

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-781 through 786 (Preliminary)

STAINLESS STEEL ROUND WIRE FROM CANADA, INDIA, JAPAN,  
KOREA, SPAIN, AND TAIWAN

## DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire, provided for in subheading 7223.00.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

## COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

## BACKGROUND

On March 27, 1998, a petition was filed with the Commission and Commerce by ACS Industries, Inc., Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Co., Inc., Pomfret, CT; Sandvik Steel Co., Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Co., Inc., Mahwah, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan. Accordingly, effective March 27, 1998, the Commission instituted antidumping investigations Nos. 731-TA-781 through 786 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 6, 1998 (63 FR 16827). The conference was held in Washington, DC, on April 17, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

## VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan that are allegedly sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

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

Our 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.<sup>7</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise

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<sup>2</sup> 19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int’l Trade 1992).

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

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

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

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</sup> *See, e.g.*, Nippon Steel Corp. v. United States, 19 CIT 450, 455, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>8</sup> *See, e.g.*, S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>9</sup> Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>10</sup>

### **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations, as stainless steel round wire (“SSRW”). Commerce defined SSRW as:

any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product, of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension.<sup>11</sup>

SSRW is a stainless steel product produced in a wide variety of types, according to grade of stainless steel, diameter, tensile strength, mechanical properties, and type of finish.<sup>12</sup> It is produced from stainless steel wire rod. Usually, the wire rod is annealed and pickled, and then cold-drawn through one or more dies. In some cases, the wire may be cold-rolled instead of being cold-drawn.<sup>13</sup> SSRW is an intermediate product with many uses, including the production of fasteners, springs, strand, rope, welding wire, and medical instruments.<sup>14</sup>

### **C. Domestic Like Product**

Petitioners argue that there is a single like product in these investigations, consisting of all types of SSRW, and no respondent presented an alternative definition. Because the record evidence shows that all types of SSRW have broad common physical characteristics;<sup>15</sup> share common channels of distribution;<sup>16</sup> have common production processes, facilities and employees;<sup>17</sup> and are perceived by producers and customers to be part of the same class of products,<sup>18</sup> we find that SSRW is a single domestic like product. While there are numerous distinctions among the many specifications for SSRW, the record describes a broad continuum of products without any clear dividing lines.

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<sup>10</sup> Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a 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).

<sup>11</sup> 63 Fed. Reg. 26150 (May 12, 1998). The products covered by these investigations are classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (“HTSUS”). *Id.*

<sup>12</sup> Confidential Staff Report (“CR”) at I-3 and I-4, Public Staff Report (“PR”) at I-3.

<sup>13</sup> CR at I-5 and I-7, PR at I-3 and I-4.

<sup>14</sup> CR at I-4, PR at I-3.

<sup>15</sup> CR at I-4, PR at I-2.

<sup>16</sup> CR at I-8, PR at I-5.

<sup>17</sup> CR at I-5 and I-6, PR at I-3 and I-4.

<sup>18</sup> Transcript of Staff Conference (“TR”), April 17, 1998, at 40.

#### **D. Domestic Industry and Related Parties**

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”<sup>19</sup> 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.<sup>20</sup> Because we have found that the domestic like product consists of all SSRW, for purposes of these preliminary investigations we also find that the domestic industry consists of all domestic producers of SSRW.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer is a related party or is an importer of the subject merchandise. Second, the Commission may exclude such a producer from the domestic industry if “appropriate circumstances” exist.<sup>21</sup>

Five domestic producers in these investigations meet the criteria for potential exclusion from the domestic industry pursuant to section 771(4)(B) of the Act:<sup>22</sup> two because they are controlled by exporters of the subject merchandise,<sup>23</sup> and three because they are importers of the subject merchandise.<sup>24</sup> Accordingly, the Commission must consider whether appropriate circumstances exist to exclude these companies from the domestic industry.

We find that appropriate circumstances do not exist to exclude any of these companies from the domestic industry. \*\*\* and \*\*\* accounted for \*\*\* percent and \*\*\* percent, respectively, of domestic SSRW shipments in 1997.<sup>25</sup> Thus, inclusion of these companies’ data is not likely to skew data for the rest of the industry. The financial data obtained in these preliminary investigations show that \*\*\* operating income ratio was much worse than that of other domestic producers and that \*\*\* operating income ratio was not better than that of other domestic producers.<sup>26</sup> Thus, there is no basis for concluding that \*\*\* or \*\*\* have been shielded from any injury that might be caused by imports, as a result of their relationships to their foreign parents. We also find that appropriate circumstances do not exist to exclude the three importing firms from the domestic industry, because the imports of these firms were very small relative to their total U.S. shipments.<sup>27</sup> Accordingly, their primary interests appear to lie in domestic production and not in importing.

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<sup>19</sup> 19 U.S.C. § 1677(4)(A).

<sup>20</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>21</sup> 19 U.S.C. §1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a domestic producer include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the domestic producer will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for such producers; and whether the primary interest of the producer lies in domestic production or importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). See also, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997), at 10 n.26.

<sup>22</sup> 19 U.S.C. §1677(4)(B).

<sup>23</sup> \*\*\* is indirectly owned by \*\*\*, and \*\*\* is a wholly-owned subsidiary of \*\*\*.

<sup>24</sup> \*\*\* imported SSRW from Japan, and \*\*\* imported SSRW from Canada. CR at IV-1, PR at IV-1.

<sup>25</sup> CR and PR at Table III-1.

<sup>26</sup> CR and PR at Table VI-2.

<sup>27</sup> \*\*\* imported \*\*\* pounds of SSRW from Japan in 1997 (information from \*\*\* questionnaire response). This represents less than \*\*\* of its 1997 U.S. shipments of \*\*\* pounds. CR and PR at Table III-1. \*\*\* imported \*\*\* pounds of SSRW from Japan in 1997 (information from \*\*\* questionnaire response). This represents less than \*\*\* of its 1997 U.S. shipments of \*\*\*. CR and PR at Table III-1. \*\*\* imported \*\*\* pounds of SSRW from Canada in 1997 (information from \*\*\* questionnaire response). This represents less than \*\*\* of its 1997 U.S. shipments of \*\*\*. CR and PR at Table III-1.

### III. NEGLIGIBLE IMPORTS

Section 733(a) of the Act requires that investigations terminate by operation of law without an injury determination if the Commission finds that the subject imports are negligible.<sup>28</sup> The provision defining "negligibility," in section 771(24) of the Act,<sup>29</sup> provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible. The statute allows the Commission to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of making negligibility determinations.<sup>30</sup>

Greening Donald Co. and Central Wire Industries Co., Canadian firms that draw stainless steel wire rod into SSRW, argue that the Commission should terminate the investigation involving Canada because allegedly LTFV imports of SSRW from Canada are negligible.<sup>31</sup> They contend that most, if not all, of the SSRW imported into the United States from Canada should not be treated as a Canadian product under the applicable rules of origin (*i.e.*, NAFTA origin rules and the "substantial transformation" test). Petitioners argue that the decision as to whether to exclude certain imports from the scope of an investigation should be made by Commerce, not the Commission.<sup>32</sup>

We have determined that allegedly LTFV imports from Canada are not negligible. The Commission generally defers to Commerce on the scope of an investigation. Furthermore, we are not in a position to evaluate issues related to the substantial transformation test. Based on the record before us, until such time as Commerce excludes imports of SSRW from Canada, or Customs rules that such imports are not properly treated as Canadian merchandise, we will continue to treat these imports as subject merchandise. Because the imports from Canada accounted for 16.7 percent of the total quantity of U.S. imports of the subject merchandise in 1997, they are well above the statutory definition of "negligible."

According to the official import statistics, allegedly LTFV imports of SSRW from the remaining subject countries accounted for the following percentages of the total quantity of U.S. imports of the subject merchandise in 1997: India -- 4.9 percent, Japan -- 7.8 percent, Korea -- 16.4 percent, Spain -- 3.6 percent, and Taiwan -- 9.6 percent.<sup>33</sup> Consequently, we find that imports from none of the subject countries are negligible, as defined by the statute.

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<sup>28</sup> 19 U.S.C. § 1673b(a).

<sup>29</sup> 19 U.S.C. § 1677(24)

<sup>30</sup> 19 U.S.C. § 1677(24)(C). *See also* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994)("SAA") at 186.

<sup>31</sup> Postconference brief of Greening Donald Co., dated May 15, 1998, at 1-23.

<sup>32</sup> Petitioners' postconference brief ("PB"), dated May 15, 1998, at 25-27.

<sup>33</sup> CR and PR at Table IV-1.

## IV. CUMULATION

### A. In General

Section 771(7)(G)(i) of the Act requires the Commission to cumulate allegedly LTFV imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.<sup>34</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>35</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;<sup>36</sup>
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>37</sup>

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.<sup>38</sup> Only a "reasonable overlap" of competition is required.<sup>39</sup>

Petitioners contend that the allegedly LTFV imports from the subject countries should be cumulated for purposes of the Commission's material injury analysis because imports from the six subject countries compete with each other and domestic production.<sup>40</sup> Daido Stainless Steel Co., Ltd., and Suzuki Metal Industries Co., Ltd., Japanese producers of the subject merchandise, maintain that imports from Japan should not be cumulated with allegedly LTFV imports from the other subject countries because there

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<sup>34</sup> 19 U.S.C. § 1677(7)(G)(i). There are four exceptions to the cumulation provision, none of which applies to these investigations. *See id.* at 1677(7)(G)(ii).

<sup>35</sup> The SAA (at 848) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." *citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd* 859 F.2d 915 (Fed. Cir. 1988).

<sup>36</sup> Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that subject imports from Canada, India, Japan, Korea, Spain, and Taiwan should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between Japanese subject imports and other subject imports. *See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain*, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

<sup>37</sup> *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>38</sup> *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>39</sup> *See Wieland Werke*, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); *United States Steel Group v. United States*, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>40</sup> PB at 13-21.

is no reasonable overlap of competition between allegedly LTFV imports from Japan and allegedly LTFV imports from other subject countries or domestic products.<sup>41</sup>

We have determined to cumulate the subject imports from Canada, India, Japan, Korea, Spain, and Taiwan for purposes of our material injury analysis in these preliminary phase investigations. First, there appears to be a significant degree of fungibility among imports from the subject countries, and between subject imports and the domestic like product. Most domestic producers and importers responding to the Commission's questionnaires considered SSRW from the six countries to be interchangeable with domestically produced SSRW. Specifically with respect to imports from Japan, all domestic producers that compared U.S. and Japanese products reported that they were interchangeable, as did most of the importers.<sup>42</sup>

It appears that at least a significant portion of the allegedly LTFV imports from Japan compete with other subject imports and the domestic like product. According to the Japanese respondents, there are three broad categories of SSRW imports from Japan: (i) two lead-containing products, SF20T and DSR16FA, which accounted for \*\*\* percent of SSRW imports from Japan in 1997;<sup>43</sup> (ii) nickel coated spring wire, which accounted for \*\*\* percent of U.S. imports from Japan in 1997;<sup>44</sup> and (iii) the remaining products imported from Japan, consisting of \*\*\*, which accounted for approximately \*\*\* percent of subject imports from Japan in 1997.<sup>45</sup> Although the first product category may not be fungible with SSRW produced domestically or imported from the other subject countries, there is evidence that the second and third product categories are produced domestically and are among the imports from the other subject countries.<sup>46</sup> We intend to obtain further information on this issue in any final phase investigations.

On the whole, we believe that the record evidence shows that the subject imports have a significant degree of fungibility with each other and the domestic merchandise. The domestic like product and imports from the subject countries are sold in the same geographical markets, namely throughout the United States.<sup>47</sup> Also, both the subject imports and the domestic like product are sold in similar channels of distribution, primarily to end users but also to distributors.<sup>48</sup> Finally, the record shows that allegedly LTFV imports from each of the subject countries were present in the U.S. market during each year of the period examined.<sup>49</sup> Accordingly, we have cumulated the allegedly LTFV imports from the six subject countries for our material injury analysis.

#### **IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

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<sup>41</sup> The Canadian respondent Greening Donald Co. argues that imports from Canada should not be cumulated with other subject imports for purposes of any threat of injury analysis because imports from Canada do not compete fully with other imports and the domestic like product (GDB at 34-37). The Indian respondents Raatjratna, Venus Wire, and Mukand argue that imports of allegedly LTFV SSRW from India do not injure, or threaten injury to, the U.S. industry because Indian wire exports consist of products which the domestic industry either does not make or does not sell to redrawers. Letter of Raatjratna, Venus Wire, and Mukand, dated May 15, 1998. As noted below, we have determined that the conditions for cumulating the subject imports from all six subject countries have been met.

<sup>42</sup> CR at II-5, PR at II-3. We intend to collect further data on the fungibility of Japanese subject imports with other subject imports, and with the domestic like product, in any final phase investigations.

<sup>43</sup> Postconference brief of Daido Stainless Steel Co., Ltd., and Suzuki Metal Industries Co. ("JRB"), dated May 15, 1998, at 20-21.

<sup>44</sup> *Id.*

<sup>45</sup> JRB at 28.

<sup>46</sup> CR and PR at Table V-2.

<sup>47</sup> CR at II-4-II-5, PR at II-3.

<sup>48</sup> CR at II-1, PR at II-1.

<sup>49</sup> CR and PR at Table IV-1.

In preliminary antidumping investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly LTFV imports under investigation.<sup>50 51</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>52</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>53</sup>

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>54</sup> 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.”<sup>55</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing SSRW is materially injured by reason of allegedly LTFV imports from Canada, India, Japan, Korea, Spain, and Taiwan.

#### **A. Conditions of Competition**

The following conditions of competition are pertinent to our analysis in these investigations. We note that stainless steel wire rod is the predominant material input used in the production of SSRW, often

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<sup>50</sup> 19 U.S.C. § 1673b(a).

<sup>51</sup> Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of the LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela*, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final) USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’d* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

<sup>52</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>53</sup> 19 U.S.C. § 1677(7)(A).

<sup>54</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>55</sup> *Id.*

accounting for as much as 70 percent of the cost of producing SSRW, and that evidence on the record indicates that the price of stainless steel wire rod in the U.S. market declined during the period examined.<sup>56</sup> <sup>57</sup> We also note that the domestic industry consists of a large number of producers of varying sizes, that there is a large number of importers, and that these factors may be reflected in the competitive conditions in the domestic market.

## **B. Volume of Subject Imports**

The quantity and value of the subject imports increased during the period examined. On a quantity basis, the cumulated subject imports increased from 24.0 million pounds in 1995 to 30.4 million pounds in 1997, a net increase of 26.7 percent.<sup>58</sup> On a value basis, the cumulated subject imports increased from \$49.9 million in 1995 to \$54.6 million in 1997, a net increase of 9.4 percent.<sup>59</sup>

The market share held by subject imports increased throughout the period examined. When measured on a quantity basis, the share of the overall SSRW market held by the subject imports increased from 12.7 percent in 1995 to 15.5 percent in 1997.<sup>60</sup> When measured on a value basis, the market share of the subject imports increased from 11.8 percent in 1995 to 13.3 percent in 1997.<sup>61</sup>

Based on the foregoing, we find that the volume of subject imports and the increase in that volume during the period examined, measured by quantity, were significant for purposes of these preliminary determinations.<sup>62</sup>

## **C. Price Effects of Subject Imports**

The record evidence in these investigations shows that, despite some perceived differences in quality, availability, and product range, most producers and importers consider the subject merchandise to be generally substitutable with the domestic like product.<sup>63</sup> The Commission was able to collect only limited comparable price data in these preliminary investigations, especially for India, Japan, and Spain.<sup>64</sup> These data show a mixed pattern of over- and underselling by the subject imports, with underselling occurring in the majority of all possible comparisons. The subject imports undersold the domestic merchandise in 93 of 143 possible price comparisons between 1995 and 1997.<sup>65</sup> Moreover, the incidence of underselling increased over the period examined, with the subject imports underselling domestic products in 23 of 39 possible price comparisons in 1995, 28 of 44 price comparisons in 1996, and 42 of 60

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<sup>56</sup> CR at V-1, PR at V-1.

<sup>57</sup> In any final phase investigations, Commissioner Crawford intends to re-examine the pricing relationship between domestic SSRW products and stainless steel rod.

<sup>58</sup> CR and PR at Table IV-1.

<sup>59</sup> *Id.*

<sup>60</sup> CR and PR at Table IV-3.

<sup>61</sup> CR and PR at Table IV-3.

<sup>62</sup> Commissioner Crawford joins only in the factual discussion of the volume of imports. She does not rely on any analysis of trends in the market share of subject imports and other factors in her determination of material injury by reason of allegedly dumped imports. She makes her finding of the significance of volume in the context of the price effects and impact of these imports, given the condition of competition. For the reasons discussed below, she finds that the volume of subject imports is significant in these investigations.

<sup>63</sup> CR at II-4 and II-5, PR at II-3

<sup>64</sup> Chairman Miller and Vice Chairman Bragg note that the absence of comparable price data for several of the subject countries makes their analysis of price effects and the impact of subject imports difficult. They expect that in any final investigations, parties to the investigations will work closely with Commission staff to develop a more comprehensive set of products for the Commission's pricing analysis.

<sup>65</sup> CR and PR at Tables V-12 through V-14.

price comparisons in 1997.<sup>66 67</sup> Accordingly, we find underselling to be significant.<sup>68</sup> Prices of domestic and subject merchandise declined from 1996 to 1997. The average unit value of the subject imports declined by 12.6 percent from 1996 to 1997, while the average unit value of sales of the domestic like product declined by 5.5 percent in the same period.<sup>69 70</sup> In light of the substitutability of the domestic and subject merchandise, the increasing patterns of underselling by the subject merchandise, and the significant declines in domestic prices toward the end of the period examined, we find that, for purposes of these preliminary determinations, the subject imports have depressed domestic prices to a significant degree.

#### **D. Impact of Subject Imports**<sup>71 72</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> Commissioner Crawford rarely gives much weight to evidence of underselling since it usually reflects some combination of differences in quality, other nonprice factors, or fluctuations in the market during the period in which price comparisons were sought.

<sup>68</sup> CR at V-9, PR at V-7. The record contains a large number of allegations by domestic producers that they lost sales to imports of the subject merchandise. CR at V-35, PR at V-12. Some of these allegations have been investigated, and the results have not been conclusive. We intend to investigate more of the allegations in any final phase investigations.

<sup>69</sup> CR and PR at Table C-1.

<sup>70</sup> To evaluate the effects of the alleged dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were dumped with what domestic prices would have been if the subject imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these investigations, the alleged dumping margins for subject imports vary widely but on the whole are fairly high. Thus, subject imports likely would have been priced significantly higher had they been fairly traded. Subject imports and domestic SSRW appear to be good substitutes. Substitutability between nonsubject imports and domestic and subject imports also appears to be good, although there is very little information on nonsubject imports at this point in these investigations. In any final phase of these investigations, she intends to examine closely the availability of nonsubject products and their substitutability with the domestic like product and will seek additional information on these issues. Given the record in the preliminary phase of these investigations, she finds that the shift in demand away from subject imports and towards the domestic like product likely would have been significant, had subject imports been fairly traded. The domestic industry has ample excess capacity with which it could have increased production, and it could have supplied additional SSRW from inventories. Because of the domestic industry's ability to increase supply in response to higher demand, and the significant competition among the various domestic suppliers and nonsubject import suppliers, she finds in the preliminary phase of these investigations that the domestic industry would not have been able to increase its prices significantly, had subject imports been fairly traded. However, she intends to re-examine the nature of competition in the domestic market in any final phase investigations. Consequently, Commissioner Crawford finds that in the preliminary phase of these investigations, the subject imports are not having significant effects on prices for domestic SSRW.

<sup>71</sup> As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). Section 771(35)(C) of the Act, 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. In its notice of initiation, Commerce identified estimated dumping margins of 2.38 to 40.48 percent for Canada, 3.47 to 36.52 percent for India, 2.02 to 29.58 percent for Japan, 3.46 to 66.44 percent for Korea, 12.99 to 35.80 percent for Spain, and 2.18 to 64.24 percent for Taiwan. 63 Fed. Reg. 26150, 26151-26152 (May 12, 1998).

<sup>72</sup> Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731(Final), USITC Pub. 2968 (June 1996) at 33.*

Despite an increase in apparent domestic consumption during the period examined,<sup>73</sup> the condition of the domestic industry declined in a number of respects. The industry's production, sales revenues, and employment levels were generally stagnant.<sup>74</sup> Capacity utilization levels fell during the period examined as U.S. producers were unable to utilize large portions of their existing and new capacity.<sup>75</sup>

At the same time as the volume and market share of the subject imports increased, and the price of subject imports fell, the domestic industry experienced a decline in average unit sales values that was greater than the decline in its average unit costs.<sup>76</sup> This resulted in a significant overall decline in the domestic industry's profitability,<sup>77</sup> with the ratio of the industry's operating income to net sales falling from 7.6 percent to 2.8 percent.<sup>78</sup> There was an increasing number of domestic producers reporting operating losses as well.<sup>79 80 81</sup>

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<sup>73</sup> Apparent domestic consumption rose from 188.1 million pounds in 1995 to 196.1 million pounds in 1997. CR and PR at Table IV-3.

<sup>74</sup> The domestic industry's production volumes rose slightly during the period examined, from a total of 145.9 million pounds in 1995 to 148.4 million pounds in 1997. CR and PR at Table III-2. The industry's total net sales fell from \$324.8 million in 1995 to \$313.2 million in 1997. CR and PR at Table VI-1. The average number of production and related workers employed by the industry rose very slightly from 1,355 in 1995 to 1,365 in 1997, while the number of hours worked declined from 3.0 million in 1995 to 2.9 million in 1997. CR and PR at Table III-3.

<sup>75</sup> Capacity utilization fell from 68.7 percent in 1995 to 63.4 percent in 1997. CR and PR at Table III-2.

<sup>76</sup> Between 1995 and 1997, aggregate average unit prices fell from \$2.27 to \$2.12, or by 5.7 percent, while average unit costs fell from \$1.92 to \$1.90, or by 1.1 percent. CR and PR at Table III-3 and Table VI-3 for costs.

<sup>77</sup> The domestic industry's aggregate gross profits fell from \$49.9 million in 1995 to \$35.4 million in 1997. Its aggregate operating income fell from \$24.7 million in 1995 to \$8.7 million in 1997. The ratio of the industry's gross profits to net sales fell from 15.4 percent in 1995 to 11.3 percent in 1997. CR and PR at Table VI-1.

<sup>78</sup> CR and PR at Table VI-1.

<sup>79</sup> The number of domestic producers reporting operating losses increased from \*\*\* in 1995, to \*\*\* in 1996, to \*\*\* in 1997. CR and PR at Table VI-2. One domestic producer filed for Chapter 11 bankruptcy protection at the end of 1997. CR at III-6, PR at III-4.

<sup>80</sup> As previously stated, Commissioner Crawford does not evaluate impact based on trends in statutory impact factors. In her analysis of material injury by reason of allegedly dumped imports, Commissioner Crawford evaluates the impact of subject imports on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the allegedly dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact. As noted above, there is a reasonable indication that the domestic industry would have been able to increase its output if subject imports had been sold at fairly traded prices. Had subject imports been fairly priced, the domestic industry would have been able to increase its output significantly in response to a shift in demand away from subject imports to the domestic product. Had subject imports been fairly traded, overall demand would not have fallen by much due to the apparent low elasticity of demand and the lack of any significant price effects. Accordingly, she finds that the output and sales increases by the domestic industry, and therefore revenues would have been significant, had subject imports been fairly priced. Consequently, the domestic industry likely would have been materially better off if subject imports had been fairly traded. Therefore, Commissioner Crawford determines that there is a reasonable indication that the domestic industry producing SSRW is materially injured by reason of allegedly LTFV imports of subject merchandise from Canada, India, Japan, Korea, Spain, and Taiwan.

<sup>81</sup> Respondents have argued that the domestic industry's declining profitability was due in part to the effects of raw material surcharges. *E.g.*, Postconference brief of Central Wire Industries Ltd., dated May 15, 1998, at 28-30. We intend to consider further the role of raw material costs and surcharges on the financial condition of the domestic

Because of the significant erosion of the domestic industry's financial performance, the accompanying declines in a number of other indicators of the condition of the industry, the absolute and relative increase in the volume of subject imports, the general decline in prices, and the widespread and increasingly-frequent underselling by the subject imports, we find for purposes of these preliminary determinations that the subject imports are having an adverse impact on the domestic industry producing SSRW.

### **CONCLUSION**

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing stainless steel round wire is materially injured by reason of allegedly LTFV imports from Canada, India, Japan, Korea, Spain, and Taiwan.

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industry in any final phase investigations.