

UNITED STATES INTERNATIONAL TRADE COMMISSION

**STAINLESS STEEL ROUND WIRE FROM CANADA, INDIA, JAPAN,
THE REPUBLIC OF KOREA, SPAIN, AND TAIWAN**

Investigations Nos. 731-TA-781-786 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3194, May 1999)

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

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), 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 Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire² that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective November 16, 1998, following receipt of a petition filed with the Commission and the Department of 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. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan 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 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 December 2, 1998 (63 FR 66577). The hearing was held in Washington, DC, on April 6, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 For purposes of these investigations, Commerce has defined the subject stainless steel round wire (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. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied." (*See e.g.*, *Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Japan* (64 FR 17318, Apr. 9, 1999.)

These products, if imported are currently covered by statistical reporting numbers 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 (HTS).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of stainless steel round wire (“SSRW”) from Canada, India, Japan, Korea, Spain, and Taiwan that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”).

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine 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.”³ 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.”⁴ 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”⁵

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.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., Nippon Steel Corp. v. United States, 19 CIT 450, 455 (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, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., Nippon Steel, 19 CIT at 454-55.

⁸ Torrington, 747 F. Supp. at 748-49.

⁹ 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).

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). SSRW is 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. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.¹⁰

The subject merchandise is an intermediate product used to make a multitude of wire products, such as fasteners, springs, wire mesh, strand, wire rope, welding wire, medical instruments, and wire of other cross sections. Producers provide SSRW in a wide range of diameters, grades, mechanical properties and tensile strengths to meet customer specifications. SSRW is favored over carbon and lower alloy steels for its corrosion resistance and strength under extreme conditions. SSRW sold in the United States ranges from 0.003 to 0.703 inch (0.08 to 18 mm) in diameter, with the primary grades (chemical composition) being 302, 304, 302HQ, 316, and 430.¹¹

In the preliminary phase of these investigations, the Commission determined that there was one like product. We have been presented with no new arguments or new evidence to change that finding in this final phase of these investigations. Accordingly, for the same reasons articulated in the preliminary phase -- the common physical characteristics, channels of distribution, manufacturing facilities and production employees, interchangeability, and customer perceptions -- we determine that there is one domestic like product in these investigations, consisting of all SSRW, as defined in Commerce's scope determination.

C. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product"¹² 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.¹³ Based on our finding that the domestic like product consists of all SSRW, we define the corresponding domestic industry as all producers of SSRW in the United States, as the Commission did in the preliminary determination.¹⁴

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). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are

¹⁰ See, e.g., Stainless Steel Round Wire From Canada, 64 Fed. Reg. 17324 (DOC, Apr. 9, 1999); Final Staff Report on Investigations Nos. 731-TA-781 through 786 (Final) ("CR"), App. A.

¹¹ CR & PR at I-6.

¹² 19 U.S.C. § 1677(4)(A).

¹³ 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).

¹⁴ Stainless Steel Round Wire From Canada, India, Japan, Korea, Spain, and Taiwan, Invs. Nos. 731-TA-781-786 (Preliminary), USITC Pub. 3111 at 5 ("Preliminary Determination").

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.¹⁵

In the preliminary phase of these investigations, the Commission found that five producers were related parties: Al Tech, as a company controlled by Korean SSRW exporter Sammi Steel; *** as importers of the subject merchandise, and Wire Industries and Sumiden, as both importers of the subject merchandise ***.¹⁶ Therefore, we may exclude these companies¹⁷ from the domestic industry if "appropriate circumstances" exist.¹⁸

As in the preliminary phase of the investigations, we determine that appropriate circumstances do not exist to exclude any of these companies from the domestic industry. None of the parties argued for the exclusion of any company other than Sumiden. Subject imports did not represent a significant percentage of production for *** or Sumiden.¹⁹ Al Tech ***, and supported the petition against Korea throughout the investigation. Sumiden supported the petition against Japan in its questionnaire response, asked to be treated as a petitioner, and testified that it had been injured by reason of subject imports.²⁰ This information suggests that these companies' primary interest lies with domestic production, rather

¹⁵ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (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 such 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 producer vis-à-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 has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

¹⁶ CR at III-6 - III-7, PR at III-4 - III-5.

¹⁷ In the final phase of these investigations, *** reported that it was not an importer of record of subject merchandise during the investigation period, as it had reported in the preliminary phase, so it is not a related party.

¹⁸ See Torrington Co. v. United States, 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (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).

¹⁹ During 1998, imports represented *** percent of total sales for *** and *** percent for Sumiden. See Importer Questionnaire Responses of *** and Sumiden at 5. Although *** imports increased from 1997 to 1998, its profits decreased by ***.

²⁰ Tr. at 113-115, 194.

than importing.²¹ We also note that each of the related parties accounted for a relatively small share of total domestic production, so their inclusion does not skew the overall industry data.^{22 23}

Accordingly, in this final phase of the investigations we determine that appropriate circumstances do not exist to exclude any of the related parties. We therefore define the domestic industry to consist of all domestic producers of SSRW.

II. NEGLIGENCE

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.²⁴ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.²⁵ The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.²⁶

The parties do not contest the Commission's findings in the preliminary phase of the investigations that imports from India, Japan, Korea, Spain, and Taiwan are not negligible, and the record indicates no reason to revisit those findings.²⁷ Canadian producers have argued that Commerce should have employed the standard test for determining the country of origin of carbon steel wire rod. Under this framework, Commerce would treat all of the SSRW drawn in Canada as the product of some other country, resulting in Canadian imports being negligible.²⁸ Commerce rejected this argument, and determined that the imports in question were subject imports.²⁹

Section 735(b) of the Act states that "[t]he Commission shall make a final determination" of whether "injury, threat of injury, or material retardation to a domestic industry has occurred by reason of imports . . . with respect to which the administering authority has made an affirmative determination under subsection (a)(1)."³⁰ Accordingly, in light of Commerce's finding, we consider the imports described in

²¹ Commissioners Crawford and Hillman observe in addition that Petitioners have not argued for the exclusion of Wire Industries and, thus, in light of their negative determinations they have included this company in the domestic industry.

²² Shares of 1998 production were: Al Tech, *** percent; ***, Sumiden, *** percent; and Wire Industries, *** percent. CR & PR, Table III-1.

²³ Commissioner Crawford does not join in this sentence.

²⁴ 19 U.S.C. § 1677(24)(I).

²⁵ 19 U.S.C. § 1673d(b)(1).

²⁶ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 103-316, Vol. 1, at 856 (1994) ("SAA").

²⁷ The subject countries had the following shares of total imports in 1997: India, 4.9 percent; Japan, 7.8 percent, Korea, 16.4 percent; Spain, 3.6 percent; and Taiwan, 9.5 percent. CR & PR, Table IV-1. Spain accounted for 2.2 percent of total imports in 1998, but for the exact 12-month period preceding the filing of the petition in March 1998, it accounted for 3.5 percent of total imports. CR at IV-6, PR at IV-2.

²⁸ See Superior Wire v. United States, 669 F. Supp. 472 (Ct. Int'l Trade 1987).

²⁹ Stainless Steel Round Wire from Canada, 64 Fed. Reg. 17324, 17326 (Apr. 9, 1999) (Final), CR & PR, App. A.

³⁰ 19 U.S.C. § 1673d(b) (emphasis added).

that finding to be Canadian subject merchandise, and determine that imports from Canada are not negligible.³¹

III. CUMULATION

A. In General

Section 771(7)(G)(I) of the Act requires the Commission to cumulate imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with domestic like products in the United States market.³²

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.³³

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 imports compete with each other and with the domestic like product.³⁴ Only a “reasonable overlap” of competition is required.³⁵

B. Analysis

The petitions in these investigations were filed on the same day, so the first statutory test for cumulation is satisfied. Therefore, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, and among the imports from the subject countries. In the preliminary phase of the investigations, the

³¹ Canadian imports represented 17.7 percent of total imports in 1997 and 13.0 percent in 1998. CR & PR, Table IV-1.

³² 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which apply to these investigations.

³³ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

³⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

³⁵ See Goss Graphic System, Inc. v. United States, 22 CIT ____, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); 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).

Commission cumulated imports from all six countries subject to investigation.³⁶ It found that the subject imports had a significant degree of fungibility with each other and the domestic merchandise. Domestic producers and importers reported that the subject imports from the six countries were interchangeable with each other, as were the subject merchandise and the domestic like product.³⁷ The Commission also found that the domestic like product and imports from the subject countries compete in the same geographic markets, namely, throughout the United States.³⁸ The Commission further found an overlap in channels of distribution for the subject imports and domestic like product, which was primarily sales to end users, but also to distributors.³⁹ Finally, the record showed that LTFV imports from each of the subject countries were present in the U.S. market during each year of the investigation period.⁴⁰

In the final phase of these investigations, we have obtained no contrary information that would lead to a different cumulation finding. In fact, the record provides further support for the finding that subject imports are fungible⁴¹ both with each other and with the domestic like product.⁴² Moreover, no party argued during the preliminary or final phases of the investigations that the Commission should not cumulate the subject imports from Canada, India, Korea, Spain, or Taiwan.

Japanese producer Suzuki Metal Industries Co., Ltd. argued that SSRW imported from Japan should not be cumulated because these imports consist primarily of niche products that have no counterparts among the domestic like product or the merchandise from other subject countries. The record in this final phase of the investigations shows, however, that such niche products accounted for only 36 percent of total imports from Japan over the entire investigation period, and 28 percent of such imports in 1998.^{43 44}

³⁶ Preliminary Determination at 8.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ 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 in the decision to cumulate the subject imports from all countries. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

⁴² Purchasers, who were not queried during the preliminary phase of these investigations, generally found that the domestic and subject imports from Canada, India, Japan, Korea, Spain, and Taiwan were interchangeable. CR at II-12, PR at II-7.

⁴³ Further, Suzuki has understated the degree of competition that it faces from U.S. and Korean producers of one of the “niche” products, nickel-coated spring wire, which accounted for 21 percent of Japanese imports in 1998. Domestic producers sold *** of this product in the United States as Japanese producers did. CR & PR, Table F-1. Although Suzuki cited *** purchasers who rated domestic nickel-coated spring wire as unusable, the purchasers’ questionnaires *** of Sumiden, the sole U.S. producer of this product, failing to meet certification requirements or being dropped for quality reasons. CR & PR, Table II-2. This statistic indicates that, as a general rule, domestic nickel-coated spring wire meets customers’ demands, and does not have a large quality disadvantage against Japan. Korean producers also shipped nickel-coated spring wire to the United States throughout the investigation period, and their share of total sales of the product increased from 1996 to 1998. CR & PR, Table F-1. Since nickel-coated spring wire represented a not insignificant share of total Japanese imports, we find that these data demonstrate a reasonable overlap in competition among domestic, Japanese, and Korean products. The

(continued...)

Suzuki also argues that imports from Japan outside of the niche product categories, which accounted for the majority of such imports, faced little or no competition from domestic merchandise or the remainder of the subject merchandise. The record shows otherwise. While most purchasers rated Japanese SSRW as superior to domestic in terms of product quality and consistency, they generally described Japanese products as interchangeable with both domestic and other subject merchandise.⁴⁵ In addition, Japanese SSRW was used in the same applications as SSRW from the other subject countries and the United States.⁴⁶

Although Suzuki alleges that imports from Korea of nickel-coated spring wire “appear to be targeted towards a different customer base,”⁴⁷ the record shows that, overall, a sizable portion of total imports from Japan and Korea consisted of commercial shipments to end users.⁴⁸ Therefore, it appears that they are sold in the same channels of distribution.

Accordingly, we find that the domestic like product and subject merchandise are sufficiently fungible, were sold in the same geographic markets and similar channels of distribution, and were simultaneously present in the market. We therefore find a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product and have cumulated the LTFV imports from all six subject countries for our analysis of material injury by reason of the subject imports.

IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

⁴³ (...continued)

record also showed that domestic resulfurized free-machining SSRW achieved levels of machinability comparable to those of Japanese leaded SSRW, which provides further evidence of an overlap of competition. Tr. at 80-81, Petitioners’ prehearing brief at 8-9.

⁴⁴ Commissioner Askey notes that there were no imports of nickel-coated spring wire from Canada, India, Spain, or Taiwan and, therefore, does not find a reasonable overlap of competition for those niche products among imports from the subject countries. She nevertheless has cumulated imports from the subject countries because of the relatively small market share held by niche products.

⁴⁵ CR at II-10 - II-13, PR at II-6 - II-7. In addition, almost all importers and producers described the Japanese product as at least somewhat interchangeable with imports from the other countries, and a majority found them “always” interchangeable. CR at II-9 - II-10, PR at II-5 - II-6.

⁴⁶ Imports from Japan fell into four of the seven end-use types for which the Commission gathered data: (1) cold heading, which also included shipments of U.S., Canadian, Indian, Korean, and Taiwanese SSRW; (2) welding, which also included shipments of U.S., Canadian, Korean, and Taiwanese SSRW; (3) springs, which also included shipments of U.S., Canadian, Indian, Korean, and Spanish SSRW; and (4) weaving/braiding/knitting/tying, which also included shipments of U.S., Canadian, Indian, Korean, Spanish, and Taiwanese SSRW.

⁴⁷ Suzuki prehearing brief at 10.

⁴⁸ CR & PR, Table I-1.

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 dumped imports under investigation.^{49 50} In making these determinations, the Commission must consider the volume of the dumped 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.⁵¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵² In assessing whether the domestic industry is materially injured by reason of dumped imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵³ 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.”^{54 55}

⁴⁹ 19 U.S.C. § 1673d(b).

⁵⁰ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is materially injured “by reason of” 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 unfairly traded imports, not by reason of the unfairly traded 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 the less-than-fair-value imports.” S. Rep. No. 96-249 at 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. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury “by reason of” the unfairly traded 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. 100-71 at 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).

⁵¹ 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).

⁵² 19 U.S.C. § 1677(7)(A).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ Although Petitioners stress that they have not “formally requested” an extension of the three-year investigation period, they have suggested that information outside of that period “be utilized essentially as a benchmark” in our material injury and threat of material injury analyses. However, the record in these investigations does not present the circumstances that the Commission has previously cited as favoring an extended period of investigation. See, e.g., Portable Electric Typewriters From Singapore, Inv. No. 731-TA-515, USITC

(continued...)

For the reasons discussed below, we determine that the domestic stainless steel round wire industry is not materially injured by reason of dumped imports from the six subject countries.

A. Conditions of Competition

Several distinctive conditions of competition are relevant to our determination.⁵⁶ All parties agreed that SSRW consists of a multitude of permutations of grade, size, and end-use.⁵⁷ We note that some companies specialized in producing SSRW for particular end uses.⁵⁸ However, such specialization does not restrict competition to a significant degree because the merchandise is made to customer specifications, and each of the domestic producers is capable of making all or most of the specific products.⁵⁹ More than 40 companies produced SSRW during the investigation period,⁶⁰ suggesting a high degree of competition among domestic producers, even without LTFV and other imports.

We find that domestically produced SSRW and the subject merchandise are substitutable. Purchasers rated domestic products as comparable to most of the LTFV imports in several areas: product quality, product consistency, product range, packaging and discounts offered.⁶¹ There were substantial quantities of domestic merchandise sold corresponding to each of the “niche product” categories identified by Respondents.^{62 63}

⁵⁵ (...continued)

Pub. 2681 at 11 (Sept. 1993) (a five-year period “covers both the decline of Smith Corona’s domestic production and the growth of BIUSA’s domestic production, [which] is important to our evaluation of the changing nature of competition in the market”); Large Newspaper Printing Presses, Assembled or Unassembled, From Germany and Japan, Invs. Nos. 731-TA-736 & 737, Pub. 2988 at 8-9; Grain-Oriented Silicon Electrical Steel From Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 at I-10 (May 1994). We also did not accede to Petitioners’ request to consider data from 1995 “as a benchmark.” The Commission was only able to obtain 1994 and 1995 data for a subset of the domestic producers that performed quite differently from the domestic industry as a whole in 1996-1998. Therefore, we found that the producers who submitted 1994 and 1995 data were not sufficiently representative for us to use their data to draw conclusions about the performance of the industry as a whole. Although the 1994 and 1995 data covered approximately 80 percent of domestic production, those producers had lower operating profits than the industry as a whole, and their profitability statistics for 1996-98 moved in different directions and by different degrees than the industry as a whole. Compare CR & PR, Table C-2 with CR & PR, Table C-1.

⁵⁶ Because only small amounts of SSRW are used internally to produce downstream products, we find that the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), does not apply. See CR & PR, Table III-4.

⁵⁷ CR & PR at I-6; Petitioners’ prehearing brief at 4; Respondents’ joint prehearing brief at 18-19.

⁵⁸ Tr. at 75.

⁵⁹ CR at I-6 & I-8, PR at I-6 - I-7; Tr. at 76.

⁶⁰ CR & PR at III-1.

⁶¹ CR & PR, Table II-3.

⁶² See CR & PR, Table F-1. However, we note that the level of substitutability was somewhat lower for imports from Japan and Spain. See CR & PR, Table II-3.

⁶³ As discussed previously, Commissioner Crawford concurs that Japanese imports are sufficiently substitutable to constitute a reasonable overlap of competition for cumulation purposes, even though a portion of Japanese imports consists of niche products. Nonetheless, the substitutability of Japanese imports is reduced by these niche products, particularly nickel-coated spring wire. For this reason, Commissioner Crawford finds that the subject imports from Japan are only moderate substitutes for the domestic product and the other subject imports. She finds

(continued...)

Costs for raw materials have a direct effect on the prices charged by the domestic industry. Surcharges were one mechanism by which raw materials influenced prices. On approximately three-quarters of the sales made by domestic suppliers during the investigation period, purchasers paid surcharges tied to the prevailing market price for their suppliers' main raw material inputs, including stainless steel wire rod, chromium, nickel, and molybdenum.⁶⁴ Therefore, when raw material prices increased or decreased, prices for sales subject to surcharges automatically increased or decreased by the same amount, as stipulated in purchasers' contracts. Aggregate domestic industry data showed that average unit values generally changed by the same amount as the average unit cost of goods sold,⁶⁵ suggesting that price movements as driven by surcharges were emblematic of a larger tendency within the industry for prices to move in tandem with costs, whether or not the particular cost item was subject to a surcharge or the producers opted to impose one.⁶⁶

Finally, demand for SSRW is derived from the demand for the products in which SSRW is used,⁶⁷ such as springs, fasteners, knitted mesh for auto exhaust systems, and welding, which are themselves inputs into much larger products. Thus, SSRW generally accounts for a small share of the cost of most of the final end-use products in which it is used,⁶⁸ and demand for SSRW is not greatly affected by changes in SSRW prices.⁶⁹

B. Volume of the 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."⁷⁰

The quantity and value of the subject imports increased over the investigation period. On a quantity basis, the cumulated subject imports increased from 24.3 million pounds in 1994 to 32.5 million pounds in 1998, an increase of 34 percent. On a value basis, the cumulated subject imports increased from \$50 million to \$55.7 million from 1996 to 1998, an increase of 11.4 percent.⁷¹ The market share held by subject imports increased from 12.3 percent of apparent domestic consumption, as measured by volume sold, in 1996 to 14.9 percent in 1997, and then to 15.8 percent in 1998. As measured by value, subject

⁶³ (...continued)

that the domestic product and the subject imports from the other countries are all fairly good substitutes for each other.

⁶⁴ CR & PR, Table I-1.

⁶⁵ See CR & PR, Table VI-3.

⁶⁶ Raw material prices declined rapidly during the investigation period, which not only depressed prices, but also served to depress domestic profitability through an "inventory effect." This effect occurred because SSRW sold at the time of declining raw material prices had been manufactured with raw materials that cost the producer more than the then-prevalent market price. Once raw material prices level off, as occurred at the very end of the investigation period, this depressive effect should cease. Vice Chairman Miller and Commissioner Hillman do not join this footnote.

⁶⁷ CR & PR at II-2.

⁶⁸ CR at II-2 - II-3, PR at II-2.

⁶⁹ CR at II-3, PR at II-2.

⁷⁰ 19 U.S.C. § 1677(7)(C)(I).

⁷¹ CR & PR, Table IV-3.

import market share rose from 11.2 percent in 1996 to 12.3 percent in 1997, and then 12.9 percent in 1998.⁷²

Although these increases were sizable, we find that they were not significant.^{73 74} Domestic demand increased by almost the same amount as the cumulated subject imports from 1996 to 1998, so the domestic market share changed by a relatively small amount. In fact, the greatest increase in cumulated subject import volume, which occurred from 1996 to 1997, was accompanied by an even greater increase in the volume of U.S. shipments, both of which came at the expense of nonsubject merchandise. Domestic producers' market share remained unchanged.⁷⁵ From 1997 to 1998, the volume of subject imports increased in conjunction with a decrease in U.S. producers' shipments.⁷⁶ However, the changes were relatively small, leaving the domestic producers' volume of shipments 3 million pounds greater than in 1996 and their market share lower than in 1996 by only slightly more than one percentage point.⁷⁷

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁷⁸

⁷² CR & PR, Table IV-4.

⁷³ Chairman Bragg notes that, when viewed in isolation, the increasing volume of subject imports can be considered significant. However, in light of the price and non-price factors discussed below, and based upon the entirety of the record in these investigations, she finds that the increasing volume of subject imports is not significant.

⁷⁴ Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is not significant in light of its price effects and impact.

⁷⁵ See CR & PR, Table IV-3.

⁷⁶ We considered whether the decreases in Canadian and Spanish imports from 1997 to 1998 were "related to the pendency of the investigation," and should consequently be accorded diminished weight, pursuant to Section 771(7)(I) of the Act. However, Petitioners requested that we cumulatively assess the volume and price effects of subject imports pursuant to Section 771(7)(G) of the Act and, as noted above, we do so here. The aggregate volume of subject imports continued to increase after the filing of the petition, giving us no reason to conclude that importers or foreign producers changed their marketing practices in response to the pendency of these investigations. In addition, we note that the volumes of subject imports from different countries did not move in lock step prior to the filing of the petition, so that the differing volume trends following the filing of the petition are not in themselves incongruous. Therefore, in our analyses of volume, price, and impact, we did not accord lesser weight to data pertaining to the period after the filing of the petition

⁷⁷ CR & PR, Table IV-4.

⁷⁸ 19 U.S.C. § 1677(7)(C)(ii).

Given the substitutability of the domestic merchandise and the subject imports, price was a factor in purchasing decisions, but not the only factor. Important non-price factors noted by purchasers included quality, reliability, and delivery time.^{79 80}

We note that the prices for subject merchandise and the domestic like product declined throughout the investigation period, both as measured by the quarterly pricing data reported by the parties and by average unit values.⁸¹ We find that this trend was not due, to a significant degree, to the subject imports. The average unit value of domestic merchandise, which provides a useful aggregate measurement of changes in prices, declined by 11.2 cents from 1996 to 1997, and by 4.2 cents from 1997 to 1998. The domestic producers' average unit cost of raw materials declined by 9.6 cents from 1996 to 1997 and by 3.2 cents from 1997 to 1998,⁸² while their average cost of goods sold per unit declined by 11.5 cents from

⁷⁹ CR & PR, Table II-1.

⁸⁰ Commissioner Crawford concurs that the subject imports are not having significant effects on domestic prices. To evaluate the effects of dumped imports on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been dumped, their prices in the U.S. market would have increased. In these investigations, the market share of cumulated subject imports was 15.8 percent in 1998. However, at fairly traded prices only a small amount of this demand would have shifted away from the subject imports. The subject imports from Korea and Taiwan held a combined market share of 8.2 percent in 1998, the majority of the market share of the cumulated subject imports, and the dumping margins for these two sources are very small, only 3 percent and less than 5 percent, respectively. Given these very small margins, it is likely that all or nearly all of the subject imports from Korea and Taiwan would have continued to be sold in the U.S. market at fairly traded prices, and thus there would not have been a shift in demand away from these subject imports. Similarly, with margins of less than 12 percent, only some portion of the 1998 market share of 3.4 percent for the subject imports from Canada likely would have shifted away from this source of subject imports. As noted previously, Japanese imports are only moderate substitutes for the domestic product and the other subject imports. Therefore, even with margins ranging from about 15 - 30 percent, only some portion of the Japanese 1998 market share of 2.1 percent likely would have shifted away from this source of subject imports, had they been fairly traded. With margins of almost 19 percent, it is likely that a larger portion of the 1998 market share of 1.5 percent for the subject imports from India would have shifted away from this source of subject imports.

With margins exceeding 25 percent, it is likely that most of the 1998 market share of 0.6 percent for the subject imports from Spain would have shifted away from this source of subject imports. Therefore, the shift in demand away from the cumulated subject imports would have consisted of little or none of the combined 8.2 percent market share of the subject imports from Korea and Taiwan; only some of the 3.4 percent market share of the subject imports from Canada; only some of the 2.1 percent market share of the subject imports from Japan; a larger portion of the 1.5 percent market share of the subject imports from India; and most of the 0.6 percent market share of the subject imports from Spain. Overall, the total shift in demand away from the cumulated subject imports would have been small. Nonsubject imports accounted for 10.3 percent of the market in 1998, and thus represented some competition in the market in that year, so it is likely that they would have captured some of the small shift in demand away from the subject imports. Given the small shift in demand away from the subject imports and the competition from nonsubject imports, the shift in demand towards the domestic product would not have been significant. Absent a significant increase in demand for its product, the domestic industry would not have been able to raise its prices. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of the subject imports. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic SSRW.

⁸¹ See CR at V-15 - V-17, PR at V-10 - V-11, CR & PR Table C-1.

⁸² CR & PR, Table VI-3.

1996 to 1997, and by 3.2 cents from 1997 to 1998.⁸³ As we note above, one element of the domestic industry's cost structure is expressly tied to price through the mechanism of raw material surcharges. This linkage of cost and price, along with the high degree of competition among domestic producers, caused prices to change roughly in parallel with changes in the cost of goods sold. Therefore, we find that these factors unrelated to imports were primarily responsible for the decline in prices that occurred during the investigation period.

We considered whether the subject imports prevented the industry from halting the downward trend in prices engendered by its falling cost of goods sold. The record contains no indication that domestic producers made a sustained effort to stabilize or raise prices, either through announced changes to list prices or by contacting individual customers. We also note that there appeared to be little correlation between changes in volume and average unit values of subject imports and the average unit values of domestic merchandise. When subject imports' volume increased and unit values decreased from 1996 to 1997, domestic producers' unit values decreased by a far smaller amount, unit COGS fell by more than average unit values, and domestic producers' operating profit margin increased.⁸⁴ Thus, the domestic industry appears to have been able to slow the decline in prices somewhat in spite of a growing subject import presence.

From 1997 to 1998, domestic producers' average unit values again tracked unit cost of goods sold, but the domestic producers' operating profit margins decreased because SG&A costs increased.⁸⁵ The increase in volume and decrease in average unit values of subject imports were far less in 1998 than in 1997, and there were also far fewer instances of underselling by the subject imports.⁸⁶ Since we concluded that imports did not prevent the domestic industry from lessening the degree of price erosion in 1997, we find that the lower incidence of underselling, lower rate of increase in volume, and lower rate of decrease in price that occurred in 1998 are not responsible for the fact that the domestic industry did not pass increased SG&A expenses on to its customers.

Despite the relative frequency of underselling, we do not find it to be significant. We note that purchasers placed importance on non-price factors, such as quality and reliability, in their purchasing decisions, which would limit price-based competition between subject imports and the domestic merchandise to some degree. In addition, changes in the pattern of underselling in these investigations appear to be unrelated to any adverse impact on the domestic industry. When the frequency of underselling increased by 18 percent in 1997, the domestic industry's operating profit margin actually increased, and when the incidence of underselling fell back to near its previous level in 1998, the operating profit margin decreased. Furthermore, while Petitioners made a large number of lost sales and lost revenue allegations, purchasers who were contacted by the Commission staff denied most of the allegations.⁸⁷ Accordingly, we find that the subject imports did not adversely affect prices for the domestic like product to a significant degree.

⁸³ CR & PR, Table VI-3.

⁸⁴ CR & PR, Table C-1.

⁸⁵ See, e.g., Certain Pasta From Italy and Turkey, 701-TA-365-366, 731-TA-734-735, Pub. 2977 at 26 and 30 (July 1996).

⁸⁶ See generally CR, App. G.

⁸⁷ See generally CR at V-19 - V-27, PR at V-13 - V-16.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” 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.”^{88 89 90}

Almost all of the relevant indicators of the domestic industry’s performance changed only slightly over the investigation period, and many improved. The domestic industry produced 153 million pounds of SSRW in 1996, 163 million pounds in 1997, and 159 million pounds in 1998, maintaining a capacity utilization of between 71 and 74 percent.⁹¹ The domestic industry’s total U.S. shipments began the period at 148 million pounds, increased in 1997 to 155 million pounds and then decreased slightly to 152 million pounds in 1998. The value of these shipments began the period at \$346 million, increased to \$350 million in 1997, and then decreased to \$339 million in 1998.⁹² The number of production and related workers decreased slightly, but productivity increased.⁹³

Operating income was \$10.2 million in 1996, \$12 million in 1997, and \$8.3 million in 1998, which represented operating income margins of 2.9 percent in 1996, 3.4 percent in 1997, and 2.4 percent in 1998. Thus, margins increased by 0.5 percent from 1996 to 1997, and then decreased by 1 percent in 1998, for a net decrease of 0.5 percent. Net income was positive in 1996 and 1997, but fell to a loss in 1998.⁹⁴ The industry’s cash flow remained positive throughout the investigation period. Capital expenditures remained high and, although they declined slightly from 1996 to 1997, the value of fixed assets and domestic production capacity increased from 1996 to 1998,⁹⁵ which indicates that the domestic industry maintained

⁸⁸ 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 at 25, n.148 (Feb. 1999).

⁸⁹ 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” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce found dumping margins within the following ranges for the subject countries: Canada, 11.18 to 11.79 percent; India, 18.64 percent; Japan, 15.2 to 29.56 percent; Korea, 3.07 percent; Spain, 24.40 to 35.80 percent; and Taiwan, 3.94 to 4.75 percent. CR & PR at I-4.

⁹⁰ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁹¹ See CR & PR, Tables III-3 and III-4.

⁹² CR & PR, Table III-4.

⁹³ CR & PR, Table III-6. The domestic industry reported 1,491 production and related workers in 1996, which decreased to 1,475 in 1997, and 1,458 in 1998. Productivity stood at 48.3 lbs./hr. in 1996, increased to 51.9 lbs./hr. in 1997, and then decreased to 50.9 lbs./hr. in 1998.

⁹⁴ CR & PR, Table VI-1.

⁹⁵ CR & PR, Tables III-3 and VI-5.

and even improved its physical plant. Research and development expenses were relatively small and stable throughout the period.⁹⁶

This fairly steady level of performance occurred at the same time that the volume of subject imports increased by 34 percent and their average unit value decreased by 16.8 percent.^{97 98} The fact that the domestic industry registered a slight improvement in operating income in 1997, when subject import volume increased the most, average unit values decreased the most, and underselling was the highest, indicates that subject imports did not have a significant effect on the domestic industry.⁹⁹

While domestic revenues declined over the period of investigation, the unit cost of goods sold declined even faster, leaving the industry with a higher gross profit in 1998 than it had in 1996. These data, in combination with our conclusion that domestic price decreases occurred primarily because of changes in the cost of goods sold and the high degree of competition among domestic producers, lead us to conclude that these factors, rather than subject imports, caused the decline in operating income.

For all of the foregoing reasons, we determine that the domestic industry producing stainless steel round wire is not materially injured by reason of dumped imports from Canada, India, Japan, Korea, Spain, and Taiwan.

⁹⁶ CR & PR, Table VI-5.

⁹⁷ CR & PR, Table C-1.

⁹⁸ Commissioner Crawford does not rely on any analysis of the trends in either the statutory impact factors or the volume of the subject imports in her determination of material injury by reason of the subject imports. However, she concurs in the conclusion that the subject imports are not having a significant impact on the domestic industry. In her analysis of material injury by reason of dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of 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 dumped imports, and so she gauges the impact 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 she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports been priced fairly. Therefore, any impact on the domestic industry would have been on the domestic industry's output and sales. As noted, at fairly traded prices the shift in demand away from the subject imports would have been small, and the increase in demand for the domestic product would not have been significant. Absent a significant increase in the demand for its product, the domestic industry would not have been able to increase its production and sales, and therefore its revenues, significantly had the subject imports not been dumped. Therefore, the domestic industry would not have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that the domestic industry is not materially injured by reason of the subject imports.

⁹⁹ The negative net income in 1998 occurred only because of ***. See CR & PR, Table VI-2, note 1. If imports were responsible for ***, imports of *** products should have increased in 1998 as they displaced ***'s product. Instead, subject imports of *** wire decreased by *** percent, which is roughly equivalent to the *** percent decrease in domestic producers' shipments of *** wire. These figures indicate that domestic consumption of *** wire had fallen and that this decline in consumption motivated the ***.

V. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Cumulation for Purposes of Threat Analysis

In determining whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has the discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation for present material injury.¹⁰⁰ In addition to considering the four cumulation factors described above,¹⁰¹ the Commission may also consider the similarity of trends in the volume and price of subject imports from the countries under investigation.¹⁰² We have exercised our discretion to cumulate all subject imports for purposes of our threat analysis. The fact that Canadian and Spanish imports decreased while the other subject countries' imports increased in 1998 is one factor that could suggest that cumulation is not appropriate here. However, we would not have changed our determination if we had decided not to cumulate any or all of the subject countries.

B. Statutory Factors

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."¹⁰³ The Commission may not make such a determination "on the basis of mere conjecture or supposition,"¹⁰⁴ and considers the threat factors

¹⁰⁰ 19 U.S.C. § 1677(7)(H).

¹⁰¹ See supra.

¹⁰² See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

¹⁰³ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

¹⁰⁴ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

“as a whole.”¹⁰⁵ In making our determination, we have considered all factors¹⁰⁶ that are relevant to these investigations.¹⁰⁷

We find no likelihood of substantially increased imports.¹⁰⁸ As discussed in our analysis of no material injury by reason of the subject imports, the volume of subject imports increased from 1996 to 1998, which resulted in an increase of 3.4 percentage points in the market penetration of subject imports during the same period.¹⁰⁹ Most of this increase, however, occurred between 1996 and 1997, when import volume increased by 26.9 percent. Import volume increased by only 5.6 percent from 1997 to 1998. This indicates that the rate of increase has leveled off and that a further significant increase is unlikely.

Furthermore, there is no indication of increased capacity or excess production capacity in the subject countries that would suggest the likelihood of substantially increased imports. Producers in India, Japan, Korea, Spain, and Taiwan all reported high levels of capacity utilization at the end of the investigation period, and projected similar levels in the future.¹¹⁰ Korean producers reported a somewhat lower capacity utilization rate than these other countries. However, they projected that increased sales in the future would be directed primarily to export markets outside the United States, and that the volume of their shipments to the United States would decrease slightly.¹¹¹ Although Canadian producers report a relatively low level of capacity utilization,¹¹² this figure remained at the same level throughout the investigation period without a substantial increase in Canadian exports to the United States. Thus, we conclude that Canadian capacity does not suggest the likelihood of substantially increased imports. Indeed, Canadian producers forecast a decrease in shipments once ***.¹¹³

We find that there is unlikely to be a significant degree of product shifting in the countries of exportation. Several of the producers are incapable of shifting into or out of SSRW production because they produce few or no other products.¹¹⁴ Petitioners allege that antidumping duties imposed on stainless steel wire rod from several countries in 1998¹¹⁵ would lead producers in those countries to circumvent the

¹⁰⁵ While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

¹⁰⁶ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although “no substantive change in Commission threat analysis is required.” SAA at 185.

¹⁰⁷ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

¹⁰⁸ 19 U.S.C. § 1677(7)(F)(i)(III).

¹⁰⁹ CR & PR, Table IV-4.

¹¹⁰ CR & PR, Tables VII-1, VII-2, VII-3, VII-4, VII-5, and VII-6.

¹¹¹ CR & PR, Table VII-4. This projection is consistent with our finding that the rate of increase in the volume of subject imports will level off.

¹¹² CR & PR, Table VII-1.

¹¹³ CR & PR at VII-4.

¹¹⁴ See Respondents’ joint prehearing brief at 45.

¹¹⁵ Antidumping duties were imposed on stainless steel wire rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan. See 63 Fed. Reg. 49327-49335 (Sept. 15, 1998)

orders by drawing their wire rod into wire and shipping the wire to the United States.¹¹⁶ However, Petitioners admitted that the imposition of the wire rod orders did not in fact lead to the decline in the supply of wire rod that they predicted, suggesting that there was no significant shifting of production from stainless steel wire rod to SSRW.¹¹⁷ Therefore, we decline to speculate that these foreign producers will shift to SSRW production. Consequently, we do not find that “further dumped . . . imports are imminent.”¹¹⁸

We do not find that imports of the subject merchandise are likely to enter the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree. None of the parties has suggested that the nature of competition between subject imports and domestic merchandise will change in the future. We find that imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are not having significant effects on domestic prices, and we have no evidence to suggest such effects in the imminent future.

We note that U.S. importers’ volume of inventories of the subject merchandise was a relatively small fraction of total subject imports. The absolute volume of inventories increased, but so did the total volume of subject imports, with the result that the ratio of subject import inventories to subject imports did not change appreciably from 1996 to 1998.¹¹⁹ Therefore, we conclude that U.S. inventories of the subject merchandise do not indicate the likelihood that material injury will occur unless an order is issued.

Finally, because research and development expenditures fluctuated only slightly during the investigation period,¹²⁰ we conclude that the subject imports are not likely to have negative effects on the domestic industry’s existing development and production efforts or on “efforts to develop a derivative or more advanced version of the domestic like product.”¹²¹ We also find no evidence of “any other demonstrable adverse trends” that indicate that there is likely to be material injury by reason of the subject imports from Canada, India, Japan, Korea, Spain, and Taiwan.¹²² Therefore, we do not find that material injury “would occur unless an order is issued or a suspension agreement is accepted.”^{123 124}

¹¹⁶ Tr. at 47.

¹¹⁷ Tr. at 60.

¹¹⁸ 19 U.S.C. § 1677(7)(F)(ii).

¹¹⁹ CR & PR, Table VII-7.

¹²⁰ CR & PR, Table VI-5.

¹²¹ Tariff Act of 1930, § 771(7)(F)(I)(VIII), 19 U.S.C. § 1677(7)(F)(I)(VIII).

¹²² We have considered the present condition of the domestic industry as among the “relevant economic factors” in our threat of material injury analysis.

¹²³ 19 U.S.C. § 1677(7)(F)(iii).

¹²⁴ The European Union recently imposed provisional antidumping and countervailing duties on certain SSRW from India and Korea. Official Journal of the European Communities, 24 March 1999 at L 79/1-79. Section 771(7)(F)(iii) of the Act requires the Commission to consider whether “dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets . . .) suggests a threat of material injury to the domestic industry.” 19 U.S.C. § 1677(7)(F)(iii)(I). We note that the EU remedy is provisional and therefore is subject to change. We also note that India and Korea account for 26.4 percent of total U.S. imports and there is no indication that Indian and Korean exporters are diverting shipments from the EU to the United States. CR & PR, Table IV-1. Accordingly, we do not find that the provisional EU remedy suggests a threat of material injury to the domestic industry.

For the reasons discussed above, we find that the domestic industry producing SSRW is not threatened with material injury by reason of subject imports from Canada, India, Japan, Korea, Spain, and Taiwan.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing certain stainless steel round wire is neither materially injured nor threatened with material injury by reason of imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan, that were found to be sold in the United States at less than fair value.