plants, with none of the firms dominating the U.S. market.¹²³ Wire rod from most subject countries typically was entered into the United States by more than one importer. Further, individual importers frequently imported from a number of sources.¹²⁴

Commission data on geographic markets show that the domestic product and imports from each of the subject countries are generally marketed throughout the United States.¹²⁵ Although Canadian Respondents argued that subject imports from Canada were concentrated in the Midwest and Northern regions of the United States, unlike other subject imports, the record shows overlapping markets for subject imports from each of the subject countries in the Midwest.¹²⁶ Ispat Indo has argued that its imports of wire rod from Indonesia are concentrated in the Western United States.¹²⁷ However, our record reflects a broader geographic market for imports from Indonesia during the period examined,¹²⁸ and shows marketing of other subject imports in the West, demonstrating at least a moderate degree of geographic market overlap between imports from Indonesia and other subject imports over the period examined.¹²⁹

Thus, the data reflect an overlap in geographic markets for domestic product and imports from each of the subject countries, with subject imports from each of the subject countries and the domestic product generally marketed throughout the United States, with more limited overlap as noted.

3. Channels of Distribution

Over the period examined, *** percent of U.S. shipments were sold directly to end users. ***.¹³⁰

Although some of the Respondents have argued that their particular wire rod products have distinct channels of distribution due to their specialized end uses and end users, those circumstances are true for a broad range of the high-end specialized wire rod products that are made to a customer's specifications.¹³¹ Lower quality wire rod can also be directed to a specific group of end users.

¹²² CR/PR at Table III-1.

¹²³ CR at III-2; PR at III-1, CR/PR at Table II-13.

¹²⁴ CR/PR at IV-1.

¹²⁵ CR/PR at Table II-13.

¹²⁶ CR/PR at Table II-13.

¹²⁷ Indonesian Respondent P.T. Ispat Indo ("Ispat Indo") Posthearing Brief at 6-8.

¹²⁸ Importers of subject merchandise from Indonesia reported geographic markets in the ***. CR/PR at Table II-13. We note that in 1999, *** imported substantive imports of wire rod from ***. *** did not list a specific geographic market for its imports from Indonesia, but listed broad geographic markets for other subject imports. *** Importers' Questionnaire at 9, 33.

¹²⁹ We note that the record reflects more limited overlap in geographic markets between subject imports from Canada and subject imports from Indonesia.

¹³⁰ CR/PR at Table D-4.

¹³¹ Canadian Respondents' Prehearing Brief at 9.

4. Simultaneous Presence

Domestic shipment data and import data show that the domestic product and subject imports from all subject countries have been present in the United States market throughout the period examined.¹³²

5. Conclusion

Given the high degree of interchangeability between domestic and imported product, the product overlap between domestic product and all subject imports, and among subject imports, recognizing that more limited overlap may exist for certain countries such as Canada, Moldova, and Ukraine, nationwide geographic markets for the domestic product and imports from each of the subject countries,¹³³ similar channels of distribution, and simultaneous presence in the U.S. market, we conclude that there exists a reasonable overlap of competition between and among the domestic like product and the subject imports. We therefore cumulate the volume and effects of subject imports from Brazil, Canada, Indonesia, Mexico, Moldova, Ukraine, and Trinidad and Tobago for purposes of our material injury determinations regarding Brazil, Canada, Indonesia, Mexico, Moldova, and Ukraine.¹³⁴

IV. CONDITIONS OF COMPETITION¹³⁵

Wire rod is an intermediate product used to make a variety of products. There is a continuum of wire rod products, corresponding to various levels of quality and end uses; the Iron and Steel Society divides wire rod into 11 major categories of wire rod. These products range from low carbon industrial quality wire rod for such uses as nails, coat hangers, mesh, and fencing; to the middle range of wire rod

¹³² CR/PR at Table IV-1. Ispat Indo argues that its imports are isolated temporally because its last entry was made in July 2001. Ispat Indo Posthearing Brief at 8. Ispat Indo imported subject merchandise into the United States in 1999, 2000, and 2001. CR/PR at Table IV-1. The record does not reflect any seasonality to such imports. Although Ispat Indo has not imported subject merchandise in interim 2002, we do not find that sufficiently distinguishes subject imports from Indonesia from other subject imports or the domestic like product.

¹³³ We note some more limited geographic market overlap, as previously discussed.

¹³⁴ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when subject imports are compared to the domestic like product that she has defined. See supra n.67. Commissioner Bragg further finds that cumulation of all subject imports is warranted when the foregoing analysis is broadened to include consideration of subject imports from Germany. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

¹³⁵ Internal consumption accounted for 10 percent by volume of U.S. producers' total shipments in 2001. CR/PR at III-6. Neither Petitioners nor any of the Respondents have raised arguments with respect to application of the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), in these final phase investigations. We do not reach the issue whether internal consumption is significant under the statute because the third criterion of the captive production provision is not satisfied in these investigations. Wire rod is used to make wire and wire products, whether internally consumed or sold to third party purchasers. Producers reported little to no differences between the wire rod that they internally transferred, and that they sold in the merchant market. ***. CR at III-8; PR at III-6. Therefore, we find the captive production provision is not applicable in these investigations.

products for such uses as tire bead, mechanical springs, strand and rope; to the high-end specialty products, such as cold-heading quality wire rod, welding quality wire rod, and tire cord quality wire rod.¹³⁶

Apparent U.S. consumption of wire rod measured by quantity increased from *** short tons in 1999 to *** short tons in 2000, and then decreased to *** short tons in 2001, an overall decrease of *** percent from 1999 to 2001. Measured in value, apparent U.S. consumption of wire rod increased from *** in 1999 to *** in 2000, and then decreased to *** in 2001, an overall decrease of *** percent from 1999 to 2001.¹³⁷ Purchasers, including both wire producers and fastener producers, argued that demand may have been reduced in part due to import competition for downstream products.¹³⁸

The domestic industry consists of 12 U.S. producers of wire rod dispersed geographically across the United States.¹³⁹ The domestic industry as a whole produces a broad range of wire rod products, and most domestic producers individually manufacture a variety of wire rod products.¹⁴⁰ The U.S. wire rod industry appears to have the capacity to switch relatively easily from production of one type of wire rod to another, although switching to production of certain wire rod products is more difficult due to qualification requirements.¹⁴¹ There are also several importers of wire rod who market wire rod throughout the United States.¹⁴²

Five domestic producers experienced bankruptcies or partial to full shutdowns of their wire rod operations late in the period examined. North Star discontinued producing wire rod at its Kingman, Arizona plant in December 2000, although it continues to produce rebar at that facility. GS Industries filed for protection under Chapter 11 bankruptcy proceedings, and closed its Kansas City wire rod mill in February 2001. Republic Steel filed for protection under bankruptcy proceedings in April 2001. Northwestern Steel and Wire filed for protection under bankruptcy proceedings and suspended operations in May 2001. American Steel and Wire (“AS&W”), owned by Birmingham Steel, closed its Cleveland, Ohio wire rod facility in June 2001.¹⁴³ Overall, domestic capacity declined by *** percent from 1999 to 2001, after peaking in 2000. Simultaneous with the decline in domestic capacity from 2000 to 2001, apparent U.S. consumption also declined.¹⁴⁴ While U.S. capacity would not meet total U.S. consumption, the U.S. industry never operated near full capacity at any time during the period examined.¹⁴⁵ Notwithstanding the decline in domestic capacity, domestic capacity utilization was only at *** percent in 2001, compared to *** percent in 1999 and *** percent in 2000.¹⁴⁶

¹³⁶ CR/PR at Table I-1.

¹³⁷ Memorandum INV-Z-162, Table C-2a.

¹³⁸ CR/PR at II-10-II-12; PR at II-7-II-8.

¹³⁹ CR/PR at Table III-1.

¹⁴⁰ CR/PR at Tables D-1 and D-3.

¹⁴¹ Petitioners’ Posthearing Brief at 7. Respondents argued that the focus of the domestic mills changed over time. AWWPA Posthearing Brief at 7; CR at II-27-II-28; PR at II-21.

¹⁴² CR/PR at Table II-13.

¹⁴³ CR at II-2-II-3; PR at II-1-II-2.

¹⁴⁴ CR/PR at Table C-2.

¹⁴⁵ Memorandum INV-Z-162, Table C-2a.

¹⁴⁶ CR/PR at Table C-2.

In the majority of their responses, purchasers reported that imported wire rod from most sources and domestically produced wire rod are used in the same applications.¹⁴⁷ Purchasers reported that quality, price, and availability, ranked in that order, were the most important factors in selecting a wire rod supplier.^{148 149} Most responding purchasers said that there were no substitutes for wire rod.¹⁵⁰

The share of the U.S. market held by nonsubject imports, including imports of wire rod from Germany, was relatively stable from 1999 to 2001. Nonsubject imports decreased as a share of the U.S. market from *** percent in 1999 to *** percent in 2000, and then increased to *** percent in 2001, a net increase of *** percentage point.¹⁵¹

In 2000, the President imposed a tariff-rate quota (“TRQ”) on imports of certain wire rod¹⁵² as a safeguard action under section 203(a)(3) of the Act.¹⁵³ The TRQ applies to imports of certain wire rod from all countries except Canada and Mexico¹⁵⁴ for a period of three years and one day, beginning March 1, 2000. No individual country allocations were initially established under the TRQ. Under the original TRQ, which was in place for quota years 1 and 2, there were quarterly allocations for imports at the in-quota rate, for each of the first three quarters equal to one-third of the total quota amount for the year. In the fourth quarter, the total in-quota quantity for the first three quarters was subtracted from the total quota amount for the year, to calculate the available in-quota quantity (if any) for that year.¹⁵⁵ Several respondents in these investigations asserted that the structure of the quarterly allocation system in the first

¹⁴⁷ CR/PR at Table II-4.

¹⁴⁸ CR/PR at Table II-2.

¹⁴⁹ Respondent AWPAA argues that its members have had to source wire rod offshore due to long lead times experienced with domestic suppliers. AWPAA Prehearing Brief at 28. However, most purchasers found the domestic product superior in delivery times. CR/PR at Tables II-5, II-6, II-8, II-9, II-10, II-11.

¹⁵⁰ CR/PR at II-12.

¹⁵¹ Nonsubject imports were higher in interim 2002, *** percent, than in interim 2001, *** percent. Memorandum INV-Z-162, calculated from Table C-2a.

¹⁵² The subject imports in the Section 201 investigation did not exclude ball bearing steel, as does the scope in this investigation, and there were other minor differences between the subject imports in the Section 201 and the subject imports in these investigations.

In his remedy, the President adopted the definition of “certain steel wire rod” as specified in the Commission’s investigation but excluded from his remedy wire rod of tire cord quality, valve spring quality, class III pipe wrap quality, aircraft cold heading quality, aluminum cable steel reinforced quality, piano wire string quality, grade 1085 annealed bearing quality, and grade 1080 tire bead quality. Inv. No. TA-204-6, Certain Steel Wire Rod, (Aug. 2001) at I-1, n.3.

¹⁵³ Presidential Proclamation 7273 of February 16, 2000. CR at I-11; PR at I-9.

¹⁵⁴ Imports from Canada and Mexico were the subject of a separate investigation conducted under provisions of the NAFTA (investigation No. NAFTA-312-1) at petitioners’ request during 2001. On August 23, 2001, the Commission determined that a surge in imports of certain steel wire rod from Canada and Mexico, respectively, undermines the effectiveness of the import relief provided for in Presidential Proclamation 7273 of February 16, 2000. However, the President declined to modify the TRQ to include certain wire rod imports from Canada and Mexico. CR at I-11, n.10; PR at I-9, n.10.

¹⁵⁵ CR at I-12; PR at I-10.

two years of the TRQ encouraged the entry of imports in the earlier months of each quarter, and the earlier quarters of each quota year.¹⁵⁶

On November 21, 2001, the President determined that the in-quota quantity of the TRQ should be allocated among supplier countries. This action established sub-quotas for (1) the European Union; (2) Trinidad and Tobago; (3) Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and (4) all other countries.¹⁵⁷ The President also amended the TRQ to allow for four equal quarterly allocations for quota year three.¹⁵⁸

V. MATERIAL INJURY BY REASON OF CUMULATED SUBSIDIZED AND/OR LTFV SUBJECT IMPORTS FROM BRAZIL, CANADA, INDONESIA, MEXICO, MOLDOVA, AND UKRAINE¹⁵⁹

A. In General

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹⁶⁰ 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.¹⁶¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁶² In assessing whether 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.¹⁶³ 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.”¹⁶⁴

For the reasons discussed below, we determine that the domestic industry producing wire rod is materially injured by reason of cumulated subject imports from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine that are subsidized and/or sold at LTFV, for purposes of our material injury analysis of all remaining subject countries, except for the determination on Trinidad and Tobago.

¹⁵⁶ CR at I-13-I-14; PR at I-10.

¹⁵⁷ Presidential Proclamation 7505 of November 21, 2001. CR at I-11-I-12; PR at I-9-I-10.

¹⁵⁸ CR at I-13; PR at I-10.

¹⁵⁹ As discussed earlier, this analysis includes data regarding imports from Trinidad and Tobago.

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

¹⁶¹ 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).

¹⁶² 19 U.S.C. § 1677(7)(A).

¹⁶³ 19 U.S.C. § 1677(7)(C)(iii).

¹⁶⁴ 19 U.S.C. § 1677(7)(C)(iii).

B. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁶⁵

The volume of cumulated subject imports increased from *** short tons in 1999 to *** short tons in 2000 and *** short tons in 2001, an overall increase of approximately *** short tons or *** percent.¹⁶⁶ ¹⁶⁷ ¹⁶⁸ The volume of subject imports increased from 2000 to 2001, despite a simultaneous decline in domestic consumption of *** short tons (a drop of *** percent).

The market penetration of cumulated subject imports also increased from 1999 to 2001. The share of apparent U.S. consumption accounted for by the cumulated subject imports measured in quantity increased from *** percent in 1999 to *** percent in 2000 and *** percent in 2001, an increase of *** percentage points.¹⁶⁹

The cumulated subject imports’ market share increase came at the expense of the domestic industry. Domestic producers’ market share, measured in quantity, decreased from *** percent in 1999 to *** percent in 2001, a decrease of *** percentage points. Nonsubject imports’ share of the U.S. market was relatively stable from 1999 to 2001, decreasing from *** percent of the U.S. market in 1999 to *** percent in 2000, and then recovering and slightly increasing to *** percent of the market in 2001, resulting in a net increase of *** percentage point.¹⁷⁰ Therefore, it was the cumulated subject imports, and not the nonsubject imports, that gained significant market share previously held by the domestic industry from 1999 to 2001.¹⁷¹ ¹⁷²

¹⁶⁵ 19 U.S.C. § 1677(7)(C)(i).

¹⁶⁶ OINV Memorandum INV-Z-162, Table C-2a.

¹⁶⁷ We have considered whether any change in the volume of cumulated subject imports since the filing of the petition on August 31, 2001 is related to the pendency of the investigations. We have determined that this is the case with respect to lower subject import volumes in interim 2002 as compared to interim 2001. Therefore, we reduce the weight accorded to interim 2002 data for purposes of our material injury determinations. 19 U.S.C. § 1677(7)(I). The volume of cumulated subject imports in interim 2002 was *** short tons as compared to *** short tons in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

Respondents have argued that we should focus our analysis on the current status of the industry, due to recent changes in the domestic industry. Joint Respondents’ Prehearing Brief at 49-51. We have considered the entire period examined in conducting our analysis consistent with our traditional practice, except as noted above for interim 2002 data.

¹⁶⁸ Respondents have argued that the TRQ was responsible for an increase in volume in the spring of 2001 because there was an incentive to increase imports early in the quota year. Joint Respondents’ Prehearing Brief at 32-33. However, the record clearly shows that subject import volume increased steadily from 1999 to 2001. OINV Memorandum INV-Z-162, Table C-2a.

¹⁶⁹ OINV Memorandum INV-Z-162, Table C-2a. Subject import market share was *** percent in interim 2002 as compared to *** percent in interim 2001. Id.

¹⁷⁰ OINV Memorandum INV-Z-162, Table C-2a. Nonsubject import volume was higher in interim 2002 (*** percent) than in interim 2001 (*** percent).

¹⁷¹ We have considered Respondents’ argument that subject imports increased both absolutely and relatively as a result of domestic industry restructuring which, they contend, was unrelated to subject imports. Ivaco Posthearing Brief at 2-5. We note, however, that subject import volume increased not only in 2001, but also in 2000, from

(continued...)

Accordingly, we find that the volume of cumulated subject imports, and the increase in that volume, are significant, in absolute terms and relative to production or consumption in the United States.¹⁷³

C. Price Effects of the Cumulated Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁷⁴

Purchasers ranked price as the second most important factor, after quality, in selecting a wire rod supplier.¹⁷⁵ Out of 57 total responses, 29 purchasers said that they “always” or “usually” purchased the wire rod offered at the lowest price, although other purchase factors such as availability, product consistency and quality, and reliability of supply were also important.¹⁷⁶ We have also found that subject imported wire rod and domestically produced wire rod of similar quality and intended for similar uses, are highly interchangeable. Moreover, there is a broad range of wire rod products, both imported and domestically produced, in the U.S. market.

In our analysis of underselling, we have relied principally on the pricing data collected by the Commission. These data compare pricing for comparable products from domestic and subject sources. Of the 250 possible quarterly price comparisons for 1999 to 2001¹⁷⁷ between the weighted average price for U.S.-produced wire rod and the weighted average price for subject imports, subject imports undersold

¹⁷¹ (...continued)
existing high levels. As discussed in Conditions of Competition, supra, domestic mill closures were concentrated in 2001.

¹⁷² The ratio of subject import volume to domestic production increased from *** percent in 1999 to *** percent in 2000 and *** percent in 2001. It was *** percent in interim 2001 and *** percent in interim 2002. Calculated from Memorandum INV-Z-162, Table C-2a.

¹⁷³ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when cumulated subject imports are compared to the domestic like product and the domestic industry that she has defined. See supra nn. 67 & 70; see also CR/PR at Table C-1.

¹⁷⁴ 19 U.S.C. § 1677(7)(C)(ii).

¹⁷⁵ CR/PR at Table II-2.

¹⁷⁶ CR at II-15; PR at II-9; CR/PR at Table II-3. Generally, purchasers found the domestic product comparable or superior to subject imports with respect to product quality and consistency, availability and reliability of supply. CR/PR at Tables II-5, II-6, II-8, II-9, II-10, II-11, and II-12.

¹⁷⁷ Because of the pendency of these investigations, and the drop in subject import volume in interim 2002, we find that data from the period 1999 to 2001 are more probative for our pricing analysis, and we have reduced the weight accorded to interim 2002 data. See 19 U.S.C. § 1677(7)(I). Still, we note that underselling remained more common than overselling in interim 2002 based on the Commission’s pricing data. CR/PR at Tables V-3-V-9.

domestic products in 167 quarters, or 66.8 percent of all comparisons.¹⁷⁸ We note that cumulative underselling has been significant, and we note in particular the consistent double-digit margins of underselling of the domestic product by subject imports from Moldova, Ukraine, and Brazil.¹⁷⁹ Although we recognize that there is some overselling, we find that the underselling that occurred was significant.¹⁸⁰

Purchaser data corroborate the underselling reflected in the pricing data. For each of the subject countries, purchasers more often reported that the U.S. product was higher-priced rather than lower-priced.¹⁸¹ There were also confirmed lost sales totaling approximately ***,¹⁸² In light of the importance of price in purchasing decisions, and the significant and increasing volume of subject imports from 1999 to 2001, we find the underselling indicated by the pricing data, and corroborated by the other information in the record, to be significant.¹⁸³

We next consider whether the subject imports have had significant price-depressing or price-suppressing effects. We have relied principally on the pricing data collected by the Commission on seven wire rod products, ranging from industrial quality to specialized high end CHQ wire rod and welding quality wire rod.¹⁸⁴

Even though the Commission's pricing data show stable or small increases in domestic prices for at least some of the products surveyed from 1999 to 2001, we find that cumulated subject imports were suppressing prices to a significant degree. The domestic industry's cost of goods sold ("COGS") as a share of net sales steadily increased from *** percent in 1999 to *** percent in 2000 and then *** percent

¹⁷⁸ Of the 270 possible quarterly price comparisons for all periods examined (including interim 2002) between the weighted average price for U.S.-produced wire rod and the weighted average price for subject imports, subject imports undersold domestic products in 178 quarters, or 65.9 percent of all comparisons and oversold domestic products in 92 quarters, or 34.1 percent of all comparisons. CR/PR at Table V-10.

¹⁷⁹ CR at V-12; PR at V-10; CR/PR at Tables V-3-V-9.

¹⁸⁰ Although we have focused our analysis on a comparison of domestic prices and subject import prices in the aggregate, we note that underselling was particularly prevalent for the relatively higher volume industrial/standard quality products 1-3. Memorandum INV-Z-162, Tables V-3b-V5b.

¹⁸¹ CR/PR at Tables II-5, II-6, II-8, II-9, II-10, II-11. Overall, the U.S. product was rated inferior on price in 41.2 percent of the comparisons, and superior on price only in 12.5 percent of the comparisons.

¹⁸² Purchasers agreed with allegations involving \$16.0 million of sales in the preliminary phase of the investigations, and *** in the final phase of the investigations. CR at V-31; PR at V-13; CR/PR at Table V-11.

¹⁸³ Respondent Ivaco argues that the Commission should find that there is a natural price premium for the domestic product, which explains why underselling in these investigations is not injuring the domestic industry. To support its arguments, it references the Commission's findings regarding a price premium in the 1997 wire rod investigations. Respondent Ivaco Posthearing Brief at 10-11.

In the 1997 wire rod investigations, the Commission found that "subject imports generally [had] significantly longer lead times and larger minimum order sizes than domestic shipments, and cannot be canceled once ordered." Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 at 25-26 (Nov. 1997). The Commission also found that imports tended to have more quality problems. Id.

Purchaser comparisons in these investigations reflect that the domestic product is generally considered comparable to the subject imports in availability, quality, and minimum quantity requirements. CR/PR at Tables II-5, II-6, II-8, II-9, II-10, II-11. Thus, the record in these investigations differs from the record in the 1997 investigations.

¹⁸⁴ Memorandum INV-Z-162, Tables V-3b-V-9b.

in 2001.¹⁸⁵ Unit cost of goods sold also steadily increased over the period examined.¹⁸⁶ These data indicate that as the domestic industry's costs increased, they were unable to raise their prices to cover them.¹⁸⁷ This cost/price squeeze was exacerbated by the large fixed costs in the industry,¹⁸⁸ the price-based nature of the competition, the decreasing demand in the domestic industry's market, and the falling rate of its capacity utilization.¹⁸⁹

Although other factors in the market may be influencing domestic wire rod prices, such as the decline in U.S. apparent consumption of wire rod and wire, we conclude that the significantly increasing volume of cumulated subject imports sold at lower prices contributed significantly to the downward pressure on U.S. prices and the domestic industry's inability to raise prices commensurately with increasing costs. Accordingly, we conclude that cumulated subject imports had significant price suppressing effects.¹⁹⁰

D. Impact of the Cumulated Subject Imports on the Domestic Industry

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.¹⁹¹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."^{192 193 194}

¹⁸⁵ OINV Memorandum INV-Z-162, Table C-2a. COGS as a share of net sales was *** percent in interim 2002 as compared to *** percent in interim 2001. Id.

¹⁸⁶ Unit costs of goods sold rose from *** in 1999 to *** in 2000 and *** in 2001. It was *** in interim 2002 as compared to *** in interim 2001. Unit costs, including both cost of goods sold and SG&A expenses, increased from *** per short ton in 1999 to *** in 2001. OINV Memorandum INV-Z-162, Table C-2a.

¹⁸⁷ CR/PR at Table VI-3.

¹⁸⁸ CR/PR at Table VI-5 (original cost of productive facilities for U.S. producers valued at \$1.6 billion in 2001).

¹⁸⁹ CR/PR at Table C-2.

¹⁹⁰ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when cumulated subject imports are compared to the domestic like product and the domestic industry that she has defined. See supra nn. 67 & 70; see also CR/PR at Table C-1.

¹⁹¹ 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.).

¹⁹² 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; 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.

¹⁹³ 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 final antidumping determination concerning Brazil, Commerce found dumping margins of 94.73 percent for Belgo Mineira and an all others rate of 74.45 percent. 67 Fed. Reg. 55792 (Aug. 30, 2002) (Brazil). For Canada, Commerce found dumping margins of 2.54 percent for Ispat Sidbec, 13.35 percent for Ivaco, de minimis for Stelco, and a rate of 9.91 percent for all others. 67 Fed. Reg. 55782 (Aug. 30, 2002) (Canada). For Indonesia, Commerce
(continued...)

From 1999 to 2001,¹⁹⁵ as the volume of subject imports increased in a declining market,¹⁹⁶ and the domestic industry lost significant market share to the subject imports, the condition of the U.S. industry deteriorated markedly. Several performance indicators for the domestic industry decreased from 1999 to 2000, then fell more sharply from 2000 to 2001. The domestic industry's production, quantity and value of U.S. shipments, and capacity utilization all followed this trend.¹⁹⁷ Subject imports increased in the U.S. market in absolute volume and in market penetration at the expense of the domestic industry, which lost *** percentage points in market share from 1999 to 2001, falling from *** percent of the U.S. market to *** percent.¹⁹⁸

The most striking negative performance indicator for the domestic industry was the increasing operating losses. As a result of declining sales volume, low and declining capacity utilization, and price

¹⁹³ (...continued)

found dumping margins of 4.06 percent for Ispat Indo and all others. 67 Fed. Reg. 55798 (Aug. 30, 2002) (Indonesia). For Mexico, Commerce found dumping margins of 20.11 percent for SICARTSA and all others. 67 Fed. Reg. 55800 (Aug. 30, 2002) (Mexico). For Moldova, Commerce found dumping margins of 369.10 percent as a Moldova-wide rate. 67 Fed. Reg. 55790 (Aug. 30, 2002) (Moldova). For Ukraine, Commerce found dumping margins of 116.37 percent for Krivorozhstal and all others. 67 Fed. Reg. 55785 (Aug. 30, 2002) (Ukraine). For Trinidad and Tobago, Commerce found dumping margins of 11.40 percent for Caribbean Ispat Ltd., and all others. 67 Fed. Reg. 55788 (Aug. 30, 2002) (Trinidad and Tobago).

¹⁹⁴ 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 the 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.

¹⁹⁵ As with the volume and pricing sections, we have focused our analysis on calendar year 1999 to 2001 data, and reduced the weight accorded to interim 2002 data due to the effect of the filing of the petition and the pendency of these investigations. See 19 U.S.C. § 1677(7)(I).

¹⁹⁶ Apparent U.S. consumption measured in quantity fell irregularly by *** percent from 1999 to 2001. It increased slightly from *** short tons in 1999 to *** short tons in 2000, and then fell to *** short tons in 2001. Apparent domestic consumption was *** million short tons in interim 2002 as compared to *** million short tons in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

Domestic capacity fell irregularly at a similar rate, i.e. *** percent, from 1999 to 2001. It was lower in interim 2002 as compared to interim 2001.

¹⁹⁷ Production declined from *** short tons in 1999 to *** short tons in 2000, and then fell sharply to *** short tons in 2001, for a total decrease of *** percent. In interim 2002, production was *** short tons as compared to *** short tons in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

The quantity of the domestic industry's U.S. shipments fell from *** short tons in 1999 to *** short tons in 2000 and *** short tons in 2001, a decrease from 1999 to 2001 of *** percent. In interim 2002, the quantity of the domestic industry's U.S. shipments was *** short tons as compared to *** short tons in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

The value of the domestic industry's U.S. shipments fell from *** in 1999 to *** in 2000 and *** in 2001, a decrease from 1999 to 2001 of *** percent. In interim 2002, the value of the domestic industry's U.S. shipments was *** as compared to *** in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

Capacity utilization decreased from *** percent in 1999 to *** percent in 2000 and to *** percent in 2001. Capacity utilization was at *** percent in interim 2002 as compared to *** percent in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

¹⁹⁸ OINV Memorandum INV-Z-162, Table C-2a.

levels that were suppressed to a significant degree, the industry's operating losses grew progressively from a loss of *** in 1999 to a loss of *** in 2000, and to a loss of *** in 2001.¹⁹⁹ The industry's operating income margin (operating income as a share of sales) fell from negative *** in 1999 to negative *** in 2000 and further to negative *** in 2001.²⁰⁰

There were other negative performance indicators. The number of production and related workers, hours worked, and wages paid fluctuated from 1999 to 2000, but declined sharply from 2000 to 2001.²⁰¹ Industry capital expenditures reported in the questionnaires increased somewhat from 1999 to 2000, then fell by *** percent in 2001.²⁰²

Respondents have argued that the bankruptcies and partial or full shutdowns experienced by the domestic industry from December 2000 to June 2001 were caused by factors other than subject imports. As a preliminary matter, we note that we are to consider the impact of subject imports on the domestic industry as a whole, and not only certain domestic producers.²⁰³ The condition of the domestic industry as a whole became progressively worse from 1999 to 2001 by reason of cumulated subject imports,²⁰⁴ and almost all producers were experiencing declining performance.²⁰⁵ We conclude from the record evidence that although additional factors may have contributed to certain domestic producers' financial problems, subject imports were a significant cause of material injury to the entire industry, playing a significant role in the adverse market conditions facing the domestic industry, including the loss of sales and market share to lower-priced subject imports.²⁰⁶ As the cumulated subject imports took sales from the domestic industry, the domestic industry experienced growing operating losses, an increased cost-price squeeze, and cost inefficiencies as production and shipments declined.

The record shows that the increasing volumes of the subject imports took market share away from the domestic industry at a time of falling consumption, leading to the domestic industry's decreased production and shipments.²⁰⁷ Because of the subject imports' significant underselling and adverse price

¹⁹⁹ In interim 2002, the domestic industry experienced an operating income of *** as compared to an operating loss of *** in interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

²⁰⁰ OINV Memorandum INV-Z-162, Table C-2a.

²⁰¹ OINV Memorandum INV-Z-162, Table C-2a. All three employment indicators were lower in interim 2002 as compared to interim 2001. *Id.*

²⁰² OINV Memorandum INV-Z-162, Table C-2a. Industry capital expenditures were higher in interim 2002 than in interim 2001. *Id.*

²⁰³ See e.g., Encon Industries, Inc. v. United States, 16 CIT 840, 842 (1998); Copperweld Corp. v. United States, F. Supp. 552, 568 (Ct. Int'l Tr. 1988).

²⁰⁴ We further note, with respect to the specific domestic producers experiencing bankruptcies or shutdowns, that Northwestern did not provide the Commission with a questionnaire response, and Birmingham only provided limited trade data from the preliminary phase of the investigations. CR/PR at III-1, VI-1, nn.1, 4; CR/PR at Table III-1. Therefore, the data upon which we have relied largely reflect the performance of surviving U.S. producers, including any benefits derived from the closure of competing members of the domestic industry.

²⁰⁵ CR/PR at Table VI-2. ***.

²⁰⁶ Tr. at 53-54, 61-65; Petitioners' Posthearing Brief at 7 & Ex. 1 at 38-39, 49-54.

²⁰⁷ Joint Respondents have argued that subject import volume increased in markets that the domestic producers had abandoned or had little interest. Joint Respondents' Prehearing Brief at 30-32. The record reflects that the domestic industry produces a broad range of wire rod products, and that it can change its products as market conditions warrant.

effects, the domestic industry could not raise prices to recover increased costs. Accordingly, we find that the subject imports are having a significant adverse impact on the domestic industry.²⁰⁸

VI. CRITICAL CIRCUMSTANCES²⁰⁹

In its final determinations, Commerce made affirmative critical circumstances findings with respect to subject imports from Moldova and Ukraine.²¹⁰ Because we have determined that the domestic industry producing wire rod is materially injured by reason of subject imports, we must further find “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”²¹¹ The SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”²¹²

The statute further provides that in making this finding the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.²¹³

Consistent with Commission practice,²¹⁴ in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject imports from Moldova and Ukraine.²¹⁵ The petitions in this case were filed on August 31, 2001. Although Commerce typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition, we are not required to analyze the same comparison periods that Commerce

²⁰⁸ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when cumulated subject imports are compared to the domestic industry that she has defined. See supra nn. 67 & 70; see also CR/PR at Table C-1.

²⁰⁹ Commissioner Bragg does not join section VI. of these Views. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

²¹⁰ CR at I-3; PR at I-2; CR/PR at Appendix A (67 Fed. Reg. 55790 (Moldova) and 67 Fed. Reg. 55785 (Ukraine) (Aug. 30, 2002)).

²¹¹ 19 U.S.C. § 1673d(b)(4)(A)(i).

²¹² SAA at 877.

²¹³ 19 U.S.C. § 1673d(b)(4)(A)(ii).

²¹⁴ See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777 to 79 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

²¹⁵ CR at IV-15; PR at IV-13; CR/PR at Table IV-6.

analyzed.²¹⁶ We have compared subject import volume from Moldova and from Ukraine for the six month period prior to and including August 2001 (March 2001 to August 2001) to the volume of those subject imports from each of those countries, respectively, for the six month period following the filing of the petition (September 2001 to February 2002). We have also considered inventories of subject imports from Moldova and Ukraine held in the United States and pricing data in making our critical circumstances determinations.²¹⁷

Moldova. The volume for subject imports from Moldova was 81,956 short tons for the six month period prior to the filing of the petition, and 110,467 short tons for the six month period following the filing of the petition, an increase of 34.8 percent.²¹⁸

*** reported inventories of *** short tons of subject imports from Moldova on February 28, 2001 (six months prior to filing the petition), *** short tons of subject imports from Moldova on August 31, 2001 (the date of the filing of the petition), and *** short tons of subject imports from Moldova on February 28, 2002, six months following the filing of the petition.²¹⁹

We have also considered prices for Products 1-3 (the only price items facing direct competition from imports from Moldova and imports from Ukraine) in our critical circumstances determinations. We note that domestic prices for Products 1-3 increased moderately in the fourth quarter of 2001 and the first quarter of 2002, compared to the two previous quarters.²²⁰ Prices for subject imports of Products 1-3 from Moldova were stable to declining in the fourth quarter of 2001 and the first quarter of 2002 compared to the two previous quarters.²²¹

Although subject imports from Moldova increased by 34.8 percent in the six month period subsequent to the filing of the petition, as compared to the six month period prior to the filing of the petition, we do not find that this increase supports a finding that subject imports from Moldova are likely to undermine seriously the remedial effect of the antidumping duty order. Imports from Moldova accounted for no more than *** percent of apparent U.S. consumption over the period examined.²²² Other indicators further support this finding. Inventories of subject imports from Moldova held in the United States decreased in the six month period subsequent to the filing of the petition, as compared to the six month period prior to the filing of the petition. Prices for subject imports from Moldova showed some declines, but domestic prices showed moderate increases in the six month period subsequent to the filing of the petition.

Ukraine. The volume of subject imports from Ukraine was 133,430 short tons for the six month period prior to the filing of the petition, and 124,179 short tons for the six month period following the filing

²¹⁶ 19 U.S.C. § 1673d(b)(4)(A)(ii).

²¹⁷ We have also compared import volumes, inventories, and prices for the three month period prior to and subsequent to the filing of the petition to the extent data are available.

²¹⁸ CR/PR at Table IV-6. For the three month period prior to the filing of the petition the subject import volume from Moldova was 63,126 short tons, as compared to 74,479 short tons for the three month period subsequent to the filing of the petition, an increase of 18.0 percent. Id.

²¹⁹ CR/PR at Table IV-7. We do not have data that correspond precisely with the three month period prior to and following the filing of the petition with respect to inventories for subject imports from either Moldova or Ukraine. We note, however, that the available data do reflect that inventories of subject imports from Moldova held in the United States in March 2001 were *** short tons, on August 31, 2001, they were *** short tons, and in December 2001, they were *** short tons. Memorandum INV-Z-162, Table C-2a; CR/PR at Table IV-7.

²²⁰ CR/PR at Tables V-3-V-5.

²²¹ CR/PR at Tables V-3-V-5.

²²² Memorandum INV-Z-162, Table C-2a.

of the petition, a decrease of 6.9 percent.²²³ Additionally, imports from Ukraine accounted for no more than *** percent of apparent U.S. consumption over the period examined.²²⁴

*** reported inventories of *** short tons of subject imports from Ukraine on February 28, 2001, *** short tons on August 31, 2001, and *** short tons on February 28, 2002.²²⁵

As stated above, domestic prices for Products 1-3 increased moderately in the fourth quarter of 2001 and the first quarter of 2002, compared to the two previous quarters.²²⁶ Prices for subject imports of Products 2-3 from Ukraine were generally stable in the fourth quarter of 2001 and the first quarter of 2002, compared to the two previous quarters.²²⁷

Subject import volume from Ukraine was lower in the six month period subsequent to the filing of the petition as compared to the six month period prior to the filing of the petition. Inventories of subject imports from Ukraine held in the United States were *** higher in the six month period subsequent to the filing of the petition as compared to the six month period prior to the filing of the petition. Domestic prices showed moderate increases, and prices for subject imports from Ukraine did not show significant changes, in the six month period subsequent to the filing of the petition. We do not find that either the decreasing import volume, the modest increase in inventories, or the price data support a finding that subject imports from Ukraine are likely to undermine seriously the remedial effect of the antidumping order to be issued.

Accordingly, we find that critical circumstances do not exist with respect to subject imports from Moldova and Ukraine.

²²³ CR/PR at Table IV-6. For the three month period prior to the filing of the petition the subject import volume from Ukraine was 67,440 short tons, as compared to 93,796 short tons for the three month period subsequent to the filing of the petition, an increase of 39.1 percent. Id.

²²⁴ Memorandum INV-Z-162, Table C-2a.

²²⁵ CR/PR at Table IV-7. We note that the available data reflect that inventories of subject imports from Ukraine held in the United States in March 2001 were *** short tons, on August 31, 2001, they were *** short tons, and in December 2001, they were *** short tons. Memorandum INV-Z-162, Table C-2a; CR/PR at Table IV-7.

²²⁶ CR/PR at Tables V-3-V-5.

²²⁷ CR/PR at Tables V-3-V-5. We note that there were no price comparisons available for imports from Ukraine with respect to Product 1 after the second quarter of 2001.

VII. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO²²⁸

A. Volume

To begin, we note that throughout the period of investigation, Trinidad and Tobago was the second or third largest source of subject wire rod imports into the U.S. market.²²⁹ The volume and market share of subject imports from Trinidad and Tobago increased from 1999 to 2001, even though total apparent consumption was declining.²³⁰ The volume of subject imports from Trinidad and Tobago decreased from 341,815 short tons in 1999 to 287,507 short tons in 2000, and then rose to 355,089 short tons in 2001.²³¹ The share of the U.S. market held by subject imports from Trinidad and Tobago decreased from *** percent of the U.S. market in 1999 to *** percent of the U.S. market in 2000, and increased to *** percent of the U.S. market in 2001.²³² Subject imports from Trinidad and Tobago are concentrated in the commodity wire rod products, low/medium-low carbon industrial/standard quality wire rod, used to manufacture nails, coat hangers, and mesh for concrete reinforcement and fencing.²³³ These products, which constituted approximately *** percent of all U.S. shipments of subject imports from Trinidad and Tobago from 1999 to 2001, are commodity products sold by many suppliers.²³⁴ The market for these products is very price sensitive.²³⁵ In such a price sensitive market, we find Trinidad

²²⁸ Chairman Okun dissenting. See Dissenting Views of Chairman Deanna Tanner Okun with respect to Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago.

²²⁹ CR/PR at Table C-1, Memorandum INV-Z-162, Table C-2a.

²³⁰ Similar to our material injury analysis with respect to the other subject countries, we have reduced the weight accorded to interim 2002 data for purposes of our material injury determinations regarding Trinidad and Tobago. 19 U.S.C. § 1677(7)(I). The volume of subject imports from Trinidad and Tobago was higher in interim 2002, 89,857 short tons, than in interim 2001, 60,992 short tons. Memorandum INV-Z-162, Table C-2a.

²³¹ Memorandum INV-Z-162, Table C-2a.

²³² Memorandum INV-Z-162, Table C-2a.

²³³ CR/PR at Table I-1.

²³⁴ CR/PR at Tables D-1 and D-2. The share of U.S. shipments in this category for imports from Trinidad and Tobago was *** percent in interim 2002 as compared to *** percent in interim 2001. Id.

²³⁵ We note that the other significant category of wire rod imports from Trinidad and Tobago, which comprised *** percent of its U.S. shipments in 2001, is the high/medium-high carbon industrial/standard quality wire rod category, which is also a commodity category and supplied by many suppliers. CR/PR at Tables D-1 and D-2.

and Tobago's absolute volume levels and market share, and their increase from 1999 to 2001, to be significant²³⁶ in absolute terms and relative to production and consumption in the United States.^{237 238}

B. Price

As discussed above, subject imports from Trinidad and Tobago are concentrated in the low to medium carbon industrial quality wire rod category, commodity products that are highly price sensitive. Subject imports from Trinidad are highly substitutable with the domestic product in that category, which reinforces the price competition between subject imports from Trinidad and Tobago and the domestic product.

Subject imports from Trinidad and Tobago undersold comparable U.S. products in 70.8 percent of quarterly comparisons from 1999 to 2001.²³⁹ For Products 1 and 2, both of which were grades of industrial quality wire rod, subject imports from Trinidad and Tobago undersold the domestic industry in 22 out of 26 comparisons by margins that ranged up to 11.0 percent.²⁴⁰ The highest quantity of available price comparisons between imports from Trinidad and Tobago and the domestic product were for Products 1 and 2. Eight purchasers rated the U.S. product inferior (higher) in price to subject imports from Trinidad and Tobago, and only one purchaser ranked the domestic product superior (lower) in price to subject imports from Trinidad and Tobago.²⁴¹ In light of the importance of price in purchasing decisions, and the significant and increasing volume of subject imports from Trinidad and Tobago from 1999 to 2001, we find the underselling indicated by the pricing data, and corroborated by the other information in the record, to be significant.

We find that subject imports from Trinidad and Tobago have had significant adverse price suppressing effects. Pricing pressure from the readily available and increasing volume of lower-priced subject imports from Trinidad and Tobago prevented the domestic industry from raising prices when its costs increased,²⁴² particularly in the price-sensitive low carbon industrial quality wire rod category. As stated earlier, subject imports from Trinidad and Tobago are concentrated in that category. The cost-price

²³⁶ Caribbean Ispat has argued that imports from Trinidad and Tobago cannot be injuring the domestic industry because the volume of imports from Trinidad increased in interim 2002 as compared to interim 2001 at the same time that the condition of the domestic industry improved. CIL Prehearing Brief at 20. As stated above, we have focused our analysis on data from 1999 to 2001, and not a comparison of interim data due to the pendency of the investigations at that time. We note, however, that one quarter's data showing a simultaneous increase in imports from Trinidad and Tobago and an improvement in the financial condition of the domestic industry does not mean that there is not material injury by reason of lower-priced imports from Trinidad and Tobago.

²³⁷ The ratio of subject import volume from Trinidad and Tobago to domestic production increased irregularly from *** percent in 1999 to *** percent in 2000 and *** percent in 2001. It was *** percent in interim 2001 and *** percent in interim 2002. Calculated from Memorandum INV-Z-162, Table C-2a.

²³⁸ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when subject imports from Trinidad and Tobago are compared to the domestic like product and the domestic industry that she has defined. See *supra* nn. 67 & 70; see also CR/PR at Table C-1.

²³⁹ CR/PR calculated from Table V-10. CR at V-30; PR at V-12. For all periods examined (including interim 2002), there was underselling in 69.2 percent of all quarterly comparisons.

²⁴⁰ CR/PR at Tables V-3-V-4.

²⁴¹ CR/PR at Table II-11.

²⁴² CR/PR at Table VI-3.

squeeze experienced by the domestic industry described above was exacerbated by its declining shipments and consequent declining revenues, particularly during 2001, as lower-priced imports from Trinidad and Tobago increased in volume by 23.5 percent and gained market share at the expense of the domestic industry.

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 suppressed prices of domestically produced wire rod to a significant degree.²⁴³

C. Impact

As noted above, during the investigation period, the domestic industry experienced growing operating losses, decreased production, shipments, capacity and capacity utilization, declining employment indicators, increasing costs, and suppressed prices. Trinidad and Tobago, which was ranked as the second or third most significant subject import supplier throughout the period, shipped increasing volumes of subject imports that undersold the domestic wire rod in a majority of comparable periods. Thus, based on the significant and increasing volume and market share of subject imports from Trinidad and Tobago in a declining market, the significant price underselling, and significant price suppression by these imports, and declining industry indicators from 1999 to 2001, we find that the subject imports from Trinidad and Tobago are having a significant adverse impact on the domestic industry producing wire rod.^{244 245}

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of subsidized imports of wire rod from Brazil and Canada and less than fair value imports of wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago,²⁴⁶ and Ukraine. We further find that critical circumstances do not exist with respect to imports of wire rod from Moldova and Ukraine, and that less than fair value and subsidized imports of wire rod from Germany are negligible.²⁴⁷

DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN WITH RESPECT TO CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM TRINIDAD AND TOBAGO

²⁴³ Commissioner Bragg finds that the foregoing analysis and conclusion are equally valid when subject imports from Trinidad and Tobago are compared to the domestic like product and the domestic industry that she has defined. See supra nn. 67 & 70; see also CR/PR at Table C-1.

²⁴⁴ We note that Caribbean Ispat is the sole supplier of wire rod from Trinidad and Tobago, and in a commodity market for industrial quality wire rod that is so highly price sensitive, decisions by a supplier of this magnitude can have a significant impact on the market.

²⁴⁵ Commissioner Bragg finds that the significant volume and price effects of subject imports from Trinidad and Tobago resulted in a significant adverse impact to the domestic industry that she has defined. See supra nn. 67 & 70; see also CR/PR at Table C-1.

²⁴⁶ Chairman Okun dissenting. See Dissenting Views of Chairman Deanna Tanner Okun with respect to Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago.

²⁴⁷ Commissioner Bragg dissenting. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

Based on the record in these investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of carbon and certain alloy steel wire rod (“wire rod”) from Trinidad and Tobago that are sold in the United States at less than fair value (“LTFV”).¹ Because Trinidad and Tobago is a beneficiary country under the Caribbean Basin Economic Recovery Act (“CBERA”), 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.² Trinidad and Tobago is the only subject country in these investigations that is a CBERA country. Therefore, my analysis of whether the domestic industry is materially injured or threatened with material injury by reason of wire rod from Trinidad and Tobago is limited to a consideration of subject imports from Trinidad and Tobago alone.

I join my colleagues in the discussion of the domestic like product, domestic industry, negligibility, cumulation, conditions of competition, affirmative determinations for cumulated subject imports, and negative findings of critical circumstances. For the reasons summarized below, however, I dissent from the Commission majority’s affirmative determination regarding subject imports from Trinidad and Tobago.

Between 1999 and 2001, subject import volume from Trinidad and Tobago fluctuated, but increased by less than 4 percent (that is, by less than *** of market share), accounting for at most *** percent of the U.S. market during that period. Subject imports from Trinidad and Tobago generally were priced higher than comparable wire rod from other subject countries, generally increased in price in the second half of 2001, and did not result in any confirmed instances of lost sales or lost revenue by the domestic industry. Although subject imports from Trinidad and Tobago frequently were priced lower than comparable domestic wire rod, underselling was often by margins of less than 5 percent. This suggests that the significant volume loss and market-disrupting low prices experienced by the domestic industry were not by reason of the subject imports from Trinidad and Tobago, and that such imports did not have a significant adverse impact on the domestic industry. Moreover, because Caribbean Ispat has limited availability capacity and already depends on the U.S. market for a substantial portion of its sales, subject imports from Trinidad and Tobago do not threaten a domestic wire rod industry that, despite decreasing ability to supply the needs of the U.S. market, has experienced increasing price levels, recent declines in costs, and in 2002 generated an operating income margin of *** percent.

I. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.³ 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.⁴ The statute defines “material injury” as “harm which is not

¹ Whether the establishment of an industry is being materially retarded is not at issue in these investigations.

² 19 U.S.C. § 1677 (7)(G)(ii)(III).

³ 19 U.S.C. § 1673d(b).

⁴ 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).

inconsequential, immaterial, or unimportant.”⁵ In assessing whether the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the industry in the United States.⁶ 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.”⁷

As noted above, because Trinidad and Tobago is the only subject country in these investigations that is a CBERA country, my analysis of whether the domestic industry is materially injured by reason of wire rod from Trinidad and Tobago is limited to a consideration of subject imports from Trinidad and Tobago alone.⁸ For the reasons discussed below, I determine that the domestic industry producing wire rod is not materially injured by reason of subject imports from Trinidad and Tobago that are sold in the United States at LTFV.

A. Volume of Subject Imports from Trinidad and Tobago

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.”⁹

The quantity of subject imports from Trinidad and Tobago decreased from 341,815 short tons in 1999 to 287,507 short tons in 2000, then increased to 355,089 short tons in 2001, resulting in a net increase of 3.9 percent (13,274 short tons).¹⁰ The share of apparent U.S. consumption accounted for by subject imports from Trinidad and Tobago was relatively stable from 1999 to 2001. Subject imports from Trinidad and Tobago fell as a share of the U.S. market from *** percent in 1999 to *** percent in 2000, then rose to *** percent in 2001, resulting in a net increase of *** percentage point of market share.¹¹ Thus, the record indicates that subject imports from Trinidad and Tobago constituted a small portion of the U.S. market and increased only modestly over the period examined.¹² I do not find the volume of subject imports from Trinidad and Tobago or any increase in the volume to be significant, particularly in comparison to the combined volume of subject imports of wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, and Ukraine, and the volume of nonsubject imports (including wire rod from Germany).

Domestic producers’ U.S. market share decreased overall from 1999 to 2001, from *** percent in 1999 to *** percent in 2001. The market share of nonsubject imports, including those from Germany, increased from *** percent to *** percent. The market share of subject imports other than Trinidad and Tobago increased from *** percent to *** percent.¹³ Thus, the record does not show that subject imports from Trinidad and Tobago captured significant market share from the domestic industry. Even though the domestic industry saw its market share erode by *** percentage points from 1999 to 2001, the market share

⁵ 19 U.S.C. § 1677(7)(A).

⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁷ *Id.*

⁸ 19 U.S.C. § 1677 (7)(G)(ii)(III).

⁹ 19 U.S.C. § 1677(7)(C)(i).

¹⁰ Memorandum INV-Z-162 at Table C-2a.

¹¹ Memorandum INV-Z-162 at Table C-2a.

¹² Even in the first quarter of 2002, the quantity of subject imports from Trinidad and Tobago, 89,857 short tons, accounted for only *** percent of apparent U.S. consumption. Memorandum INV-Z-162 at Table C-2a.

¹³ Memorandum INV-Z-162 at Table C-2a.

of subject imports from Trinidad and Tobago increased by only *** percentage point. In contrast, the market share of other imports, primarily subject imports, increased by *** percentage points.¹⁴

Based on the foregoing I find that the volume of subject imports from Trinidad and Tobago and the increase in volume is neither significant in absolute terms nor relative to U.S. production or consumption of wire rod.¹⁵

B. Price Effects of the Subject Imports from Trinidad and Tobago

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.¹⁶

Purchasers view quality as the most important purchase factor, followed by price and then availability.¹⁷ A large majority of purchasers, however, rate wire rod produced in the United States and in Trinidad and Tobago as “comparable” in quality.¹⁸ In terms of product mix, the United States and Trinidad and Tobago overlap substantially (approximately *** of sales are industrial quality wire rod).¹⁹ Wire rod from Trinidad and Tobago is rated as comparable to wire rod from the United States in nearly all non-price considerations.²⁰

The Commission collected quarterly price information on seven types of wire rod, designated products 1 through 7. Based on these data, subject imports from Trinidad and Tobago were priced below comparable domestic wire rod in 36 of 52 comparisons.²¹ In the majority of these instances, however, the margins of underselling were less than 5 percent.²² Moreover, although subject imports from Trinidad and Tobago generally were priced below comparable domestically produced wire rod, wire rod from other

¹⁴ Memorandum INV-Z-162 at Table C-2a. Because of rounding, figures may not add to the totals shown.

¹⁵ Relative to U.S. production of wire rod, subject imports from Trinidad and Tobago were *** percent in 1999; *** percent in 2000; *** percent in 2001; and *** percent in the first quarter of 2002. Calculated from Memorandum INV-Z-162 at Table C-2a.

¹⁶ 19 U.S.C. § 1677(7)(C)(ii).

¹⁷ CR/PR at Table II-2.

¹⁸ CR/PR at Table II-11.

¹⁹ CR/PR at Tables D-1 and D-2.

²⁰ CR/PR at Table II-11.

²¹ CR/PR at Table V-10. There were no comparisons for the specified CHQ wire rod (product 5) and the specified tire bead quality wire rod (product 6).

²² In 20 instances the margins of underselling were less than 5 percent; in the remaining 16 instances the margins ranged between 5.3 percent and 11.2 percent. CR/PR at Tables V-3 - V-6 and Table V-9.

subject countries were priced lower still.²³ Additionally, although lost sales or lost revenues may constitute anecdotal evidence of direct price competition, there were no confirmed lost sales or lost revenues attributable to subject imports from Trinidad and Tobago in these investigations.²⁴ Given the limited magnitude of underselling by subject imports from Trinidad and Tobago and the complete absence of any confirmed lost sales or lost revenue allegations involving such imports, I conclude that price underselling by subject imports from Trinidad and Tobago, while prevalent and contributing moderately to the overall price effects of the subject imports, was not significant.

I do not find that subject imports from Trinidad and Tobago have a significant price depressing effect on the domestic like product. Purchasers identified no clear price leader in the U.S. market.²⁵ Moreover, the record does not reflect any clear downward trend in prices for the domestic like product. Instead, domestic (and import) prices fluctuated over the period examined, although most high volume products tended to peak in 2000, decline to period lows in early 2001, then increase late in 2001.²⁶ Further, I do not find that subject imports from Trinidad and Tobago prevented to a significant degree price increases by the domestic industry that otherwise would have occurred. Over the period examined in these investigations, subject imports increased significantly in terms of volume and market share. While part of this rapid growth reflected increased imports from Canada which typically sold at prices higher than comparable wire rod produced in the United States, much of the growth was as a result of very low-priced imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine.²⁷ Therefore, in light of the large and growing presence of subject imports that undersold both comparable U.S.-produced wire rod and, as discussed above, comparable wire rod from Trinidad and Tobago, I do not find the price-suppressing effects of wire rod from Trinidad and Tobago to be significant.

Accordingly, I find that subject imports from Trinidad and Tobago did not have significant adverse price effects on the domestic like product.

C. Impact of Subject Imports from Trinidad and Tobago

²³ For product 1, subject imports from Trinidad and Tobago generally were priced higher than subject imports from ***. CR/PR at Table V-3. For product 2, subject imports from Trinidad and Tobago generally were priced higher than subject imports from ***. CR/PR at Table V-4. For product 3, subject imports from Trinidad and Tobago were available in the market only sporadically, in relatively low volumes, and generally were priced higher than subject imports from ***. CR/PR at Table V-5. For product 4, subject imports from Trinidad and Tobago generally were priced higher than subject imports from ***. CR/PR at Table V-6. For product 7, subject imports from Trinidad and Tobago generally were priced lower than *** but higher than ***. CR/PR at Table V-9.

²⁴ Preliminary Staff Report at Table V-9; CR/PR at Tables V-11 and V-12.

²⁵ CR at V-6-8, PR at V-7.

²⁶ See CR/PR at Tables V-3 - V-9. Domestic prices for products 1 through 4 (high volume items) all recovered to first quarter 1999 price levels in 2001 (by the second quarter for product 1, by the third quarter for product 2, by the third quarter for product 3, and by the first quarter for product 4). Although domestic prices for specialty products 5 through 7 (low volume items) were lower than first quarter 1999 price levels throughout 2001, only product 7 was even available from Trinidad and Tobago (at prices generally above those of the comparable domestic product). *Id.*

²⁷ CR/PR at Tables V-3 - V-9 (price level comparisons); CR/PR at Table V-10 (subject imports from Canada oversold comparable domestic wire rod in *** percent of comparisons; subject imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine undersold comparable domestic wire rod in *** percent of comparisons); memorandum INV-Z-162 at Table C-2a (subject imports from Canada gained *** percentage points of market share between 1999 and 2001; subject imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine gained nearly *** percentage points of market share between 1999 and 2001).

In examining the impact of the subject imports on the domestic industry, I consider all relevant economic factors that bear on the state of the industry in the United States.²⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{29 30}

Consistent with my finding that the volume and price effects of subject imports from Trinidad and Tobago are not significant, I find that the subject imports from Trinidad and Tobago did not have a significant adverse impact on the domestic industry. I have considered the factors included in the discussion of the impact of cumulated subject imports on the domestic industry contained in section V-D of the Views of the Commission, but in the absence of significant volume or price effects from wire rod from Trinidad and Tobago, I conclude that the domestic industry is not materially injured by reason of imports of wire rod from Trinidad and Tobago that are sold in the United States at LTFV.³¹

²⁸ 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).

²⁹ 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.

³⁰ 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 final determination of sales at LTFV, Commerce found dumping margins of 11.40 percent for Caribbean Ispat Ltd. and for all other manufacturers and exporters in Trinidad and Tobago. 67 Fed. Reg. 55788, 55790 (Aug. 30, 2002). In addition, Commerce made a negative countervailing duty determination with respect to subject imports from Trinidad and Tobago. 67 Fed. Reg. 55810 (Aug. 30, 2002). The Commission subsequently terminated its countervailing duty investigation with respect to subject imports from Trinidad and Tobago. 67 Fed. Reg. 62075 (Oct. 3, 2002).

³¹ I have considered Petitioners’ arguments with respect to Trinidad and Tobago (*see* Petitioners’ Posthearing Brief at 13 and appendix 1 at 75). While Trinidad and Tobago was the *** largest source of imported wire rod and its import volume increased in 2001, I find that the limited market share and growth in market share accounted for by wire rod from Trinidad and Tobago over the period examined suggest that the impact of such imports was not significant. While subject imports from Trinidad and Tobago generally were comparable to domestically produced wire rod and undersold comparable domestic product in the majority of instances, I find that the relatively low margins of underselling, particularly in light of the rapid growth in very low-priced imports from other subject countries, suggest that the impact of such prices do not rise to the level of “significant.” In addition, I do not agree with the characterization by the Petitioners that “the growth in imports from Trinidad closely tracked, in an inverse manner, the financial deterioration of the domestic industry.” While such a characterization is accurate for cumulated subject imports, subject imports from Trinidad and Tobago declined in 2000 (when the financial performance of the domestic industry deteriorated) and increased in 2002 (when the financial performance of the domestic industry improved). Finally, I am not persuaded by the contention that subject imports from Trinidad and Tobago “deprived” the domestic industry of sales it could have otherwise obtained in interim 2002, given the absence of confirmed lost sales or lost revenue allegations, the increase in the domestic industry’s capacity utilization, and the improvement in unit sales and operating income. Memorandum INV-Z-162 at Table C-2a.

II. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO

A. In General

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”³² The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.³³ In making my determination, I have considered all statutory factors that are relevant to these investigations,³⁴ including the rate of the increase in the volume and market penetration of subject imports, unused production capacity, and any substantial inventories of the subject merchandise. As noted above, because Trinidad and Tobago is the only subject country in these investigations that is a CBERA country, my analysis of whether the domestic industry is threatened with material injury by reason of wire rod from Trinidad and Tobago is limited to a consideration of subject imports from Trinidad and Tobago alone.³⁵

B. Statutory Threat Factors

Based on an evaluation of the relevant statutory factors, I determine that the domestic industry is not threatened with material injury by reason of the subject imports from Trinidad and Tobago sold in the United States at LTFV.

As an initial matter, I do not find that the domestic industry is vulnerable to a threat of material injury by reason of the subject imports from Trinidad and Tobago. As noted above, the domestic industry experienced a sharp decline in its operating performance between 1999 and 2001. Going forward, however, the domestic industry faces a market in which the closure of four mills between December 2000 and June 2001 will exacerbate the pre-existing gap between domestic capacity and apparent U.S. consumption.³⁶ Such market conditions, if accompanied by a reduction in LTFV imports, are conducive to

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

³³ 19 U.S.C. § 1677(7)(F)(ii).

³⁴ 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable to wire rod from Trinidad and Tobago because, as a result of Commerce’s negative determination, no countervailable subsidy is involved. Factor VII is also inapplicable because these investigations do not involve imports of a raw agricultural product.

³⁵ 19 U.S.C. § 1677 (7)(G)(ii)(III).

³⁶ North Star ceased rod production at its Kingman facility in December 2000. The facility continues to produce rebar and merchant bar, and North Star continues to produce wire rod in Beaumont. GSI entered bankruptcy in February 2001 and closed its Kansas City facility. Its Georgetown facility has been purchased and will remain open. Northwestern failed to emerge from bankruptcy and suspended operations in May 2001. Its facility has been purchased by wire producer L&P, which intends to recondition the facility and consume its wire rod internally. Birmingham closed its AS&W facility in June 2001. Its facility has been purchased by U.S. producer Charter, but is being used to produce bar products only. CR at II-2-4, PR at II-1-2.

higher price levels and more productive use of assets. Indeed, the domestic industry achieved profitability in the first quarter of 2001 on the strength of rising prices and declining costs.³⁷

There is no evidence on the record of an imminent, substantial increase in production or capacity in Trinidad and Tobago indicating the likelihood of substantially increased imports of wire rod into the United States, nor evidence of a likelihood of a substantial increase in the volume of subject imports. As noted earlier, I did not find that the volume or increase in the volume of subject imports from Trinidad and Tobago over the period examined was significant, and the data collected on the industry in Trinidad and Tobago do not indicate that the trend is likely to be different in the imminent future.

Caribbean Ispat's capacity remained stable throughout the period examined, and is projected to remain stable at *** short tons annually.³⁸ Production levels were relatively stable between 1999 and 2000, then declined by *** short tons in 2001,³⁹ although capacity utilization remained high throughout the period examined.⁴⁰ Available capacity fluctuated between *** short tons and *** short tons during the period 1999-2001.⁴¹ Production in Trinidad and Tobago is projected to reach *** short tons in 2002 and 2003 as a result of higher volumes of home market sales and exports to non-U.S. markets.⁴² In light of the consistently high levels of capacity utilization by Caribbean Ispat and its limited availability of excess capacity, I see no likelihood of a substantial increase in the volume of subject imports.⁴³

Inventories in Trinidad and Tobago increased from *** short tons in 1999 to *** short tons in 2001, rising as a share of total shipments from *** to ***.⁴⁴ U.S. importer-held inventories, on the other hand, were quite small (less than *** short tons and consistently less than *** percent of imports of wire rod from Trinidad and Tobago) and have been diminishing since the end of 2000 (falling to just *** short tons at the end of the first quarter of 2002).⁴⁵ On balance, I find that inventory levels do not indicate a likelihood of a significant increase in imports from Trinidad and Tobago in the imminent future.

I did not find the adverse price effects of the subject imports from Trinidad and Tobago to be significant during the period examined. Because prices have increased during recent quarters, domestic supply has become increasingly constrained due to mill closures, and a significant increase in subject imports from Trinidad and Tobago does not appear to be imminent, I do not find that subject imports from Trinidad and Tobago are likely to have significant depressing or suppressing effects on domestic prices in the imminent future.

³⁷ Memorandum INV-Z-162 at Table C-2a.

³⁸ CR/PR at Table VII-7. Caribbean Ispat is the only known producer of wire rod in Trinidad and Tobago. CR at VII-10, PR at VII-5.

³⁹ CR/PR at Table VII-7. Production levels were *** short tons in 1999, *** short tons in 2000, and *** short tons in 2001. In the first quarter of 2002, production reached *** short tons, compared to *** short tons in the first quarter of 2001. *Id.*

⁴⁰ CR/PR at Table VII-7. Caribbean Ispat's capacity utilization rates were ***. *Id.*

⁴¹ CR/PR at Table VII-7.

⁴² CR/PR at Table VII-7. Caribbean Ispat's non-U.S. export markets include ***. CR/PR at Table VII-7 note 2.

⁴³ Moreover, exports to the United States already account for a substantial share of Caribbean Ispat's production and shipments of wire rod, fluctuating between *** and *** percent of total shipments during the period 1999-2001. Projections for 2002 and 2003 of *** percent are in line with 1999-2001 data. CR/PR at Table VII-7.

⁴⁴ CR/PR at Table VII-7. During the first quarter of 2002, such inventories stood at *** short tons, or *** percent of annualized shipments. *Id.*

⁴⁵ CR/PR at Table VII-9.

I also find that subject imports from Trinidad and Tobago are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. During the period 1999-2001, domestic production, capacity, capital expenditures, and R&D expenditures decreased markedly.⁴⁶ Going forward, however, domestic production and capital expenditures increased in the first quarter of 2002, although capacity and R&D expenditures decreased.⁴⁷

The record indicates that Trinidad and Tobago also produces *** on the same equipment used to produce wire rod.⁴⁸ Wire rod, however, accounts for *** percent of total sales, and Caribbean Ispat has shown no inclination to alter its allocated capacity between *** and wire rod.⁴⁹

Finally, since March 1, 2000, imports of wire rod other than those from Canada and Mexico have been subject to a tariff-rate quota (TRQ). The TRQ on wire rod, including a defined allocation for Trinidad and Tobago, will expire in March 2003. The TRQ currently imposes an additional 5 percent tariff on over-quota shipments from Trinidad and Tobago.⁵⁰ Colombia has had an antidumping duty order on low-carbon wire rod from Trinidad and Tobago since December 1997; the order, however, will terminate in December 2002.⁵¹

For the foregoing reasons, on balance I determine that the U.S. industry producing wire rod is not threatened with material injury by reason of subject imports from Trinidad and Tobago.

CONCLUSION

For the reasons stated above, I determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of wire rod from Trinidad and Tobago that are sold in the United States at LTFV.

⁴⁶ Memorandum INV-Z-162 at Table C-2a.

⁴⁷ Memorandum INV-Z-162 at Table C-2a.

⁴⁸ CR at VII-10, PR at VII-5.

⁴⁹ CR at VII-10, PR at VII-5 (sales); CR/PR at Table VII-7 (capacity).

⁵⁰ During the final quota year, quarterly allocations were based on four equal allocations and were allocated by region (the European Union; Trinidad and Tobago; former Soviet republics; and all other countries). CR at I-11-14, PR at I-9-11.

⁵¹ CR at VII-10 and 13, PR at VII-5.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine Investigations Nos. 701-TA-417-419 (Final) and 731-TA-953-954, 956-959, and 961-962 (Final)

As noted, I join my colleagues in finding 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 and Canada, and less-than-fair-value (“LTFV”) imports of carbon and certain alloy steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. However, because I find that subject imports from Germany are likely to imminently exceed the applicable negligibility threshold, and because I find that an industry in the United States is threatened with material injury by reason of subsidized and LTFV subject imports from Germany, I provide my additional and dissenting views below.¹ Before proceeding to a discussion of my separate injury analysis, I offer the following general observations regarding the Commission’s actions in response to the extraordinary procedural posture that developed during the course of these investigations.

I. GENERAL OBSERVATIONS

A. Background

These investigations result from petitions filed on August 31, 2001, alleging material injury and threat of material injury to an industry in the United States by reason of subsidized subject imports from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey, and LTFV subject imports from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela.² The original scope of these investigations as provided for in the petitions included certain grade 1080 tire cord and tire bead quality wire rod; however, on October 9, 2001, the Petitioners requested that Commerce modify the scope to exclude certain grade 1080 tire cord and tire bead quality wire rod.³ On October 12, 2001, the Commission rendered its preliminary determinations based upon the original scope because Commerce had not yet amended the scope as requested by the Petitioners.⁴

Based upon the original scope, the Commission found that subject imports from Egypt, South Africa, and Venezuela, were each below the three percent negligibility threshold, and that in the aggregate, subject imports from these three countries were below the seven percent negligibility threshold; accordingly, the Commission found imports from these three countries to be negligible for purposes of a

¹ I also dissent from the negative critical circumstances determinations rendered by the Commission majority, and as discussed below, I make affirmative findings of critical circumstances with respect to subject imports from Germany, Moldova, and Ukraine.

² Confidential Report (“CR”) at I-1; Public Report (“PR”) at I-1.

³ See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Invs. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary), USITC Pub. 3456 at 9 n.41 (October 2001) (“Preliminary Determination”).

⁴ *See id.*

present material injury analysis.⁵ The Commission majority further found that subject imports from these three countries would not imminently exceed the applicable negligibility thresholds, either individually or in the aggregate, and as a result, the investigations with respect to Egypt, South Africa, and Venezuela, were terminated.^{6 7} The Petitioners subsequently appealed the Commission's negligibility findings and the termination of the investigations with respect to Egypt, South Africa, and Venezuela, to the Court of International Trade.

On April 10, 2002, Commerce modified the scope of these investigations to exclude certain grade 1080 tire cord and tire bead quality wire rod; when evaluated against this modified scope, subject imports from Germany fell below the applicable three percent negligibility threshold during the most recent twelve month period preceding the filing of the petition for which data were available; however, when considered in the aggregate, imports of subject merchandise from Egypt, Germany, South Africa, Venezuela, together exceeded the seven percent negligibility threshold. On June 20, 2002, the Court of International Trade remanded the Commission's negligibility findings with respect to Egypt, South Africa, and Venezuela, in light of the modified scope definition, and on July 3, 2002, the Commission reopened the record to introduce subject import data based upon the modified scope definition.

On July 19, 2002, pursuant to the Court's order of remand, the Commission rendered affirmative preliminary determinations of present material injury on remand with respect to subject imports from Egypt, South Africa, and Venezuela, based upon a cumulative analysis. The Commission submitted its remand views to the Court on August 2, 2002; in particular, the Commission found that subject imports from these three countries were not negligible because such imports, together with subject imports from Germany, exceeded the seven percent aggregate negligibility threshold. Pending judicial finality, however, the Commission did not transmit notice of the affirmative preliminary determinations on remand to Commerce, nor did the Commission attempt to revive the previously terminated investigations with respect to Egypt, South Africa, and Venezuela, by publishing notice of affirmative preliminary determinations on remand in the *Federal Register*.

On September 13, 2002, the Court of International Trade affirmed the Commission's remand determination. The Court did not, however, provide any further instruction with respect to how subject imports from Egypt, South Africa, and Venezuela, should be treated for purposes of the Commission's pending final determinations in the remaining investigations involving Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine. Again, pending judicial finality, the Commission did not transmit notice of affirmative preliminary determinations on remand to Commerce, nor did the Commission attempt to revive the previously terminated investigations with respect to Egypt, South Africa, and Venezuela, by publishing notice of affirmative preliminary determinations on remand in the *Federal Register*. On September 24, 2002, the Egyptian respondent filed an appeal from the decision of the Court of International Trade affirming the Commission's remand determination with the Court of

⁵ Preliminary Determination at 8-9.

⁶ Preliminary Determination at 9-11. The Commission published notice of termination of the investigations with respect to Egypt, South Africa, and Venezuela, in the *Federal Register*. 66 Fed. Reg. 54,539 (October 29, 2001).

⁷ I dissented from this aspect of the majority's determination, and found instead that subject imports from Egypt, South Africa, and Venezuela, would imminently exceed the statutory negligibility threshold. See Preliminary Determination at 9 n.43. Consequently, I proceeded to a threat analysis with respect to these three countries, and based upon a cumulative analysis I rendered affirmative determinations, finding a reasonable indication that a domestic industry was threatened with material injury by reason of subject imports from Egypt, South Africa, and Venezuela. See Preliminary Determination at 24 n.146.

Appeals for the Federal Circuit. On October 2, 2002, the Commission voted in the final phase investigations with respect to Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine; as noted, a majority of the Commission found subject imports from Germany to be negligible.

B. Policy Concerns

In my view, the foregoing developments created in these final phase investigations an extraordinary procedural posture that exposes a tension between two lines of relevant legal teachings that I will refer to as *Timken*⁸ finality (*i.e.* deferral of administrative action pending the finality of the appellate process) and *Borlem*⁹ accuracy (*i.e.* reconsideration of administrative determinations in the interest of ensuring accuracy in the administration of U.S. trade laws). As a matter of policy, the Commission confronted the choice between conducting these investigations in accordance with the principle of *Timken* finality versus acting in accordance with the imperative of *Borlem* accuracy. Ultimately, I do not agree with the choice of *Timken* finality over *Borlem* accuracy, due to the strong probability that the administrative inaction dictated by *Timken* finality would be outcome determinative with respect to the investigations involving Germany, as well as any revived investigations involving Egypt, South Africa, and Venezuela; such a result would frustrate the express legislative intent underlying the amended cumulation provision that was incorporated into the Uruguay Round Agreements Act. In my view, this substantive implication elevates a seemingly procedural matter beyond the principle of *Timken* finality and instead invites the application of *Borlem* accuracy in these exceptional circumstances.

In accordance with *Timken* and its progeny, the Commission has an established procedure of not issuing *Federal Register* notices with respect to its remand determinations until final judicial disposition of the matter, treating its original determinations as operative until directed otherwise by final court disposition.¹⁰ I agree that this practice serves the Commission well as a general rule, particularly in the context of appeals taken from final Commission determinations. However, the exceptional principle of *Borlem* accuracy derives from a court ordered remand requiring the Commission to reconsider a final affirmative injury determination in light of the subsequent identification and correction of erroneous dumping margins that had been assigned by Commerce to the only two producers of subject merchandise; importantly, the Commission in *Borlem* proceeded to reconsider its final determination even though Commerce's remand determination that gave rise to the amended margins was still on appeal.¹¹ In response to the concern expressed by the Commission over "endless *renvoi*" given the absence of judicial finality with respect to Commerce's amended dumping margins, the *Borlem* court acknowledged that the

⁸ *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990).

⁹ *Borlem S.A.–Empreeditmentos Industriais v. United States*, 913 F.2d 933 (Fed. Cir. 1990).

¹⁰ The *Timken* court held that a decision of the Court of International Trade ("CIT") that is under appeal is not a "final court decision" and therefore liquidation of entries pursuant to the CIT decision is not appropriate until the appellate process is completed. *Timken*, 893 F.2d at 339-340. The Federal Circuit recently extended its holding in *Timken*, finding that a court decision is not final until expiry of the period necessary to file a petition for certiorari to the U.S. Supreme Court. See *Fujitsu General America, Inc. v. United States*, 283 F.3d 1364 (Fed. Cir. 2002).

¹¹ In its original determination in *Borlem*, Commerce assigned dumping margins in excess of 15 percent to each of the two subject producers; as a result of the court ordered remand, however, Commerce assigned a *de minimis* dumping margin to one of the subject producers, while the other subject producer was assigned a dumping margin of roughly 10 percent. *Borlem*, 913 F.2d at 935.

“point is a thoughtful one.”¹² Nonetheless, the *Borlem* court did not see fit to preclude reconsideration on that basis.¹³

The *Borlem* court also stated that “Congress’ desire for speedy determinations on dumping matters should not be interpreted as authorizing proceedings that are based on inaccurate data” and that “{t}he law does not require, nor would it make sense to require, reliance on data which might lead to an erroneous result.”¹⁴ With respect to the question of negligibility in these final phase investigations, the Commission is basing its determination on “accurate data” in that subject import data are compiled in accordance with the scope as amended by Commerce on April 10, 2002. However, because of the Commission’s failure to revive the investigations with respect to Egypt, South Africa, and Venezuela, following its affirmative preliminary determinations on remand, the Commission fails to heed the guidance of *Borlem* and instead relies upon data which, in my view, have led to an erroneous result. Specifically, the investigations with respect to Egypt, South Africa, and Venezuela, each remain terminated; thus, subject imports from Germany are examined in isolation for purposes of determining negligibility in these final investigations.¹⁵ Yet the fact remains that petitions were filed on the same day with respect to imports encompassed by the amended scope from Egypt, Germany, South Africa, and Venezuela; accordingly, as the Commission recognized in its remand determination, negligibility should be determined on the basis of imports from these four countries in the aggregate—resulting in a finding that imports from each of the countries subject to these investigations are not negligible and are therefore amenable to cumulation if there exists a reasonable overlap of competition among subject imports and between subject imports and the domestic like product. Instead, the investigations with respect to Germany are terminated.¹⁶

In sum, notwithstanding affirmative preliminary determinations on remand with respect to Egypt, South Africa, and Venezuela, the Commission’s adherence to the principle of *Timken* finality has led to an erroneous result with respect to Germany that also frustrates the express legislative intent underlying the amended cumulation provision, *i.e.* that imports subject to petitions filed on the same day should be treated in a consistent and predictable procedural manner.¹⁷ In my view, the strong probability that the

¹² *Borlem*, 913 F.2d at 939.

¹³ *Borlem*, 913 F.2d at 939 (the possibility of multiple determinations by the Commission does not lead to a conclusion of error by the trial court in remanding the matter to the Commission).

¹⁴ *Borlem*, 913 F.2d at 937.

¹⁵ The Commission majority found that subject imports from Germany are negligible and that there is not a potential that subject imports from Germany will imminently exceed the applicable three percent negligibility threshold; accordingly, by operation of law the investigations with respect to Germany are terminated.

¹⁶ Moreover, the disposition of any subsequently revived investigations with respect to Egypt, South Africa, and Venezuela, is likely rendered moot because without Germany, subject imports from those three countries fail to exceed the applicable negligibility thresholds, both individually and in the aggregate; in addition, based upon a broader definition of subject merchandise, the Commission majority previously determined that there is no potential that such imports will imminently exceed the applicable negligibility thresholds. Preliminary Determination at 9-11.

¹⁷ See Uruguay Round Agreements Act, Statement of Administrative Action (“SAA”) at 177-180; *see also* SAA at 185-187 (termination based upon negligibility in preliminary investigations is precluded where imports are extremely close to the relevant negligibility thresholds and there is a reasonable indication that data obtained in a final investigation will establish that imports exceed the negligibility thresholds). Although the SAA proscribes a negligibility finding in the foregoing circumstances, with respect to a present material injury analysis the statute is unequivocal in its terms, regardless of whether the context is a preliminary or final phase investigation. *See* 19

(continued...)

administrative inaction dictated by *Timken* finality would be outcome determinative with respect to the investigations involving Germany should have guided the Commission to take action consistent with the principle of *Borlem* accuracy in these exceptional circumstances, *i.e.* publication in the *Federal Register* of the Commission's affirmative preliminary determinations on remand and revival of the Commission's terminated investigations with respect to Egypt, South Africa, and Venezuela.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In the Preliminary Determination, I joined a unanimous Commission in defining a single domestic like product comprised of the continuum of all carbon and certain alloy steel wire rod products falling within the scope.¹⁸ As noted, Commerce has since modified the scope to exclude certain grade 1080 tire cord and tire bead quality wire rod. In previous investigations involving certain steel wire rod, I excluded tire cord wire rod from the definition of the domestic like product because it fell outside the scope of the investigations and I determined that, having identified the domestic product "like" the subject merchandise, it was not necessary to proceed to the question of whether tire cord wire rod should be included in the like product definition.¹⁹ Similarly, in these investigations I find it is not necessary to consider whether certain grade 1080 tire cord and tire bead quality wire rod should be included in the like product definition. Accordingly, I define a single domestic like product in these final phase investigations, coterminous with the amended scope and thus excluding certain grade 1080 tire cord and tire bead quality wire rod. I further note, however, that domestic production of 1080 tire bead and 1080 tire cord products is *** compared to domestic production of the like product corresponding to Commerce's scope.²⁰ As a result, the trends identified by the Commission majority in its analysis of the volume, price effects, and impact of subject imports on the domestic industry, are equally valid with respect to the domestic industry that I define below.

B. Domestic Industry

In accordance with the foregoing definition, I define a single domestic industry consisting of all U.S. producers of the domestic like product, thus excluding any production of certain 1080 tire cord and 1080 tire bead wire rod products. I further note, however, that the U.S. producers encompassed by my definition of the domestic industry are identical to those identified by the Commission majority because no U.S. producer of wire rod is engaged exclusively in the production of 1080 tire cord and 1080 tire bead

¹⁷ (...continued)

U.S.C. § 1677(24)(A). Thus, there appears to be a tension between the unequivocal terms of the statutory negligibility provision versus the nature and purpose of the inquiry in preliminary phase investigations. *See American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986).

¹⁸ Preliminary Determination at 6.

¹⁹ Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 (Preliminary) and 731-TA-763-766 (Preliminary), USITC Pub. 3037 at 11 n.50 (April 1997); 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 (November 1997).

²⁰ *Compare* CR/PR Tables C-1 and C-2.

wire rod products.²¹ In addition, I note that I join my colleagues in declining to exclude any U.S. producer as a related party.²²

III. NEGLIGIBLE IMPORTS

Imports from a single 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.²³ As noted, only Germany is implicated by the negligibility provision in these final phase investigations. Subject imports from Germany accounted for *** percent of total imports during the relevant 12 month period and are thus negligible for purposes of a present material injury analysis.²⁴ The statute further provides, however, that imports from a single country which comprise less than three percent of total imports of such merchandise shall not be treated as negligible for purposes of a threat analysis if there is a potential that imports from such a country will imminently exceed the three percent threshold.²⁵ I note that subject producers in Germany project their total production in 2002 will increase by 306,302 short tons over 2001 levels, and will increase by a further 50,000 short tons in 2003; in addition, subject producers project that their end-of-period inventories will decline by 30,000 short tons in 2002, and by a further 30,000 short tons in 2003.²⁶

Even if the total volume of subject imports from Germany during the relevant 12 month period (*i.e.* *** short tons) is subtracted from the projected increase in production for 2002, this still leaves an additional *** short tons of subject merchandise available for export from Germany in 2002, and a further *** short tons available for export in 2003. Standing alone, the additional volume of subject merchandise available for export in 2002 is equivalent to *** percent of the volume of total imports of such merchandise into the United States during the relevant 12 month period; similarly, the additional volume of subject merchandise available for export in 2003 is equivalent to a further *** percent of the volume of total imports of such merchandise into the United States during the relevant 12 month period.²⁷ Based upon all the foregoing, I am satisfied that there is a potential that subject imports from Germany will imminently exceed the three percent negligibility threshold; accordingly, I proceed to a threat analysis in the investigations with respect to Germany.

²¹ See CR/PR at Table D-3.

²² See Views of the Commission section I.D.2.

²³ 19 U.S.C. § 1677(24)(A)(i). In this case the relevant 12 month period extends from August 1, 2000, through July 31, 2001.

²⁴ CR/PR at Table IV-2.

²⁵ 19 U.S.C. § 1677(24)(A)(iv).

²⁶ CR/PR at Table VII-3.

²⁷ *Calculated from* Table IV-2.

IV. CUMULATION

In the Preliminary Determination, I found a reasonable overlap of competition among all subject imports and between all subject imports and the domestic like product;²⁸ as a result, I engaged in a cumulative analysis of all subject imports for purposes of analyzing the threat of material injury by reason of subject imports from Egypt, South Africa, and Venezuela.²⁹ Similarly, in the remand determination, notwithstanding the amendment to the scope, I joined a unanimous Commission in cumulating subject imports from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, for purposes of our present material injury analysis in the investigations with respect to Egypt, South Africa, and Venezuela. Upon review, I find that nothing in the record developed in these final phase investigations detracts from my finding of a reasonable overlap of competition among all subject imports, and between all subject imports and the domestic like product.³⁰

Accordingly, I cumulate subject imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, for purposes of analyzing the threat of material injury by reason of subject imports from Germany in these final phase investigations.

V. CONDITIONS OF COMPETITION

I note that I join the Commission majority's discussion of the relevant conditions of competition in these investigations.³¹ With respect to section 201 safeguard relief imposed by the President on imports of certain wire rod,³² I note that in previous investigations I have stated my view that the existence of section 201 safeguard relief is not relevant to the analysis of material injury in Title VII investigations, except to the extent that such relief masks the injurious presence of subject imports in the U.S. market.³³ I reaffirm that view in these investigations. In any event, even if the impact of the 201 relief is taken into account, the record presents compelling evidence of material injury over the period 1999-2001 by reason of the significant volume and price effects of subject imports.³⁴ I have discounted the probative value of interim 2002 data (which evidence an improvement in certain performance indicia of the domestic industry coupled with a decline in the volume of subject imports)³⁵ due to the filing of the petitions and the pendency of these investigations.³⁶ Consequently, in turning to an analysis of the threat of material injury posed by cumulated subject imports, I chiefly rely upon the 2001 data as a reference point. Based upon the significant deterioration in the performance indicia of the domestic industry over the period 1999-2001, I find that the domestic industry currently is in a vulnerable condition.

²⁸ See Preliminary Determination at 15 n.79.

²⁹ See Preliminary Determination at 24 n.146.

³⁰ I note that I also join in the analysis of cumulation set forth in section III of the Views of the Commission.

³¹ Views of the Commission section IV.

³² Presidential Proclamation 7273 of February 16, 2000; CR at I-11, PR at I-9.

³³ See *Dissenting Views of Commissioner Lynn M. Bragg* in Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand, Inv. Nos. 731-TA-965, 971-972, 979, and 981 (Final), USITC Pub. 3536 at 57, 72-73 (September 2002).

³⁴ See Views of the Commission section V.

³⁵ See CR/PR at Table C-1.

³⁶ See 19 U.S.C. § 1677(7)(I).

VI. THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”³⁷ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”³⁸ In making my determination, I have considered all factors that are relevant to this investigation.³⁹

As noted, I find that the domestic industry is vulnerable to material injury, and that the domestic industry has already experienced present material injury by reason of subject imports from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. My assessment of the threat posed by subject imports from Germany is based on a cumulative analysis with imports from those other subject countries, and thus my affirmative threat determinations for Germany are a natural extension of my affirmative determinations of present material injury with respect to the other subject countries. Additional threat factors specific to Germany include the following:

With regard to whether imports of the subject merchandise are likely to increase,⁴⁰ as noted, the projections of subject producers in Germany indicate a minimum of an additional *** short tons of production available for export in 2002,⁴¹ which is equivalent to *** percent of apparent U.S. consumption in 2001.⁴² German producers project a further increase of *** short tons of production available for export in 2003, which is equivalent to *** percent of apparent U.S. consumption in 2001. Based upon the foregoing and the partial improvement in price levels evidenced in the U.S. market during interim 2002,⁴³ I find that subject imports from Germany are likely to increase imminently.

With regard to unused capacity in the subject countries,⁴⁴ I note that subject producers in Germany project unused capacity of 855,170 short tons in 2002, which is equivalent to 12.3 percent of apparent U.S. consumption in 2001; for 2003, notwithstanding a slight increase in projected capacity, German producers again project unused capacity of 855,170 short tons.⁴⁵ These projections of unused capacity in Germany further indicate the likelihood of substantially increased exports of subject merchandise to the U.S. market.⁴⁶

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

³⁸ 19 U.S.C. § 1677(7)(F)(ii).

³⁹ 19 U.S.C. § 1677(7)(F)(i). Factor (VII) regarding raw and processed agricultural products is inapplicable to the instant investigations. With regard to factor (I) involving allegations of a countervailable subsidy, I have reviewed the information provided by Commerce regarding the CVD investigations with respect to Brazil, Canada, and Germany. See 67 Fed. Reg. 55,805 (Aug. 30, 2002) (Brazil); 67 Fed. Reg. 55,813 (Aug. 30, 2002) (Canada); 67 Fed. Reg. 55,808 (Aug. 30, 2002) (Germany).

⁴⁰ See 19 U.S.C. § 1677(7)(F)(i)(I).

⁴¹ See *supra* section III (negligible imports).

⁴² Calculated from CR/PR at Table C-1.

⁴³ See CR/PR at Tables V-3 through V-7.

⁴⁴ See 19 U.S.C. § 1677(7)(F)(i)(II).

⁴⁵ Calculated from CR/PR at Tables VII-3 and C-1.

⁴⁶ I note in this regard that subject producers in Germany exhibit a substantial export orientation, with total exports to all countries accounting for over *** of total shipments throughout the period of investigation.

The statute also directs the Commission to examine whether subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.⁴⁷ Based upon the pricing behavior evident on the record, I find that subject imports will continue to undersell the domestic like product to a significant degree; as noted, subject imports (excluding Germany) undersold the domestic like product in roughly two-thirds of the pricing comparisons available on the record, with margins of underselling ranging as high as *** percent.⁴⁸ Similarly, subject imports from Germany undersold the domestic like product in 23 out of 35 quarterly pricing comparisons for a 65.7 percent incidence of underselling, with margins of underselling ranging as high as *** percent. In addition, the record indicates that the domestic industry experienced a progressive cost/price squeeze over the period 1999-2001, with the ratio of COGS/sales increasing from 96.6 percent in 1999 to 98.4 percent in 2000, and to 102.0 percent in 2001.⁴⁹ Given the significant degree of underselling that will continue to prevail, I find that subject imports will enter the U.S. market at prices that are likely to have a significant suppressing effect on domestic prices in the imminent future; this, in turn, will extend the impact of the cost/price squeeze experienced by the domestic industry, which will have a negative effect on the existing development and production efforts of the domestic industry.⁵⁰

Based upon all the foregoing, I find that an industry in the United States is threatened with imminent material injury by reason of subsidized and LTFV subject imports from Germany.

VII. CRITICAL CIRCUMSTANCES

Commerce has rendered final determinations that critical circumstances exist in the antidumping investigations of subject imports from Germany, Moldova, and Ukraine. Because I find that a domestic industry is materially injured by reason of subject imports from Moldova and Ukraine, and is threatened with material injury by reason of subject imports from Germany, I must further determine whether imports from each of these three subject countries “are likely to undermine seriously the remedial effect” of antidumping duty orders covering imports from these countries.⁵¹ As discussed below, I render affirmative critical circumstances determinations with respect to Germany, Moldova, and Ukraine.

To begin, I note that the average monthly volume of apparent U.S. consumption during 2001 was 577,975 short tons.⁵² In analyzing whether critical circumstances exist in these investigations, I have focused on a comparison of subject import volumes during two-month, three-month, and four-month,

⁴⁷ 19 U.S.C. § 1677(7)(F)(i)(IV).

⁴⁸ See Views of the Commission section V.C; see also CR/PR at Tables V-3 through V-9.

⁴⁹ CR/PR at Table C-1.

⁵⁰ See 19 U.S.C. § 1677(7)(F)(i)(VIII). I also note that subject producers in Germany manufacture a number of difference products on the same machinery used to produce the subject merchandise, thus raising the distinct potential for product shifting; see 19 U.S.C. § 1677(7)(F)(i)(VI).

⁵¹ 19 U.S.C. § 1673d(b)(4)(A)(i). The statute further provides that in making this determination, the Commission shall consider, among other factors it considers relevant: (I) the timing and volume of the imports; (II) a rapid increase in inventories of the imports; and (III) any other circumstances indicating that the remedial effect of the antidumping duty order will be seriously undermined. 19 U.S.C. § 1673d(b)(4)(A)(ii).

⁵² Calculated from CR/PR at Table C-1.

periods before and after the filing of the petition.⁵³ I have also compared the post-petition import volumes to the corresponding volume of average apparent U.S. consumption during the respective period. I am satisfied that for each country, these comparisons demonstrate that increased imports have reached levels relative to apparent U.S. consumption such that the volume of low-priced subject imports from each country is likely to undermine seriously the remedial effect of an antidumping duty order covering such imports.

In the case of Germany, a comparison of the two-month periods preceding and following the filing of the petition indicates that the volume of subject imports increased by *** percent during the period September to October 2001, reaching a total level that was equivalent to *** percent of the average apparent U.S. consumption for that period.⁵⁴ A comparison of three-month periods indicates that the volume of subject imports increased by *** percent during the period September to November 2001, reaching a total level that was equivalent to *** percent of the average apparent U.S. consumption for that period.⁵⁵ Finally, a comparison of four-month periods indicates that the volume of subject imports increased by *** percent during the period September to December 2001, reaching a total level that was equivalent to *** percent of the average apparent U.S. consumption for that period.⁵⁶ I find that the increasing volumes of significantly lower priced⁵⁷ subject imports from Germany that are subject to a critical circumstances determination are likely to undermine seriously the remedial effect of an antidumping duty order.

In the case of Moldova, a comparison of the two-month periods preceding and following the filing of the petition indicates that the volume of subject imports increased by 157.5 percent during the period September to October 2001, reaching a total level that was equivalent to 5.2 percent of the average apparent U.S. consumption for that period.⁵⁸ A comparison of three-month periods indicates that the volume of subject imports increased by 18.0 percent during the period September to November 2001, reaching a total level that was equivalent to 4.3 percent of the average apparent U.S. consumption for that period.⁵⁹ Finally, a comparison of four-month periods indicates that the volume of subject imports increased by 50.0 percent during the period September to December 2001, reaching a total level that was equivalent to 4.6 percent of the average apparent U.S. consumption for that period.⁶⁰ I find that the increasing volumes of significantly lower priced⁶¹ subject imports from Moldova that are subject to a critical circumstances determination are likely to undermine seriously the remedial effect of an antidumping duty order.

In the case of Ukraine, a comparison of the two-month periods preceding and following the filing of the petition indicates that the volume of subject imports increased by 31.2 percent during the period September to October 2001, reaching a total level that was equivalent to 4.5 percent of the average

⁵³ The petition was filed on August 31, 2001.

⁵⁴ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁵⁵ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁵⁶ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁵⁷ As noted, subject imports from Germany undersold the domestic like product in 23 out of 35 weighted average quarterly pricing comparisons, for a 65.7 percent incidence of underselling. CR/PR at Table V-10.

⁵⁸ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁵⁹ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁶⁰ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁶¹ Subject imports from Moldova undersold the domestic like product in 19 out of 22 weighted average quarterly pricing comparisons, for an 86.4 percent incidence of underselling. CR/PR at Table V-10.

apparent U.S. consumption for that period.⁶² A comparison of three-month periods indicates that the volume of subject imports increased by 39.1 percent during the period September to November 2001, reaching a total level that was equivalent to 5.4 percent of the average apparent U.S. consumption for that period.⁶³ Finally, a comparison of four-month periods indicates that the volume of subject imports increased by 73.6 percent during the period September to December 2001, reaching a total level that was equivalent to 5.3 percent of the average apparent U.S. consumption for that period.⁶⁴ I find that the increasing volumes of significantly lower priced⁶⁵ subject imports from Ukraine that are subject to a critical circumstances determination are likely to undermine seriously the remedial effect of an antidumping duty order.

VIII. CONCLUSION

Based upon all the foregoing, I find that the domestic industry producing carbon and certain alloy steel wire rod is threatened with material injury by reason of subject imports from Germany, and I render affirmative critical circumstances determinations with respect to subject imports from Germany, Moldova, and Ukraine. I therefore dissent from the negligibility determination rendered by the Commission majority with respect to subject imports from Germany, as well as the negative critical circumstances determinations with respect to subject imports from Moldova and Ukraine.

⁶² *Calculated from CR/PR at Tables IV-6 and C-1.*

⁶³ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁶⁴ *Calculated from CR/PR at Tables IV-6 and C-1.*

⁶⁵ Subject imports from Ukraine undersold the domestic like product in 21 out of 22 weighted average quarterly pricing comparisons, for a 95.5 percent incidence of underselling. CR/PR at Table V-10.