

UNITED STATES INTERNATIONAL TRADE COMMISSION
STEEL WIRE ROPE FROM CHINA, INDIA, MALAYSIA, AND THAILAND
Investigations Nos. 731-TA-868-871 (Preliminary)
DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3294, April 2000)

UNITED STATES INTERNATIONAL TRADE COMMISSION

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STEEL WIRE ROPE FROM CHINA, INDIA, MALAYSIA, AND THAILAND

DETERMINATIONS

On the basis of the record¹ 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 or threatened with material injury by reason of imports from China, India, and Malaysia of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 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).

The Commission further determines, pursuant to 19 U.S.C. § 1677(24)(A), that the subject imports from Thailand that are alleged to be sold at LTFV are negligible, but that there is a potential that subject imports from Thailand will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States.² The Commission further determines either that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of steel wire rope from Thailand³ or that such imports are negligible.⁴

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 affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations 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 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.

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 Vice Chairman Miller and Commissioner Askey determined that there is no potential for subject imports from Thailand to imminently account for more than 3 percent of the volume of all such merchandise imported into the United States.

³ Commissioners Hillman, Koplan, and Okun made this finding with Chairman Bragg dissenting. Chairman Bragg found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Thailand that are alleged to be sold at LTFV.

⁴ Vice Chairman Miller and Commissioner Askey found that subject imports are negligible and do not reach the issue of a reasonable indication of threat of material injury by reason of subject imports from Thailand.

BACKGROUND

On March 1, 2000, a petition was filed with the Commission and the Department of Commerce by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee),⁵ Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of steel wire rope from China, India, Malaysia, and Thailand. Accordingly, effective March 1, 2000, the Commission instituted antidumping duty investigations Nos. 731-TA-868-871 (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 March 9, 2000 (65 FR 12575). The conference was held in Washington, DC, on March 22, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁵ The Committee is comprised of the following U.S. producers: Bergen Cable Technology, Inc.; Bridon American Corp.; Carolina Steel & Wire Corp.; Continental Cable Co.; Loos & Co., Inc.; Paulsen Wire Rope Corp.; Sava Industries, Inc.; Strandflex, A Division of MSW, Inc.; and Wire Rope Corp. of America, Inc.

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 from China, India, and Malaysia of certain steel wire rope that is allegedly sold in the United States at less than fair value (“LTFV”). With regard to Thailand, the Commission reaches a negative determination. First, the Commission determines that subject imports from Thailand are negligible for purposes of assessing present material injury. With respect to threat of material injury by reason of subject imports from Thailand, Commissioners Hillman, Koplán, and Okun determine that, although there is a potential that subject imports from Thailand will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from Thailand.¹ Vice Chairman Miller and Commissioner Askey determine that there is not a potential that subject imports from Thailand will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, and therefore do not reach the issue of threat of material injury.² Consequently, the investigation of subject imports from Thailand will be terminated.

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, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ 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.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a {w}hole

¹ Chairman Bragg dissenting. Chairman Bragg found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Thailand that are alleged to be sold at LTFV. See Dissenting Views of Chairman Lynn M. Bragg Regarding Thailand. Chairman Bragg joins sections I-V.D of these Views.

² Except as otherwise noted, Vice Chairman Miller and Commissioner Askey join in sections I-V of the views.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵ 19 U.S.C. § 1677(4)(A).

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.”⁶ 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”⁷

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.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁰ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

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

For purposes of these investigations, the product covered is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under subheadings 7312.10.6030, 7312.10.6060, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS subheadings are provided for convenience and Customs Service purposes, the written

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Dep’t of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁰ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (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 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

description of the scope of this investigation is dispositive.¹²

Generally, there are three types of steel wire rope within this scope: stainless steel wire rope (manufactured from stainless steel wire), galvanized carbon steel wire rope (manufactured from galvanized, or zinc coated, carbon steel wire), and bright steel wire rope (manufactured from ungalvanized carbon steel wire).¹³ Most types of steel wire rope, regardless of the principal constituent material, consist of three basic components, including a core, wires that form strands, and strands laid helically around the core.¹⁴ Steel wire rope is used for applications which require force to be transmitted such as, *inter alia*, earth-moving equipment, elevators, logging applications, suspension bridges, marine applications, food and chemical processing applications, aircraft control cables, fish net trawling, and drilling and well servicing within the oil field industry.¹⁵

C. Domestic Like Product Issues

Petitioner contends that the Commission should find a single like product consisting of both carbon steel and stainless steel wire rope. Petitioner observes that the Commission conducted previous investigations as well as five year reviews involving steel wire rope.¹⁶ In those cases, the Commission found a single like product defined as carbon steel and stainless steel wire rope, not fitted with fittings or made up into articles. Petitioner argues that application of the “six-factor” analysis commonly employed by the Commission continues to support the like product definition reached in the prior investigations.^{17 18}

Carbon steel and stainless steel wire rope are manufactured from different raw materials, and consequently have some inherently different physical characteristics. Thus, as petitioner has acknowledged, carbon steel wire rope has higher tensile and breaking strengths, and longer wear resistance than stainless steel wire rope. Stainless steel wire rope, on the other hand, is more corrosion-resistant than carbon steel wire rope and typically has non-magnetic properties which carbon steel wire rope does not possess.¹⁹ Petitioner also acknowledges that these differences in physical characteristics

¹² 65 Fed. Reg. 16173 (March 27, 2000).

¹³ Petition at 10.

¹⁴ Petition at 11. Petitioner notes that while all carbon steel wire ropes contain a core, many, but not all, stainless steel wire ropes contain a core.

¹⁵ Petition at 10.

¹⁶ Petitioner specifically cites Steel Wire Rope from the Republic of Korea and Mexico, USITC Pub. 2613 at 12 (March 1993) (“Due to the overlap in general physical characteristics and end uses and channels of distribution, interchangeability of products for some applications, and similarity and commonality of manufacturing facilities, production processes, equipment and employees, we define the like product in these investigations to be all steel wire rope whether made of carbon steel or stainless steel.”). Petitioner also relies on Certain Steel Wire Rope from Japan, Korea, and Mexico, Invs. Nos. AA1921-124 and 731-TA-546-547 (Reviews), USITC Pub. 3259 (December 1999).

¹⁷ Petition at 18.

¹⁸ Respondents have not disagreed with the petitioner’s suggested definition of the domestic like product. Respondents have indicated that they may dispute the definition of the domestic like product in any possible final phase investigations, but that they currently do not have enough information to dispute the product as defined by petitioner. Conference Transcript [hereinafter “Tr.”] at 79.

¹⁹ Petitioner’s Postconference Brief at 6, citing Steel Wire Rope from the Republic of Korea and Mexico,

(continued...)

may often result in different end uses to which each is dedicated.²⁰ Nevertheless, both carbon steel and stainless steel wire rope are steel cables composed of multiple strands laid helically around a central core. The record indicates that there are common and/or similar industry specifications which apply to both carbon and stainless steel wire rope. Specifically, federal specification RR-W-410D is used in the industry as a basic standard.²¹

The substitutability between carbon steel and stainless steel wire rope is limited in part because of the significantly higher cost of stainless steel.²² Most of the substitution occurs between small-diameter galvanized carbon steel and stainless steel wire rope.²³ Petitioner asserts that the galvanization process enables some carbon steel rope (particularly so-called “small diameter” galvanized wire rope) to share many of the end-uses to which stainless steel wire rope is often applied.²⁴

There is mixed information regarding the degree of overlap in the channels of distribution for carbon steel and stainless steel wire rope. Petitioner asserts that there is significant overlap in the channels of distribution for carbon and stainless steel wire rope, and that this is consistent with previous Commission findings.²⁵ We note that the majority of carbon steel wire rope is sold by U.S. producers to distributors. The majority of stainless steel wire rope is sold by U.S. producers directly to end-users.²⁶ Distributors sell to a wide variety of industries, including construction, marine, oil and gas, and machine manufacturers.²⁷

There are both similarities and differences in the production processes for carbon steel and stainless steel wire rope. The process for carbon and stainless steel wire rope production consists of three basic steps, namely (1) drawing rod into wire; (2) stranding wire; and (3) closing strands into rope.²⁸ Stainless steel wire rope manufacturing, however, requires longer set-up times and special cleaning steps for production equipment, and the equipment must be run at lower speeds.²⁹ Petitioner contends that the general production processes, however, are the same in both cases (i.e. the process from wire to strand to wire rope). The stranding and closing machinery used for the two products do not differ significantly, because the forming process is similar for both types of steel wire rope.³⁰ Significantly, several domestic

¹⁹ (...continued)

USITC Pub. 2613 at 9.

²⁰ Petitioner’s Postconference Brief at 6.

²¹ CR at I-7, I-8; PR at I-5, I-6.

²² CR at I-11; PR at I-7, I-8.

²³ CR at I-11; PR at I-7, I-8.

²⁴ Chairman Bragg notes that due to the price differences between carbon and stainless steel, in instances in which galvanized wire rope is substitutable for applications that would otherwise require stainless, galvanized products may be used instead of stainless because of cost savings. CR at I-11; PR at I-8.

²⁵ Petitioner’s Postconference Brief at 7 citing Certain Steel Wire Rope from Japan, Korea, and Mexico, USITC Pub. 3259 at I-17, and Steel Wire Rope from the Republic of Korea and Mexico, USITC Pub. 2613 at 10-11.

²⁶ Petitioner’s Postconference Brief at 7.

²⁷ CR at I-12; PR at I-8.

²⁸ CR at I-10; PR at I-7. For a detailed discussion of drawing rod into wire and stranding wire, see Steel Wire Rope from the Republic of Korea and Mexico, USITC Pub. 2613, March 1993, pp. I-11 to I-16.

²⁹ Petitioner’s Postconference Brief at 7.

³⁰ CR at I-12; PR at I-8; Petitioner’s Postconference Brief at 7, citing Certain Steel Wire Rope from Japan, Korea and Mexico, USITC Pub. 3259 at I-16.

companies produce both stainless steel and carbon steel wire rope. Moreover, the two products can be, and sometimes are, manufactured using the same production lines and the same workers.³¹

Although the information is mixed, on balance, due to the similarities in physical characteristics, overlap as to the channels of distribution, and the existence of common manufacturing facilities and employees, we define the domestic like product as consisting of carbon and stainless steel wire rope. We intend to explore this issue further in any final phase investigations.³²

D. Domestic Industry and Related Parties

1. In General

The domestic industry is defined as “the producers as a whole of a domestic like product.”³³ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁴ Based on our finding that the domestic like product consists of carbon steel and stainless steel wire rope, we conclude that the domestic industry consists of all domestic producers of that product.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to 19 U.S.C. § 1677(4)(B). Section 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or that are themselves importers.³⁵ Exclusion of such producers is within the Commission’s discretion based upon the facts presented in each case.³⁶

³¹ CR at I-10; PR at I-7; Petitioner’s Postconference Brief at 8.

³² Vice Chairman Miller and Commissioner Askey do not join in this statement.

³³ 19 U.S.C. § 1677(4)(A).

³⁴ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

³⁵ 19 U.S.C. § 1677(4)(A).

³⁶ 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 related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Invs. Nos. 731-TA-
(continued...)

*** domestic producers imported subject merchandise between 1997 and 1999, and are therefore related parties under 19 U.S.C. § 1677(4)(B)(i). The companies are ***,³⁷

We determine that it is not appropriate to exclude any related party from the domestic industry. Domestic production is considerably greater than total imports for each of the related party producers, thus indicating that their primary interests lie in domestic production, and not importation.^{38 39}

III. NEGLIGIBLE IMPORTS

The statute provides that 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.⁴⁰ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁴¹ The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.⁴²

The statute provides that the focus of a negligibility analysis is the volume of all subject merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition for which data are available. The petition was filed on March 1, 2000, and so the most recent 12-month period for which data are available is the period February 1999 to January 2000. For this time period, subject imports from Thailand accounted for 2.9 percent of total imports,⁴³ and are thus currently negligible.⁴⁴

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently

³⁶ (...continued)
741-743 (Final), USITC Pub. 3016, at 14 n.81 (February 1997).

³⁷ CR/PR at III-5. One of these companies, ***, also purchased small volumes of the subject merchandise from U.S. importers. *Id.*

³⁸ For 1999, the ratio of imports to production by U.S. producers of subject merchandise from subject countries was ***. CR/PR at Table III-7.

³⁹ For 1999, the ratio of imports to production by U.S. producers of subject merchandise from subject countries was ***. The ratio of imports from subject countries to total production of U.S. producers for all companies in 1999 was ***. Responses of the importers' questionnaires reflect that ***. The record also indicates that in 1999 *** had significant imports from nonsubject countries, and that of the related party producers, *** had much smaller ratios of nonsubject imports to production. Nevertheless, domestic production is considerably greater than total imports for each of the *** related party producers. Petitioner has argued that no related party should be excluded from the domestic industry. The Respondents have not taken a position on the issue of related parties. See CR/PR at Table III-7; Table III-8; and Petitioner's Postconference Brief at 11.

⁴⁰ 19 U.S.C. § 1677(24)(A)(i)(I).

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

⁴² 19 U.S.C. § 1677(24)(C); *see also* The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) ("SAA").

⁴³ CR/PR at Table IV-1. The unrounded ratio for subject imports from Thailand in 2.935 percent.

⁴⁴ Because none of the three other subject import sources in these investigations accounted for less than three percent of total imports for the most recent 12 month period, the exception to the negligibility rule requiring a 7 percent threshold for multiple negligible countries is inapplicable. See 19 U.S.C. § 1677(24)(A)(ii).

account for more than three percent of all such merchandise imported into the United States.^{45 46}

We find that there is a potential that subject imports from Thailand will imminently account for more than three percent of all such merchandise imported into the United States, and therefore we do not treat such imports as being negligible for purposes of an analysis of a reasonable indication of threat of material injury. Steel wire rope from Thailand accounted for 4.2 percent of U.S. imports of steel wire rope in 1997, 2.8 percent in 1998, and 3.0 percent in 1999. This trend reflects both a marked decline in imports from Thailand and fluctuating levels of imports from all sources combined.⁴⁷ Thus, while imports from Thailand accounted for 2.9 percent of total imports in the most recent 12-month period, Thai imports accounted for 3.0 percent or more of total imports in five of the seven most recent rolling 12-month periods.^{48 49 50} Consequently, we find that there is a potential for imports from Thailand to imminently exceed the three percent threshold. Accordingly, we consider below whether there is a reasonable indication of a threat of material injury by reason of subject imports from Thailand.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁵¹ In assessing whether

⁴⁵ 19 U.S.C. § 1677(24)(A)(iv).

⁴⁶ Vice Chairman Miller and Commissioner Askey do not find that there is a potential that subject imports from Thailand will imminently account for more than 3 percent of total imports of steel wire rope. While we recognize that the level of imports from Thailand has been above the 3 percent threshold in certain twelve month rolling averages, their share of total imports has generally been declining and has fallen below the 3 percent threshold during the most recent of these periods. See, INV-X-077. Moreover, the absolute volume of subject imports from Thailand has been relatively stable throughout the period examined, with only slight fluctuation in the import share held by Thailand. Further, they note that data for the Thai industry show high capacity utilization levels and an overall decline in the absolute volume of exports to the United States, as well as a drop in the U.S. share of Thai exports. CR/PR at Table VII-4. Consistent with this, reported orders for imports from Thailand after December 31, 1999, suggest continued declines in the level of imports from Thailand. CR/PR at Table IV-5.

⁴⁷ Chairman Bragg does not concur in describing the decline in subject import volume from Thailand as “marked.” She notes that during the period of investigation, virtually all of the decline in imports from Thailand occurred between 1997 and 1998; however, even as apparent U.S. consumption declined 11.7 percent between 1998 and 1999, subject import volume from Thailand declined only 2.1 percent. CR and PR, Table C-1.

⁴⁸ Memorandum INV X-077 (April 10, 2000).

⁴⁹ CR/PR at Table IV-1.

⁵⁰ Chairman Bragg notes that, with regard to the two Thai manufacturers for which information has been provided, and which account for about *** percent of the Thai production, the record indicates capacity utilization of *** percent in 1999, and an *** percent capacity utilization projected for 2000. CR/PR at Table VII-4.

⁵¹ 19 U.S.C. § 1677(7)(G)(i).

subject imports compete with each other and with the domestic like product,⁵² the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁵³

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.⁵⁴ Only a “reasonable overlap” of competition is required.⁵⁵

⁵² 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).

⁵³ 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).

⁵⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵⁵ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

B. Analysis

We have determined to cumulate the subject imports from China, India, and Malaysia for purposes of our analysis of present material injury.⁵⁶ The petitions were filed on the same day, and we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product for purposes of our preliminary determinations.

There is mixed evidence concerning the degree the subject imports compete with the domestic like product. The degree of substitutability between domestic and imported steel wire rope appears to depend to a significant degree on issues of quality and consistency.⁵⁷ Questionnaire data reflect that U.S. producers perceive imports from the subject countries to “always” be interchangeable with each other and with U.S. produced steel wire rope. While importers’ views are less uniform, generally the importers found that subject imports were at least “sometimes” interchangeable with each other and with the domestic like product. The comparison of U.S. and Chinese product was the only instance where an appreciable number of importers indicated that the products were “never” interchangeable.⁵⁸ Overall, based on the available data, the subject imports appear to be at least moderately fungible with the domestic like product and each other.⁵⁹

The record also indicates a reasonable overlap of geographic markets, similar channels of distribution, and simultaneous presence in the market place.⁶⁰ The subject imports and the domestic like product share common or similar channels of distribution. Domestically produced steel wire rope is marketed nationwide by a network of producer-operated warehouses and distributorships and unrelated distributors.⁶¹ Steel wire rope imported from the subject countries is also marketed nationwide, generally by importers and secondary distributors. U.S. distributors commonly carry both imported and domestically produced steel wire rope.⁶²

Based on a consideration of these factors, we find that there is a reasonable overlap of competition among the subject imports from China, India, and Malaysia and between the subject imports and the domestic like product. Consequently, we cumulate subject imports from China, India, and Malaysia.⁶³

⁵⁶ We have determined that imports from Thailand are negligible; thus, they are not eligible for cumulation in the context of a present material injury analysis. However, we have included imports of steel wire rope from Thailand in our analysis of competition for consideration in a threat context.

Vice Chairman Miller and Commissioner Askey do not reach the issue of cumulation of the Thai product for purposes of a threat analysis because they find that there is not a potential that imports from Thailand will imminently account for more than three percent of the volume of all steel wire rope imports into the United States.

⁵⁷ CR at II-8; PR at II-5.

⁵⁸ CR/PR at Tables II-1 and II-2.

⁵⁹ CR at II-8; PR at II-5.

⁶⁰ All eight responding U.S. producers reported that they served the entire U.S. market. Of the 21 importers responding to the question of geographic markets, 11 stated that they served the entire U.S. market with subject imports. The other importers reported serving more limited and regional markets. Department of Commerce import statistics demonstrate that there is a significant degree of overlap in the ports of entry for the subject merchandise, and that these ports cover the expanse of the continental United States. The evidence also demonstrates that subject imports are simultaneously present in these markets. CR at II-8; PR at II-5.

⁶¹ CR/PR at II-1.

⁶² CR/PR at II-1.

⁶³ Because there is some question as to the degree of fungibility between the subject imports and the domestic
(continued...)

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁶⁴ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁷ 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.”⁶⁸

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing carbon and stainless steel wire rope is materially injured by reason of subject imports from China, India, and Malaysia that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

There are several conditions of competition that are relevant to our analysis in these investigations. First, steel wire rope is an established product which has hundreds of uses, such as for earth-moving and materials-handling equipment, for elevators, logging applications, aircraft control cables, fish net trawling, and by the oil field industry for drilling and well servicing.⁶⁹ Although there is a wide range of applications for steel wire rope, both domestically produced and imported merchandise generally conform to one or more industry standards or governmental specifications. In general, the specifications establish minimum requirements for the materials used, finish, core, mechanical properties, fabrication, lay, dimensions, and weight and strength of the wire rope. Federal specification RR-W-410D is the most common standard; additional specifications have been developed by the American Petroleum Institute and the American Society of Mechanical Engineers.⁷⁰

Second, the domestic steel wire rope market is stable. Given the wide range of applications for steel wire rope, however, it is not surprising that the market can, from time to time, exhibit a degree of volatility. While several market participants attributed increased demand to a strong U.S. economy others

⁶³ (...continued)

like product, we intend to explore this issue further in any final phase investigation.

⁶⁴ 19 U.S.C. § 1673b(a).

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

⁶⁶ 19 U.S.C. § 1677(7)(A).

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ Id.

⁶⁹ CR at II-5; PR at II-3 to II-4.

⁷⁰ CR at II-5 to II-6; PR at II-4.

pointed to troubled sectors (e.g. oil exploration, shipbuilding) as contributing to weaker demand. Overall, apparent U.S. consumption increased from 208,511 short tons in 1997, to 214,957 short tons in 1998, and then fell to 189,792 short tons in 1999.

Third, the industry underwent considerable consolidation in 1998 and 1999, with two domestic producers ceasing operations. The Rochester Corp. shut down its production plant in 1998, and Macwhyte Company exited the industry in 1999.⁷¹ Some of the assets of these firms were purchased by the Wire Rope Company of America, the largest domestic producer.⁷²

Fourth, there is a substantial volume of nonsubject imports in the U.S. market. Nonsubject steel wire rope as a percentage of total U.S. imports was 67.2 percent in 1997, 66.5 percent in 1998, and 65.4 percent in 1999. Nonsubject imports accounted for 29.5 percent of U.S. apparent consumption in 1997, 32.9 percent in 1998, and 33.2 percent in 1999.⁷³

Finally, certain U.S. producers consume a portion of their wire rope production internally. Captive production as it relates to this industry refers to producing steel wire rope that is fitted with fittings. Six producers engage in captive production, and a single firm, ***, accounts for the bulk of these internal transfers. Industry-wide, *** percent of U.S. production of steel wire rope is consumed internally.^{74 75} Neither petitioner nor respondents have argued that the captive production provision⁷⁶ is applicable; and there is limited specific information in the record with regard to captive production. We will explore this issue further in any final phase investigations.

B. Volume of Subject Imports

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷⁷ The volume of subject imports from China, India, and Malaysia increased from 26,136 short tons in 1997 to 32,651 short tons in 1998, and then declined slightly to 30,515 short tons in 1999.⁷⁸

Subject imports from China, India, and Malaysia as a share of apparent U.S. consumption, measured by quantity, increased from 12.5 percent in 1997 to 15.2 percent in 1998, and to 16.1 percent in 1999. In contrast, U.S. producers’ share of apparent U.S. consumption declined from 56.1 percent in 1997 to 50.5 percent in 1998, and then to 49.1 percent in 1999.^{79 80}

For purposes of these preliminary investigations, we find that the volume of subject imports, and

⁷¹ CR/PR at II-1.

⁷² CR/PR at VI-1.

⁷³ CR/PR at Tables IV-1 and IV-3.

⁷⁴ CR/PR at Tables III-3 and VI-1.

⁷⁵ See CR/PR at Table III-3.

⁷⁶ 19 U.S.C. § 1677(7)(C)(iv).

⁷⁷ 19 U.S.C. § 1677(7)(C)(i).

⁷⁸ The volume of imports from nonsubject countries followed a similar pattern, increasing between 1997 and 1998, but then declining between 1998 and 1999. CR/PR at Table IV-1.

⁷⁹ CR/PR at Table IV-4.

⁸⁰ Nonsubject imports as a share of domestic apparent consumption increased from 29.5 percent in 1997 to 33.2 percent in 1999. CR/PR at Table IV-3.

the increase in volume in both absolute terms and relative to apparent U.S. consumption, is significant.

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.⁸¹

For the six products for which the Commission collected data, the subject imports undersold the domestic like product in every quarter for which comparisons were available. Despite consistent underselling, however, U.S. prices remained relatively stable with the exception of product 5, a relatively high volume product in which prices fell substantially at the end of the three year period. The substantial underselling, stable U.S. prices, and rising industry unit costs, suggests that there may be price suppression by the subject imports.⁸² We are aware, however, that the sheer magnitude of underselling by the subject imports (typically ranging in margin from 40 percent to 80 percent), in light of relatively stable prices for the U.S. produced merchandise, may raise questions regarding the substitutability of the domestic like product and subject imports. We note in this regard that respondent has argued that the vast difference in price levels for subject imports vis-a-vis the domestic product is a sign of market segmentation, and that there is little actual competition between imports and the domestic product. We intend to further explore this issue in any final phase investigation.

Finally, Commission staff confirmed two instances of lost sales due to lower priced subject imports of steel wire rope.⁸³ Although limited, these instances would provide further support for a finding of significant adverse price effects due to the subject imports.

⁸¹ 19 U.S.C. § 1677(7)(C)(ii).

⁸² Chairman Bragg determines that, for purposes of these preliminary investigations, there is a reasonable indication of significant price suppression by reason of subject imports.

⁸³ CR at V-29; PR at V-8. Each of these allegations involve subject imports from China.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸⁴ 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.”^{85 86 87}

We find a reasonable indication that the subject imports had a significant adverse impact on the domestic industry. While the volume and market share of subject imports increased, the domestic industry experienced declines in several key indicators.

The U.S. industry’s capacity fell from 218,727 short tons in 1997 to 203,217 short tons in 1999, reflecting the departure of two firms from the domestic industry. Notwithstanding this decrease in capacity, capacity utilization also decreased from 58.2 percent in 1997 to 54.1 percent in 1998, and to 53.3 percent in 1999.⁸⁸ U.S. producers’ shipments also decreased over the period examined, from *** short tons in 1997 to *** in 1998, and to *** in 1999. The value of U.S. shipments also decreased in every year over the period examined.⁸⁹ U.S. inventories increased between 1997 and 1999, both absolutely and as a ratio to total shipments.⁹⁰ The average number of production and related workers decreased from 1,603 in 1997 to 1,588 in 1999. The hours worked followed a similar pattern, increasing slightly from 1997 to 1998, but declining overall. Again, these declines reflect in part the departure of two firms from the domestic industry.

As a share of net sales, the U.S. industry’s operating income fell from 4.3 percent to 2.4 percent from 1997 to 1999.⁹¹ The number of firms reporting operating losses increased from 1 to 3 between 1997 and 1999.⁹²

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885).

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

⁸⁶ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce provided the following estimates of dumping ranges: China, 5 to 58 percent; India, 59 to 142 percent; Malaysia, 11 to 63 percent; and Thailand, 49 to 69 percent. 65 Fed. Reg. 16173 (March 27, 2000).

⁸⁷ 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, e.g., Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁸⁸ CR/PR at Table III-2.

⁸⁹ CR/PR at Table III-3.

⁹⁰ CR/PR at Table III-4.

⁹¹ CR/PR at Table VI-1.

⁹² CR/PR at Table VI-1.

Respondents contend that nonsubject imports are a significantly more important market factor than subject imports.⁹³ In our view, the role played by nonsubject imports does not negate the effects of the growing volume and market share of subject imports.⁹⁴ Respondents also argue that certain wire rope customers and end users refuse to purchase imported wire rope, and that therefore there is a “reserve market” occupied exclusively by the U.S. industry.⁹⁵ We intend to explore this issue further in any final phase investigations.

In sum, for purposes of these preliminary investigations, we find there is a reasonable indication that the significant and increasing volume of subject imports has resulted in a significant decline in the domestic industry’s profitability, market share and other performance indicia, and may have suppressed domestic prices.⁹⁶

In conclusion, and for the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rope from China, India, and Malaysia that are allegedly sold in the United States at less than fair value.

⁹³ Respondents’ Postconference Brief at 19 (specifically arguing that nonsubject imports from Korea are larger than total shipments from all subject countries combined).

⁹⁴ Commissioner Askey does not join this statement and will examine the role of nonsubject imports in any final phase investigations.

⁹⁵ This market segment allegedly includes customers who will only buy American products for patriotic reasons, or in order to increase the ability to recover damages in the case of any liability claims. One witness for the respondents suggested that this “reserve market” constitutes more than 50 percent of the overall market. Tr. at 81-82.

⁹⁶ Chairman Bragg notes that in the recently completed sunset reviews concerning steel wire rope from Japan, Korea, and Mexico, she determined that the domestic steel wire rope industry is not in a weakened state, as contemplated by the vulnerability criterion of the statute. Certain Steel Wire Rope from Japan, Korea, and Mexico, Separate and Dissenting Views of Chairman Lynn M. Bragg, Invs. Nos. AA1921-124 and 731-TA-546-547 (Reviews), USITC Pub. 3259 at 37 (December 1999). Chairman Bragg further notes, however, that the instant preliminary investigations present an analytical context that is significantly distinct from that in a sunset review; in particular, the instant investigations require the Commission to determine whether “the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury,” and whether “no likelihood exists that contrary evidence will arise in a final investigation.” American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986). Under this standard and based upon the record in these preliminary investigations, Chairman Bragg determines that there is a reasonable indication of present material injury to the domestic industry by reason of cumulated subject imports from China, India, and Malaysia. Chairman Bragg further determines that there is a reasonable indication of imminent threat of material injury by reason of cumulated subject imports from China, India, Malaysia, and Thailand. See Dissenting Views of Chairman Lynn M. Bragg Regarding Thailand.

VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM THAILAND⁹⁷

A. In General

Section 771(7)(F) of the Act directs the Commission to consider whether the U.S. industry is threatened with material injury by reason of the subject merchandise.⁹⁸ While an analysis of the statutory threat factors necessarily involves projection of future events, “{s}uch a determination may not be made on the basis of mere conjecture or supposition.”⁹⁹ Further direction is provided by the amendment to Section 771(7)(F)(ii), which adds that the Commission shall consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues.¹⁰⁰ In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

B. Cumulation for Purposes of Threat

Cumulation for threat analysis is treated in section 771(7)(H) of the Act.¹⁰¹ This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.¹⁰² In this respect the provision preserves the Commission’s discretion to cumulate imports in analyzing threat of material injury. The limitations concerning what imports are eligible for cumulation and the exceptions for cumulation are applicable to cumulation for threat as well as to cumulation for present material injury.¹⁰³ In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.¹⁰⁴

⁹⁷ Chairman Bragg does not join section VI of these Views. See Dissenting View of Chairman Lynn M. Bragg Regarding Thailand.

⁹⁸ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii). In R-M Industries, Inc. v. United States, the CIT remanded an affirmative threat determination that did not first address present material injury by reason of subject imports. See 848 F. Supp. 204, 212 (Ct. Int’l Trade 1994).

⁹⁹ 19 U.S.C. § 1677(7)(F)(ii); see, e.g., S. Rep. No. 249 at 88-89; see also Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990).

¹⁰⁰ 19 U.S.C. § 1677(7)(F)(ii). 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 854.

¹⁰¹ 19 U.S.C. § 1677(7)(H).

¹⁰² See Kern-Liebers v. United States, 19 CIT 87, Slip Op. 95-9, at 49-51 (January 27, 1995).

¹⁰³ To be eligible for cumulation for threat analysis, the imports must be from countries with respect to which petitions were filed or investigations were self-initiated on the same day, and the imports must compete with each other and with the domestic like product in the United States market. Cumulation for threat analysis is precluded in the four instances in which it is precluded for material injury analysis.

¹⁰⁴ See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming

(continued...)

As discussed above, we find that imports from Thailand are negligible for purposes of present material injury. We further find, however, that there is a potential that such imports will imminently exceed the statutory negligibility thresholds for purposes of threat of material injury. Imports that are negligible for purposes of present material injury are not precluded from cumulation with other imports for purposes of making a threat determination as long as the Commission finds that there is a potential for such imports to imminently exceed the statutory negligibility thresholds.

As discussed above, we find that the subject imports from Thailand compete with other subject imports and with the domestic like product in the U.S. market. However, we do not exercise our discretion to cumulate imports from the other subject countries for purposes of the threat analysis of subject imports from Thailand. We find the different volume and price trends between imports from Thailand and the other subject imports to be significant. During the period examined, subject imports from Thailand declined in absolute volume from 3,869 short tons in 1997 to 2,928 tons in 1999, a decrease of 24 percent. In contrast, subject imports from China, India, and Malaysia increased over the period of investigation by amounts ranging from 10 to 35 percent. Additionally, the market share held by subject imports from Thailand has declined from 1.9 percent in 1997 to 1.5 percent in 1999, while each of the other subject countries increased their market share over the same period. Furthermore, the average unit values for subject imports from Thailand were above those from the other subject countries in each year of the period of investigation, and although the Thai imports have undersold the domestically produced product, they have generally sold for higher prices than subject imports from China, India, and Malaysia.^{105 106}

¹⁰⁴ (...continued)

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); Metallverken 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).

¹⁰⁵ CR at V-16 to V-22; PR at V-5 to V-7. Further, unlike subject imports from the other countries, the subject imports from Thailand have been commercially insignificant as to products 1 and 5, the most significant products in volume for the domestic industry for which we have obtained pricing data.

¹⁰⁶ In evaluating whether to exercise her discretion to cumulate the volume and effect of imports of the subject merchandise for purposes of her threat analysis, Commissioner Okun examines the levels and trends between and among the subject imports from different national sources. Based on the record in these investigations, she joins Commissioners Hillman and Koplman in finding the differences in the levels and trends of the subject imports from Thailand and from the other subject countries to be significant.

Commissioner Okun notes that there is no evidence on the record in these investigations of transnational corporate relationships between the manufacturers/exporters in Thailand and those in China or Malaysia. The absence of such relationships reduces the likelihood of overlapping or coordinated exports to the United States of the subject merchandise by the steel wire rope industries of the respective subject countries.

The situation with respect to the industries in India and Thailand is somewhat different. Usha Martin, a manufacturer/exporter of steel wire rope in India, and Usha Siam, a manufacturer/exporter of steel wire rope in Thailand, are both part of the Usha Martin Group. Indeed, Usha Martin's web page states that:

Usha Martin's perspectives are now largely global - strengthened as they are by strategic alliances and acquisitions of technology, facilities, and a strong distribution network, all of which help Usha remain highly competitive in terms of cost and quality. (*See* Petitioners' Postconference Brief at exh. 3.)

(continued...)

C. Statutory Threat Factors

Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Thailand that are allegedly sold in the United States at less than fair value.

The record shows no indication of increased capacity or excess production capacity in the subject country that would indicate the likelihood of substantially increased imports of subject merchandise. Capacity utilization for the industry in Thailand for 1999 was estimated at *** percent, with a projected capacity utilization rate of *** percent for 2000.^{107 108} The relatively high capacity utilization levels indicate that it is unlikely that there will be a substantial increase in imports into the United States, particularly given the low and declining level of recent exports to the United States.

Further, imports from Thailand have declined by approximately 24 percent in the period examined.^{109 110} Subject imports from Thailand have generally held a very small share of the domestic market, accounting for 1.9 percent of apparent U.S. consumption in 1997, 1.4 percent in 1998, and 1.5 percent in 1999.¹¹¹

Thai exports to other world markets have increased between 1997 and 1999, and there is no indication that shipments to these markets will be diverted to the United States.¹¹² There are no dumping findings in other markets on wire rope imports from Thailand that would result in a shift of exports to the U.S. market.¹¹³ Nor does the record contain evidence that Thai manufacturers are likely to engage in product shifting. We therefore find it is unlikely that there would be a significant degree of shifting from other markets or from other products.

Although the subject merchandise from Thailand has undersold the domestically produced product, the small and declining volume of imports will likely continue to render any price effects

¹⁰⁶ (...continued)

In weighing this evidence, however, Commissioner Okun notes that any commercial incentive to coordinate the U.S. sales of steel wire rope from India and from Thailand is somewhat curbed by the apparent capacity constraints in Thailand, current shipment allocations to Usha Martin America, and differences in product mix and production capabilities. (See Thai/Indian Postconference Brief at 6 and 9.) In addition, Usha Martin accounts for only *** percent of the production of steel wire rope in India, while Usha Siam accounts for less than *** percent of the production of steel wire rope in Thailand. Thus, the ability and the incentive of the Thai industry and the Indian industry to act in concert is diminished further.

Accordingly, Commissioner Okun does not exercise her discretion to cumulate the volume and effect of the subject imports from Thailand with the subject imports from China, India, or Malaysia.

¹⁰⁷ CR/PR at Table VII-4.

¹⁰⁸ Two Thai producers, which account for approximately *** percent of production in Thailand, and *** percent of exports to the United States, responded to Commission questionnaires. CR at VII-6; PR at VII-3.

¹⁰⁹ Indian and Thai Respondents' Postconference Brief at 11, 12.

¹¹⁰ Thai imports of the subject merchandise to the United States in 1999 were *** short tons, and are projected to decline to *** short tons in 2000. CR/PR at Table VII-4.

¹¹¹ CR/PR at Table IV-3.

¹¹² See CR/PR at Table VII-4.

¹¹³ Petitioner has stated that "knowledgeable industry sources have informed the Committee that the EU has recently initiated antidumping investigations on steel wire rope from Thailand and Malaysia." Petitioner's Postconference Brief at 44, 45. However, petitioner provided no substantiation for this claim and the record does not confirm that any antidumping orders are actually in effect as to subject imports from Thailand.

insignificant.

There are no significant inventories of steel wire rope from Thailand, either in Thailand or the United States. Foreign producer questionnaire responses show inventories in Thailand at the close of 1999 of *** tons, and U.S. importer inventories of *** tons.¹¹⁴

As noted above, the U.S. steel wire rope industry is mature and established. Although U.S. producers have alleged in their questionnaire responses that there have been negative effects as to capital investments, we find that as the volume of Thai subject imports is small and declining, there is no likely actual negative effect on the U.S. industry's ability to develop a more advanced product. Nor does the record in these investigations indicate any other demonstrable adverse trends that indicate a probability that the subject imports from Thailand will likely cause material injury to the domestic industry.¹¹⁵

For the foregoing reasons, we find no reasonable indication that the U.S. industry producing steel wire rope is threatened with material injury by reason of subject imports from Thailand.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rope from China, India, and Malaysia that are allegedly sold in the United States at less than fair value. With regard to Thailand, the Commission reaches a negative determination,¹¹⁶ and the investigation of subject imports from Thailand will be terminated.

¹¹⁴ CR/PR at Tables VII-4 and VII-5.

¹¹⁵ 19 U.S.C. § 1677(7)(F)(I)(IX).

¹¹⁶ Chairman Bragg dissenting. See Dissenting Views of Chairman Lynn M. Bragg Regarding Thailand.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG REGARDING THAILAND

I concur with my colleagues in finding that subject imports from Thailand do not exceed the statutory negligibility threshold for purposes of a present material injury analysis. I also concur with certain of my colleagues in finding that there is a potential that subject imports from Thailand will imminently account for more than 3 percent of all such merchandise imported into the United States. I therefore engage in a threat analysis with regard to Thailand and, as discussed below, I cumulate subject imports from Thailand with subject imports from China, India, and Malaysia. Based upon my cumulative analysis, I find that there is a reasonable indication that subject imports from Thailand pose an imminent threat of material injury to the domestic industry.

I. Negligibility:

As noted in the Views of the Commission, I join certain of my colleagues in finding that there is a potential that subject imports from Thailand will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States. Consequently, I do not treat subject imports from Thailand as being negligible for purposes of analyzing threat of material injury to the domestic industry in these preliminary investigations.¹

II. Threat of Material Injury:

Legal Framework—

In assessing whether the domestic industry is threatened with material injury by reason of subject imports from Thailand, the statute directs the Commission to consider “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”²

The Commission may not make such a determination “on the basis of mere conjecture or supposition,”³ and considers the threat factors⁴ as a whole; indeed, the presence or absence of any such factor is not dispositive of the Commission’s determination.⁵ In making my determination, I have considered all statutory factors that are relevant to these investigations.⁶

¹ 19 U.S.C. § 1677(24)(A)(iv).

² 19 U.S.C. § 1677(7)(F)(ii).

³ 19 U.S.C. § 1677(7)(F)(ii).

⁴ 19 U.S.C. § 1677(7)(F)(i).

⁵ 19 U.S.C. § 1677(7)(F)(ii).

⁶ 19 U.S.C. § 1677(7)(F)(i). I note that factor (I) is not relevant, as it addresses the nature of any countervailable subsidies, and Thai imports are subject solely to an antidumping investigation. Factor (VII) is also not relevant, as it concerns raw and processed agricultural products.

Cumulation⁷

The statute provides that the Commission may, in determining threat of material injury, cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.⁸ I note that I have joined my colleagues in cumulating subject imports from China, India, and Malaysia, for purposes of assessing present material injury in these preliminary investigations. In my view, the Commission's analysis and finding of a reasonable overlap of competition among subject imports from China, India, and Malaysia, as well as between such imports and the domestic like product, apply equally to subject imports from Thailand.⁹ Consequently, I find a reasonable overlap of competition among imports from all four subject countries, and between such imports and the domestic like product.

In considering whether to exercise its discretion to cumulate in the context of a threat analysis, the Commission has also examined whether subject import volumes are increasing at similar rates in the same markets, whether the subject imports have similar margins of underselling, and the probability that subject imports will enter the United States at prices that would have a depressing or suppressing effect on prices for the domestic like product.¹⁰ In my view, however, any decision regarding cumulation in the context of a threat analysis stems chiefly from an assessment of whether there is a reasonable overlap of competition among the subject imports at issue and between subject imports and the domestic like product. While similarities in volume and price trends may corroborate a finding of a reasonable overlap of competition,¹¹ disparities in such trends, of themselves, do not necessarily preclude cumulation; rather, disparate trends must be scrutinized in light of the competitive conditions that influence the volume and price behavior evidenced in the record. Thus, in my view, cumulation may be warranted based upon prevailing conditions of competition, notwithstanding disparate volume and/or price trends.

In this case, the volume of subject imports from Thailand declined 24.3 percent between 1997 and 1999, while during the same period the volume of subject imports from China, India, and Malaysia increased 10.5 percent, 17.5 percent, and 35.6 percent, respectively.¹² Although the volume of imports from Thailand declined, imports from each of the subject countries were available in the U.S. market during each quarter of the period 1997-1999.¹³ Moreover, the decline in Thai imports occurred even as apparent U.S. consumption declined 9.0 percent between 1997 and 1999; as a result, the share of the U.S.

⁷ For additional discussion of my approach to cumulation in a similar context, I refer to my dissenting views regarding subject imports from Germany in Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126, at 25-26 (September 1998).

⁸ See 19 U.S.C. § 1677(7)(H).

⁹ See Views of the Commission, section IV.

¹⁰ See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989).

¹¹ See, e.g., Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic, USITC Pub. 3181, at 29-31 (April 1999).

¹² Confidential Report ("CR") and Public Report ("PR"), Table C-1.

¹³ CR at II-8, PR at II-5.

market captured by Thai imports remained relatively stable throughout the period of investigation.¹⁴

In addition, the quarterly pricing data on the record indicate that subject imports from all subject countries, including Thailand, undersold the domestic like product in 100 percent of pricing comparisons.¹⁵ The pricing data also demonstrate that the margins of pervasive underselling by imports from each subject country, including Thailand, were ***.¹⁶

Based upon the foregoing, I find that in light of declining U.S. consumption during the period of investigation, consistently lower-priced imports from Thailand retained an important presence in the U.S. market notwithstanding their decline in volume over the period of investigation. Coupled with my determination that there is a reasonable overlap of competition with regard to imports from all four subject countries, I find that the significance of Thai imports in the U.S. market will continue in the imminent future. Accordingly, I determine that it is appropriate to cumulate subject imports from China, India, Malaysia, and Thailand, for purposes of my threat analysis.

Threat Analysis–

To begin, I am mindful of the fact that I have joined my colleagues in finding a reasonable indication that the domestic industry is materially injured by reason of steel wire rope imports from China, India, and Malaysia. When assessed in conjunction with the reasonable indication of present material injury caused by these cumulated subject imports, I determine that there is a reasonable indication that future Thai imports pose an imminent threat of material injury to the domestic industry.

Specifically with regard to Thailand, I note that the record contains data for two producers in Thailand which account for about *** percent of production in Thailand and *** percent of Thai exports to the United States.¹⁷ These data indicate that capacity utilization in Thailand was *** percent in 1999 and is projected to decline to *** percent in 2000 before increasing to *** percent in 2001.¹⁸ Thus, according to the projected data, roughly *** percent of production capacity in Thailand is available to direct significant additional exports to the U.S. market in the imminent future.

Second, as noted, the available pricing data indicate that subject imports from Thailand uniformly undersold the domestic like product by *** margins.¹⁹ In addition, the average unit value of subject imports from Thailand declined between 1997 and 1998, and again between 1998 and 1999, and was substantially lower than the average unit value of domestic producers' U.S. shipments throughout the period of investigation.²⁰ As a result, I find that future Thai imports are likely to enter the U.S. market at prices that will likely have a depressing or suppressing effect on domestic prices.

Third, I note that inventories of Thai imports held by U.S. importers increased *** between 1997

¹⁴ CR and PR, Table C-1 (the share of apparent U.S. consumption held by subject imports from Thailand declined from 1.9 percent in 1997 to 1.4 percent in 1998, before increasing to 1.5 percent in 1999).

¹⁵ CR at V-9, PR at V-5.

¹⁶ See CR and PR, Tables V-1, V-3, V-4, V-5, and V-6.

¹⁷ CR at VII-6, PR at VII-3.

¹⁸ CR and PR, Table VII-4.

¹⁹ See CR and PR, Tables V-1, V-3, V-4, and V-5.

²⁰ See CR and PR, Table C-1. I note that the probative value of average unit value data may be limited due to differences in product mix among countries and over time; however, I also note that in this case the AUV data corroborate the *** margins of underselling by subject imports from Thailand evidenced in the pricing data.

and 1999, ***; these U.S. importers accounted for about *** percent of the subject import volume from Thailand.²¹

In sum, for purposes of these preliminary investigations, I find that future import volumes from Thailand are likely to be significant and will enter the U.S. market at prices that will likely have a depressing or suppressing effect on domestic prices. In light of my finding that there is a reasonable indication of present material injury to the domestic industry, I find that together with imports from China, India, and Malaysia, imports from Thailand will exacerbate the adverse impact of subject imports on the domestic industry in the imminent future.

III. Conclusion:

For the foregoing reasons, and based upon the record evidence in these preliminary investigations, I determine that there is a reasonable indication that subject imports from Thailand pose an imminent threat of material injury to the domestic industry.

²¹ CR and PR, Tables VII-5 and C-1; *see also* CR at VII-7, PR at VII-3.