

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STEEL WIRE ROD
Investigation No. NAFTA-312-1

DETERMINATION AND VIEWS OF THE COMMISSION
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CERTAIN STEEL WIRE ROD

DETERMINATION

On the basis of the information in the investigation, the Commission determines¹ that a surge in imports of certain steel wire rod from Canada and Mexico, respectively, undermines the effectiveness of the import relief on wire rod provided for in Presidential Proclamation 7273 of February 16, 2000.

BACKGROUND

Following receipt of a request filed on July 24, 2001, on behalf of Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Company, and North Star Steel Texas Inc., the Commission instituted investigation No. NAFTA-312-1 under section 312(c)(2) of the North American Free Trade Agreement Implementation Act (19 U.S.C. § 3372(c)(2)) to determine whether a surge in U.S. imports of certain steel wire rod from Canada and/or Mexico undermines the effectiveness of the import relief on wire rod provided for in Presidential Proclamation 7273 of February 16, 2000 (65 FR 8624, February 18, 2000).

Notice of the institution of the Commission's investigation and of the scheduling of a staff 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 August 3, 2001 (66 F.R. 40722). The staff conference was held in Washington, DC, on August 8, 2001; all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ Vice Chairman Okun and Commissioner Hillman dissenting.

VIEWS OF THE COMMISSION

Introduction

Pursuant to section 312(c) of the NAFTA Implementation Act (19 U.S.C. § 3372(c)), we determine that a surge in imports of certain steel wire rod from Canada and a surge in imports of certain steel wire rod from Mexico undermine the effectiveness of the global safeguard action of the President concerning steel wire rod.^{2 3}

Background

The Commission instituted this investigation effective July 24, 2001, following receipt of a petition filed by four producers of steel wire rod.⁴ The petition alleged that a surge in U.S. imports of certain steel wire rod from Canada and Mexico undermines the effectiveness of the action by the President under section 203 of the Trade Act of 1974 to facilitate positive adjustment to competition from imports of certain steel wire rod.

On July 12, 1999, the Commission transmitted to the President its report in Inv. No. TA-201-69, in which the Commissioners were equally divided in their determination of whether imports were a substantial cause of serious injury to the domestic industry producing certain steel wire rod.⁵ The majority of those Commissioners making an affirmative determination made negative findings pursuant to section 311(a) of the NAFTA Implementation Act (19 U.S.C. § 3371(a)) with respect to imports of

² Vice Chairman Okun and Commissioner Hillman dissenting. They join the discussions regarding background, scope of investigation, and cumulation.

³ Although Commissioner Bragg reaches the same affirmative determination in this investigation as Chairman Koplán and Commissioners Miller and Devaney, her interpretation and application of section 312(c) differs, in part, from that of her colleagues. She therefore issues separate views. See Separate Views of Commissioner Lynn M. Bragg. However, for purposes of discussion, Commissioner Bragg joins the Commission's views with respect to background, scope of the investigation, and statutory framework.

⁴ 66 Fed. Reg. 40722 (Aug. 3, 2001). Section 312(c) provides that "any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports." 19 U.S.C. § 3372(c)(1)(B).

Neither the statute nor the legislative history defines the term "representative," lists factors for deciding whether the petitioning firms are representative, or requires petitioning firms to account for a specific share of U.S. production. None of the parties assert that the petitioning entities are not producers of the like product. We affirm our decision reflected in our institution of this investigation that the petitioning firms provided the information required at section 206.24 of the Commission's regulations (19 C.F.R. § 206.24).

Even if the petitioners were required to account for a particular share of production, we find that they accounted for more than half of production in 2000 (Confidential Staff Report ("CR") and Public Staff Report ("PR") at table II-1), the last full year prior to filing of the petition, and would continue to account for more than half of production if the 2000 data are adjusted to reflect plant closings by petitioners and other producers in 2001.

⁵ Certain Steel Wire Rod, Inv. No TA-201-69, USITC Pub. 3207 (July 1999). Commissioners Koplán, Bragg, and Miller made affirmative determinations (Commissioners Koplán and Miller finding serious injury, and Commissioner Bragg finding a threat of serious injury), and Commissioners Crawford, Hillman, and Askey made negative determinations.

certain steel wire rod from Canada and Mexico and recommended that such imports be excluded from any relief action.^{6 7}

Pursuant to section 330(d)(1) of the Tariff Act of 1930 (19 U.S.C. § 1330(d)(1)), the President considered the determination of the Commissioners voting in the affirmative to be the determination of the Commission.⁸ In Presidential Proclamation 7273 of February 16, 2000, the President imposed a safeguard action in the form of a tariff-rate quota (TRQ) for a period of 3 years and 1 day, effective March 1, 2000.⁹ The President made a negative determination under section 312(a) of the NAFTA Implementation Act and accordingly excluded imports from Canada and Mexico from the relief action.¹⁰ The Proclamation also suspended duty-free treatment for imported certain steel wire rod under the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), the Andean Trade Preferences Act (ATPA), and the U.S.-Israel Free Trade Area Implementation Act of 1985 (IFTA).

The quota for the first year of the program was set at 1.58 million short tons, an amount equivalent to 1998 import levels of subject products from the countries subject to the TRQ, with the quota amount to increase by an additional 2 percent in the second and in the third years to account for growth in demand. Over-quota imports were subject to an additional duty of 10 percent ad valorem in the first year, declining to 7.5 percent in the second year, and 5 percent in the third year. The quota is administered on a quarterly basis, with no more than one-third of the annual quota amount permitted to enter in each of the first three calendar quarters, and with any remaining amount allowed in the fourth quarter.

Scope of Investigation

⁶ Id. Commissioner Bragg dissenting with respect to imports from Canada.

⁷ Certain Steel Wire Rod, Inv. No TA-201-69, USITC Pub. 3207 (July 1999). Section 311(a), (19 U.S.C. § 3371(a)), provides:

If in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C.A. § 2251 et seq.], the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title, the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether--

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

⁸ Section 330(d)(1) provides that, when the Commission is required to determine under section 202(b) of the Trade Act of 1974 whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, and the Commissioners voting are equally divided with respect to such determination, the determination agreed upon by either group of Commissioners may be considered by the President as the determination of the Commission. 19 U.S.C. § 1330(d)(1).

⁹ 65 Fed. Reg. 8621 (Feb. 18, 2000).

¹⁰ Further, imports of certain steel wire rod from Canada and Mexico are not counted towards the TRQ limits that trigger the over-quota rates of duty.

Certain steel wire rod was defined by the Commission in Investigation No. TA-201-69 as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. The scope of the original section 202 investigation did not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel.

The President adopted the definition of “certain steel wire rod” as specified in the original section 202 investigation, but added exclusions for wire rod of tire cord quality, valve spring quality, class III pipe wrap quality, aircraft cold heading quality, aluminum cable steel reinforced (“ACSR”) quality, piano wire string quality, grade 1085 annealed bearing quality, and grade 1080 tire bead quality. These products are described in detail in the annex to Presidential Proclamation 7273 (65 FR 8624, February 18, 2000), which is presented in appendix A of the report in this investigation.

Statutory Framework

Section 312(c) of the NAFTA Implementation Act implements the “surge” provision in Article 802.3 of the NAFTA.¹¹ Section 312(c) provides that:

(c) Action After Exclusion of NAFTA Country Imports

(1) In general

If the President, under subsection (b) of this section, excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C.A. § 2251 et seq.] but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action—

(A) the President may take appropriate action under such chapter 1 [19 U.S.C.A. § 2251 et seq.] to include those imports in the action; and

(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.

(2) Investigation

¹¹ As a general matter, Article 802 of the NAFTA calls for NAFTA members to *exclude* imports from other NAFTA countries from their global safeguard measures. A NAFTA member may *include* imports from another NAFTA country initially only if it finds that both of two conditions are satisfied: imports from the NAFTA country account for a substantial share of total imports, and such imports contribute importantly to the serious injury or threat of serious injury to the domestic industry. Article 802 then permits imports from a NAFTA country initially excluded to be included if “a surge in imports of such goods from the other Party or Parties undermines the effectiveness of the action.”

Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.

(3) “Surge” defined

For purposes of this subsection, the term “surge” means a significant increase in imports over the trend for a recent representative base period.¹²

Whether to Consider Imports Collectively

The petitioners request that the Commission consider the imports from Canada and Mexico on a cumulative basis.¹³ The petitioners contrast the language of section 312(c), which refers to consideration of imports from a NAFTA “country or countries,” with language in section 311, which specifies when imports will be considered “individually” and when they will be considered “collectively.”¹⁴ They maintain that the absence of a requirement in section 312(c) that the imports be considered individually under any circumstances, or collectively only in exceptional circumstances, coupled with the reference in section 312(c) to “country or countries,” indicate that Congress contemplated that the Commission, in its discretion, could cumulate imports from the NAFTA countries, Canada and Mexico, in a section 312(c) investigation.¹⁵ They also assert that exercise of discretion to cumulate is warranted in this investigation in light of the similarities between the imports from Canada and Mexico.¹⁶

The Government of Canada and the Canadian producers assert that cumulation is not permitted under section 312(c). They argue that Congress provided for consideration of imports “collectively” at section 311. Omission of similar language from section 312(c), they contend, shows congressional intent not to permit consideration of the imports collectively under that section. They also maintain that reference to “country or countries” in section 312 does not suggest authority to cumulate, but simply that more than one NAFTA country can be excluded from a global relief action and subsequently subject to a petition for inclusion.¹⁷ Finally, the Government of Canada, the Canadian producers, and the American Wire Producers Association (AWPA) claim that, even if authority to cumulate were implied in section 312(c), that authority cannot be any broader than the authority expressed in section 311, where it may be invoked only in “exceptional circumstances.”¹⁸

Section 312(c)(1) refers to a determination by the President with respect to a surge in imports “from that country or countries,” and section 312(c)(2) refers to a determination by the Commission with

¹² Commissioner Bragg does not join in the remainder of these views. See Separate Views of Commissioner Lynn M. Bragg.

¹³ Conference Transcript at 34, 41-44.

¹⁴ Id. at 34, 41-42. See 19 U.S.C. § 3371(a).

¹⁵ Conference Transcript at 34, 41-42.

¹⁶ Id. at 44.

¹⁷ Government of Canada postconference brief at 3; Canadian producers’ postconference brief at 3.

¹⁸ Government of Canada postconference brief at 3; Canadian producers’ preconference brief at 4-5, Canadian producers’ postconference brief at 3, n.3, and at Exhibit 5, p. 2; AWPA postconference brief at 4, n.6.

respect to a surge “in such imports.” Thus, the provision speaks of a surge in the singular, whether the surge is comprised of imports from “a country” or from “countries.”¹⁹ Although we do not view that language as requiring cumulation, we find that it permits the Commission, in its discretion, to consider imports from two NAFTA countries collectively.²⁰

We do not agree with respondents’ argument that the Commission must follow the “exceptional circumstances” approach to cumulation set out in section 311(a) of the NAFTA Implementation Act. While the Commission might find that approach useful in its section 312(c) analysis, the finding that the Commission makes under section 311(a) is different, relating to whether a NAFTA country individually accounts for a substantial share of total imports and whether imports from a NAFTA country, or in exceptional circumstances, countries collectively, contributed importantly to the serious injury or threat of serious injury found under section 202 of the Trade Act of 1974. The manner in which section 311 specifies that issues are to be addressed, individually or, in exceptional circumstances, collectively, does not control the manner in which different issues are to be addressed in section 312, in which no such specification appears.

While we find that the Commission has the discretion to consider collectively all NAFTA imports in a section 312(c) investigation, we decline to exercise our discretion to cumulate steel wire rod imports from Canada with those from Mexico because of differences in the conditions of competition relating to those imports. First, a significant majority of the imported steel wire rod from Mexico, *** percent in 2000, is of industrial or standard quality. However, only *** percent of the imports from Canada are of industrial or standard quality.²¹ Conversely, *** percent of the imports from Canada are of cold heading or welding quality, and *** of the imports from Mexico are of those qualities.²² Second, quarterly price comparison data show that, when the products are comparable, prices for the Mexican product are generally below those of the Canadian product.²³ The product from Mexico also undersold the U.S. product in a higher percentage of comparisons than did the Canadian product.²⁴ Finally, there is a significant difference in the trends of imports from the two countries. For instance, fluctuations among the monthly volume of imports from Canada are minor in comparison with the broad fluctuations among the monthly volumes of imports from Mexico.²⁵ For these reasons, we find that the conditions of competition are sufficiently different between imports from Canada and Mexico and therefore conclude that it is not appropriate to exercise our discretion to consider those imports collectively in determining whether a surge in such imports undermines the effectiveness of the President’s global safeguard action concerning steel wire rod.

A Surge in Imports from Canada and a Surge in Imports from Mexico Undermine

¹⁹ See also NAFTA Article 802(3).

²⁰ The parallel NAFTA language similarly can be read to permit cumulation by referring to a determination whether “a surge in imports of such good *from the other Party or Parties* undermines the effectiveness of the action.” NAFTA, article 802.3 (emphasis added).

²¹ CR and PR at table I-2; see also CR and PR at appendix D, table D-1 (in 1999, too, a majority of the imports from Mexico, but not a majority of those from Canada, were of industrial or standard quality).

²² CR and PR at table I-2.

²³ CR and PR at tables IV-1, IV-2, and IV-4.

²⁴ CR and PR at tables IV-1, IV-2, IV-4, and IV-9.

²⁵ See, e.g., Memorandum INV-Y-162 (Aug. 21, 2001) at table 2 (monthly imports from 1994 to June 2001), and CR and PR at table II-10 (monthly imports from March 1999 to June 2001).

the Effectiveness of the Global Safeguard Action²⁶

The statute defines “surge” as “a significant increase in imports over the trend for a recent representative base period.” In our view, this requires the Commission in this investigation, to (1) identify a recent representative base period, (2) determine what the trend for imports was over this base period, and (3) determine whether there has been a “significant increase” over the trend for this recent representative base period in imports from Canada and Mexico after they were excluded from the President’s action. By requiring that the Commission examine the “trend” for imports over the recent base period, the statute suggests that more than two years be considered to identify a “trend.”²⁷

We find 1996 to 1998 to be a recent representative base period for determining whether there is a surge. A “representative” period, in our view, excludes time frames in which the volume of imports from the NAFTA countries may have been affected by the pendency of the underlying 202 investigation or by the Commission’s determination. Importations in 1996-1998 predate the Commission’s determination and transmittal of its report to the President.²⁸ We select 1998 as the end point of the representative base period because it is the last full year prior to the President’s action in which imports were not affected by the Commission’s investigation or determination. Moreover, 1996 to 1998 is the most recent part of the period considered by the Commission in its investigation under section 202 and the period considered by the three Commissioners that made a decision under section 311 of the NAFTA Implementation Act to exclude NAFTA imports from any relief action.²⁹

Canada

The volume of U.S. imports from Canada of steel wire rod declined during the representative base period from 658,395 short tons in 1996, to 572,089 short tons in 1997, to 555,886 short tons in 1998.³⁰ Thus, the 1998 volume of certain steel wire rod imports from Canada represents a 15.6 percent decrease from the volume in 1996. Similarly, the volume of imports from Canada of steel wire rod decreased as a share of U.S. consumption from 8.7 percent in 1996 to 6.9 percent in 1997, and 6.7 percent in 1998.³¹

We find that, contrasted with this declining trend during the base period, certain steel wire rod imports from Canada increased significantly following implementation of the President’s action, a tariff

²⁶ Vice Chairman Okun and Commissioner Hillman do not join in the remainder of these views. See Dissenting Views of Vice Chairman Deanna Tanner Okun and Commissioner Jennifer A. Hillman.

²⁷ A difference between two years would represent simply a change, not a trend. See also section 203(e)(4) of the Trade Act of 1974 (quantitative restriction to allow importation of at least that quantity or value of goods that entered during “the most recent 3 years that are representative of imports”).

²⁸ Certain Steel Wire Rod, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999). The Commission instituted Inv. No. TA-201-69 effective January 12, 1999. The Commission transmitted its report in that investigation to the President on July 12, 1999.

²⁹ Certain Steel Wire Rod, USITC Pub. 3207 at I-18 - I-19, I-31 - I-32.

³⁰ INV-Y-162 at table 2.

³¹ USITC Pub. 3207 at table C-1 (these shares are based on data gathered during the original section 201 investigation, which included a small amount of wire rod imported under an HTS subheading that was later determined not to fall within the product definition). See Memorandum INV-Y-162.

rate quota (TRQ), effective March 1, 2000.³² Based on full year data, imports of certain steel wire rod from Canada increased from 626,352 short tons in 1999 to 715,974 short tons in 2000,³³ a 14.3 percent increase. Imports of certain steel wire rod from Canada also increased from an 8.0 percent share of U.S. consumption in 1999 to a 9.1 percent share in 2000.³⁴ When imports for all steel wire rod are isolated for the 12-month periods preceding and following the March 1, 2000, implementation of the TRQ, the volume of imports from Canada increased 12.4 percent.³⁵ Imports of certain steel wire rod from Canada also increased when comparing interim periods, from 356,518 short tons in the first six months of 2000 to 367,677 short tons in the first six months of 2001.³⁶ We find that both the 14.3 percent increase based on the full year information for certain steel wire rod and the 12.4 percent increase based on the TRQ year information for all steel wire rod are significant increases over the trend for the representative base period. Accordingly, as compared to the decrease in 1996-98, we find that imports from Canada have surged.

As imports of certain steel wire rod from Canada have surged, U.S. consumption has ranged from flat to declining in 1999 through interim 2001.³⁷ In addition, the domestic industry's share of consumption has declined,³⁸ and the domestic industry's production, shipments, and sales declined from 1999 to 2000 and again in the 2001 interim period.³⁹ The surge in imports from Canada contributed to the inability of domestic producers to utilize fully their productive capacity, which increased slightly in 2000, and depressed domestic capacity utilization.⁴⁰ Further, inventories as a ratio of U.S. shipments

³² 65 Fed. Reg. 8621 (Feb. 18, 2000).

³³ CR and PR at table II-5.

³⁴ CR and PR at table II-8.

³⁵ CR and PR at table II-6 (comparing imports for March 1999 - February 2000 with those for March 2000 - February 2001). The ratio of imports to apparent U.S. consumption is not calculated in relation to these time periods.

³⁶ INV-Y-162 at table 2. As a share of U.S. consumption they increased from 8.6 percent in January-March 2000 to 10.3 percent in January-March 2001. CR and PR at table II-8.

³⁷ Apparent consumption increased slightly from 7,876,516 short tons in 1999 to 7,898,025 short tons in 2000. CR and PR at table II-4. Domestic consumption was 2,004,803 short tons in interim 2000 compared with 1,597,852 short tons in interim 2001. Id.

³⁸ The domestic industry's shipments as a share of consumption declined from 67.8 percent in 1999 to 65.6 percent in 2000. CR and PR at table II-8. The domestic industry's share of consumption was 70.6 percent in interim 2000 compared with 66.9 percent in interim 2001. Id.

³⁹ The domestic industry's production decreased from 5,394,760 short tons in 1999 to 5,336,432 short tons in 2000. CR and PR at table III-1. Production declined further in the first three months of 2001, from 1,421,446 short tons in interim 2000 to 977,180 in interim 2001. Id. Similarly, the domestic producers' U.S. shipments declined from 5,336,837 short tons in 1999 to 5,179,875 short tons in 2000, then declined from 1,415,989 in interim 2000 to 1,068,918 in interim 2001. Id. The domestic industry's net sales on a quantity basis declined from 5,314,751 short tons in 1999 to 5,174,622 short tons in 2000, then declined from 1,425,852 short tons in interim 2000 to 1,069,154 in interim 2001. Id.

⁴⁰ Capacity utilization declined from 82.6 percent in 1999 to 80.2 percent in 2000. Comparing interim 2001 to interim 2000 shows a further decline, from 86.5 percent in interim 2000 to 58.4 percent in interim 2001. The industry's capacity increased from 6,532,463 short tons in 1999 to 6,650,148 short tons in 2000; capacity increased comparing the interim periods, from 1,643,620 short tons in interim 2000 to 1,671,898 short tons in interim 2001. CR and PR at table III-1. The low interim 2001 capacity utilization rate results in part from a decline in production at the closing plants that is not yet offset by an actual capacity shutdown. CR at III-3; PR at III-1. Nevertheless,

(continued...)

increased in 2000 compared with 1999 and increased in interim 2001 compared with interim 2000.⁴¹ Prices of the majority of products from Canada for which data were provided were lower in 2001 than at the end of the base period, further evidence of the negative effects of those increasing imports.⁴²

Concerning deterioration of the financial position of the industry, four firms have shut down or will be shutting down facilities in 2001. Birmingham closed its American Steel & Wire rod plant in Cuyahoga Heights, OH, in June 2001; GS Industries filed for Chapter 11 bankruptcy and permanently idled its Kansas City, MO, rod mill in February 2001; North Star's Kingman, AZ, plant shut down production in May 2001; and Northwestern, which had been operating under Chapter 11 bankruptcy protection, announced in May 2001 plans to shut down operations in the near future.⁴³

The domestic industry had significant operating losses in both 1999 and 2000. Losses increased significantly on both an absolute and per unit basis in interim 2001.⁴⁴

We find that the surge in imports from Canada has contributed to the domestic industry's poor performance. We also find that the poor performance has led to a decline in capital expenditures between 1999 and 2000, and again in interim 2001 compared to interim 2000,⁴⁵ and has otherwise

⁴⁰ (...continued)

capacity utilization figures reported by all but one of the firms remaining in production also dropped in the first quarter of 2001, in some cases sharply. Id.

⁴¹ Inventories were 5.1 percent of U.S. shipments in 1999 and 6.4 percent in 2000, and 4.9 percent in interim 2001 compared with 4.8 percent in interim 2000. CR and PR at table III-1.

⁴² See CR at IV-5; PR at IV-4 & CR and PR at tables IV-1, IV-2, IV-4, IV-5.

⁴³ CR at II-3 - II-4; PR at II-1 - II-3. In assessing the impact of changes at the Kingman, AZ, plant on purchasing patterns, Mexican respondents cite press reports indicating that the melt shop was closed in December 2000 due to rising energy costs and that by January 2001 customers had begun to look for alternate sources of supply. Mexican respondents' prehearing brief at 19-20, and posthearing brief at Exhibit 3. Petitioners indicate that North Star has historically supplied western U.S. purchasers from its Beaumont, TX, plant and, following the closing of the Kingman, AZ, plant, "continues to do so." Petitioners' posthearing brief, Exhibit 2 at 1.

⁴⁴ The industry had operating losses of \$80.6 million in 1999 and \$77.6 million in 2000. The loss increased in the interim period from a loss of \$14.7 million in interim 2000 to a loss of \$34.1 million in interim 2001. CR and PR at table III-1. The loss was \$15 per short ton in 1999 and 2000, then increased in interim 2001 to a loss of \$32 per short ton, compared to \$10 per short ton in interim 2000. Id.

⁴⁵ Capital expenditures declined from \$85.1 million in 1999 to \$73.8 million in 2000. CR and PR at table III-1. Capital expenditures declined further, from \$12.8 million in interim 2000 to \$8.7 million in interim 2001. Id.

undermined implementation of the adjustment plan for the U.S. industry that was to have been carried out during the TRQ relief period.⁴⁶

For the foregoing reasons, we find that the significant increase in imports of certain steel wire rod from Canada has contributed to the industry's worsening financial performance. Accordingly, we find that a surge in such imports from Canada undermines the effectiveness of the President's global safeguard action under section 203 of the Trade Act of 1974.

Mexico

The volume of U.S. imports from Mexico of steel wire rod increased from 88,284 short tons in 1996, to 128,512 short tons in 1997, then declined to 75,241 short tons in 1998.⁴⁷ Thus, notwithstanding the increase in 1997, imports of steel wire rod from Mexico declined 14.8 percent in the representative base period. Similarly, the volume of steel wire rod imports from Mexico, after increasing from a 1.2 percent share of U.S. consumption in 1996 to a 1.5 percent share in 1997, declined to a 0.9 percent share in 1998.⁴⁸

We find that, contrasted with the declining trend during the representative base period, imports of steel wire rod from Mexico increased significantly following implementation of the TRQ, effective March 1, 2000. Based on full year data, imports of certain steel wire rod from Mexico increased from 122,038 short tons in 1999 to 159,818 short tons in 2000, a 31.0 percent increase.⁴⁹ Imports of certain steel wire rod from Mexico also increased from a 1.5 percent share of U.S. consumption in 1999 to a 2.0 percent share in 2000.⁵⁰ When imports for all steel wire rod are isolated for the 12-month periods preceding and following implementation of the TRQ, the increase is 34.6 percent.⁵¹ We find that both the 31.0 percent increase based on the full year information for certain steel wire rod and the 34.6 percent increase based on the TRQ year information for all steel wire rod are significant increases over the trend for the representative base period. Accordingly, we find that the imports from Mexico have surged.

As imports of certain steel wire rod from Mexico have surged, U.S. consumption has ranged from flat to declining in 1999 through interim 2001.⁵² In addition, the domestic industry's share of

⁴⁶ For a discussion of adjustment efforts undertaken by U.S. producers to compete more effectively in the U.S. market for steel wire rod since the TRQ was implemented, see Part IV of the Staff Report to the Commission, Inv. No. TA-204-6, USITC Pub. 3451 (Aug. 2001).

⁴⁷ INV-Y-162 at table 2.

⁴⁸ Id.

⁴⁹ CR and PR at tables II-5 & II-6.

⁵⁰ CR and PR at table II-8.

⁵¹ CR and PR at table II-6 (comparing imports for March 1999 - February 2000 with those for March 2000 - February 2001). The ratio of imports to apparent U.S. consumption is not calculated in relation to these time periods.

⁵² Apparent consumption increased slightly from 7,876,516 short tons in 1999 to 7,898,025 short tons in 2000. CR and PR at table II-4. Domestic consumption was 2,004,803 short tons in interim 2000 compared with 1,597,852 short tons in interim 2001. Id.

consumption has declined,⁵³ and the domestic industry's production, shipments, and sales declined from 1999 to 2000 and again in the 2001 interim period.⁵⁴ The surge in imports from Mexico contributed to the inability of domestic producers to utilize fully their productive capacity, which increased slightly in 2000, and depressed domestic capacity utilization.⁵⁵ Further, inventories as a ratio of U.S. shipments increased in 2000 compared with 1999 and increased in interim 2001 compared with interim 2000.⁵⁶ Prices of the three products from Mexico for which data were provided were lower at the end of the period compared to the beginning, further evidence of the negative effects of those increasing imports.⁵⁷

Concerning deterioration of the financial position of the industry, four firms have shut down, or will be shutting down facilities in 2001. Birmingham closed its American Steel & Wire rod plant in Cuyahoga Heights, OH, in June 2001; GS Industries filed for Chapter 11 bankruptcy and permanently idled its Kansas City, MO, rod mill in February 2001; North Star's Kingman, AZ, plant shut down production in May 2001; and Northwestern, which had been operating under Chapter 11 bankruptcy protection, announced in May 2001 plans to shut down operations in the near future.⁵⁸

The domestic industry had significant operating losses in both 1999 and 2000. Losses increased significantly on both an absolute and a per unit basis in interim 2001.⁵⁹

⁵³ The domestic industry's shipments as a share of consumption declined from 67.8 percent in 1999 to 65.6 percent in 2000. CR and PR at table II-8. The domestic industry's share of consumption was 70.6 percent in interim 2000 compared with 66.9 percent in interim 2001. Id.

⁵⁴ The domestic industry's production decreased from 5,394,760 short tons in 1999 to 5,336,432 short tons in 2000. CR and PR at table III-1. Production declined further in the first three months of 2001, from 1,421,446 short tons in interim 2000 to 977,180 in interim 2001. Id. Similarly, the domestic producers' U.S. shipments declined from 5,336,837 short tons in 1999 to 5,179,875 short tons in 2000, then declined from 1,415,989 in interim 2000 to 1,068,918 in interim 2001. Id. The domestic industry's net sales on a quantity basis declined from 5,314,751 short tons in 1999 to 5,174,622 short tons in 2000, then declined from 1,425,852 short tons in interim 2000 to 1,069,154 in interim 2001. Id.

⁵⁵ Capacity utilization declined from 82.6 percent in 1999 to 80.2 percent in 2000. Comparing interim 2001 to interim 2000 shows a further decline, from 86.5 percent in interim 2000 to 58.4 percent in interim 2001. The industry's capacity increased from 6,532,463 short tons in 1999 to 6,650,148 short tons in 2000; capacity increased comparing the interim periods, from 1,643,620 short tons in interim 2000 to 1,671,898 short tons in interim 2001. CR and PR at table III-1. The low interim 2001 capacity utilization rate results in part from a decline in production at the closing plants that is not yet offset by an actual capacity shutdown. CR at III-3; PR at III-1. Nevertheless, capacity utilization figures reported by all but one of the firms remaining in production also dropped in the first quarter of 2001, in some cases sharply. Id.

⁵⁶ Inventories were 5.1 percent of U.S. shipments in 1999 and 6.4 percent in 2000, and 4.9 percent in interim 2001 compared with 4.8 percent in interim 2000. CR and PR at table III-1.

⁵⁷ CR at IV-5; PR at IV-4 and CR and PR at tables IV-1, IV-2, IV-4.

⁵⁸ CR at II-3 - II-4; PR at II-1 - II-3. In assessing the impact of changes at the Kingman, AZ, plant on purchasing patterns, Mexican respondents cite press reports indicating that the melt shop was closed in December 2000 due to rising energy costs and that by January 2001 customers had begun to look for alternate sources of supply. Mexican respondents' prehearing brief at 19-20, and posthearing brief at Exhibit 3. Petitioners indicate that North Star has historically supplied western U.S. purchasers from its Beaumont, TX, plant and, following the closing of the Kingman, AZ, plant, "continues to do so." Petitioners' posthearing brief, Exhibit 2 at 1.

⁵⁹ The industry had operating losses of \$80.6 million in 1999 and \$77.6 million in 2000. The loss increased in the interim period from a loss of \$14.7 million in interim 2000 to a loss of \$34.1 million in interim 2001. CR and PR at table III-1. The loss was \$15 per short ton in 1999 and 2000, then increased in interim 2001 to a loss of \$32 per short ton, compared to \$10 per short ton in interim 2000. Id.

We find that the surge in imports from Mexico has contributed to the domestic industry's poor performance. We also find that the poor performance has led to a decline in capital expenditures between 1999 and 2000, and again in interim 2001,⁶⁰ and has otherwise undermined implementation of the adjustment plan for the U.S. industry that was to have been carried out during the TRQ relief period.⁶¹

For the foregoing reasons, we find that the significant increase in imports of certain steel wire rod from Mexico has contributed to the industry's worsening financial performance. Accordingly, we find that a surge in such imports from Mexico undermines the effectiveness of the President's global safeguard action under section 203 of the Trade Act of 1974.

⁶⁰ Capital expenditures declined from \$85.1 million in 1999 to \$73.8 million in 2000. CR and PR at Table III-1. Capital expenditures declined from \$12.8 million in interim 2000 to \$8.7 million in interim 2001. Id.

⁶¹ For a discussion of adjustment efforts undertaken by U.S. producers to compete more effectively in the U.S. market for steel wire rod since the TRQ was implemented, see Part IV of the Staff Report to the Commission, Inv. No. TA-204-6, USITC Pub. 3451 (Aug. 2001).

SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG

Certain Steel Wire Rod Investigation No. NAFTA-312-1

Based upon the record in this investigation, I find that a surge in wire rod imports from Canada and Mexico, individually, has undermined the effectiveness of the wire rod tariff rate quota (“TRQ”) established by the President on February 16, 2000. Although I reach the same affirmative determination in this investigation as Chairman Koplán and Commissioners Miller and Devaney, my interpretation and application of the statutory language “representative base period” differs from that of my colleagues.¹ I therefore find it necessary to set forth these separate views.

For purposes of discussion, I join the Commission’s views with respect to background and the scope of the investigation.

I. CUMULATION

A threshold issue in this investigation is whether the Commission is authorized to cumulate imports from Canada and Mexico in determining the existence of a surge under section 312(c). In my view, it is important to note that this section 312(c) determination is a related review of the Commission’s initial findings under section 311 to exclude these imports from the remedy imposed. Importantly, cumulation is treated differently in that related statutory provision; in section 311, Congress specifically provides that in the initial findings regarding exclusion of NAFTA imports, the Commission could cumulate, but only in “exceptional circumstances.” Significantly, no such language appears in section 312(c) which governs this investigation.² The absence of a similar specific endorsement of cumulation in section 312(c) strongly suggests that Congress did not intend to authorize cumulation in section 312 proceedings. This perspective is consistent with how Congress addressed cumulation in other trade law determinations where it has been purposeful in providing specific direction to the Commission; for example, in Title VII investigations, the Commission is required to cumulate in certain instances, and is authorized, but not required, to cumulate in other instances. Accordingly, I conclude that the statute does not authorize the Commission to cumulate imports from Canada and Mexico in performing its analysis in section 312(c) investigations.

II. SURGE AND RECENT REPRESENTATIVE BASE PERIOD

The statute defines a surge as “a significant increase in imports over the trend for a recent representative base period.” Unfortunately, no further clarification of this provision of the statute is provided by relevant legislative history. The application of the language “a significant increase in imports” appears relatively straightforward; it is often the role of the Commission to place subject

¹ In performing my analysis in this investigation, I define the representative base period as the time period of January 1998 through June 2001.

² An initial reading of section 312(c) might suggest that the statute authorizes the Commission to cumulate, given that the statute refers to a determination by the President with respect to a surge in imports “from that country or countries,” and section 312(c)(2) refers to a determination by the Commission with respect to a surge “in such imports.” However, I do not find this language to be a sufficient basis for the authority to cumulate, particularly in light of the specific language authorizing cumulation included by Congress in section 311.

imports in the context of the facts of a given investigation and then draw varying conclusions regarding the role of those imports in the U.S. market, i.e., discern the imports' "significance."

However, the application of the second portion of the definition, i.e., "over the trend for a recent representative base period," is less clear.³ Given this lack of clarity, it is useful to consider the statutory provision at issue in a broader context to help ascertain what is intended by the statutory language. Section 312(c) appears to be designed to prevent NAFTA trading partners exempted from relief from capitalizing on their preferential status in the U.S. market once relief is imposed on non-exempt imports. In addition, the related section 312(d) statutory provision specifically recognizes that any relief imposed as the result of an affirmative finding under section 312 must allow for reasonable import growth. In this context, the essential question to be answered through the application of "over the trend for a recent representative base period" is therefore whether exempt NAFTA imports exceeded reasonable growth otherwise anticipated as a result of NAFTA trade liberalization. This question is best answered, I believe, by assessing the historical behavior of Canadian and Mexican imports into the U.S. market together with their behavior after imposition of relief over one, uninterrupted time line. Such an assessment captures both the rate and direction of import changes, and thereby provides, in my view, the most probative analysis of whether exempted imports capitalized on their preferential status instead of experiencing reasonably expected growth.

In light of the foregoing, and upon review of the record in these proceedings, I define the recent representative base period as including the period January 1998 through June of 2001. This period appropriately captures the historical behavior of both Canadian and Mexican imports in 1998, together with their behavior through the pendency of the investigation in 1999 and the imposition of the relief in 2000 and 2001.⁴

In reaching this determination, I considered whether to include earlier periods in an attempt to capture more "history." Upon review of the record, I find earlier periods to be either aberrational or beyond what could reasonably be considered to be "recent." With respect to 1997, the record indicates that at that time the Commission was conducting an antidumping duty investigation on wire rod imports from Canada. It is likely that the existence of this antidumping investigation would have affected the historical behavior of Canadian wire rod imports into the United States during that period, thereby limiting the usefulness of the 1997 Canadian import data in these section 312(c) proceedings. With respect to wire rod imports from Mexico, such imports into the United States in 1997 appeared to be at relatively high levels⁵ compared to previous years since 1994, and therefore also not an appropriate benchmark for historical volumes of Mexican imports into the United States. I also find, for purposes of this investigation, that the period prior to 1997 is beyond what could reasonably be considered to be recent.

I next address the issue of whether the alleged surge in imports from Canada and/or Mexico should be analyzed on an absolute basis, i.e., looking only at absolute volumes, or relative to other factors

³ I note that my analysis of the term "representative base period" in this investigation is distinguishable from my past analysis of the term "representative period" in section 201 remedy proceedings. In contrast to section 201 remedy proceedings, the question here is not the assessment of the relationship between import trends and recommended import levels necessary to remedy injury, but rather, whether the recent historical pattern of subject imports changed and surged as the TRQ was imposed, which, in my view, requires a dynamic, time-line approach. See, e.g., Wheat Gluten, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-28, n.134.

⁴ I also examined the volume of imports from Canada and Mexico into the United States as far back as 1994 to ensure that the 1998 to June 2001 period provides the proper historical context for assessing the role of Canadian and Mexican imports into the U.S. market.

⁵ See supra note 4.

such as U.S. production, other imports, and/or apparent U.S. consumption. I believe this analysis must incorporate an assessment of import volumes both on an absolute basis as well as relative to other factors. Importantly, an analysis limited to an assessment of absolute volumes of imports could potentially lead to the perverse result of a negative determination based on a finding that imports, although showing a surge due to relative declines in U.S. production and/or apparent U.S. consumption, did not surge in absolute terms. It is evident that imports surging relative to, for example, U.S. production could be equally injurious to the domestic industry as imports surging in absolute terms and that both surges could reflect import behavior which undermines the effectiveness of relief. I have therefore assessed imports from Canada and Mexico both on an absolute basis as well as relative to other factors.

A. CANADA

In absolute terms, the volume of subject imports from Canada increased from 555,886 short tons in 1998 to 626,352 short tons in 1999, by 12.7 percent, and then to 715,974 short tons in 2000, by 14.3 percent.⁶ The volume of Canadian subject imports then increased slightly between the interim (January-June) periods from 356,518 short tons in interim 2000 to 367,677 short tons in interim 2001, or by 3.1 percent.⁷ The record also indicates that the volume of subject imports from Canada rose over the most recent 12-month period (July 2000-June 2001) when compared to the two related, previous 12-month periods, from 576,486 short tons during July 1998-June 1999 to 687,250 short tons during July 1999-June 2000 and then to 736,187 short tons during the period July 2000-June 2001.⁸ The record therefore indicates that although the volume of subject imports from Canada increased over the trend for the recent representative base period, the increase over the trend, in absolute terms, was relatively steady. It therefore appears that, on an absolute basis, wire rod imports from Canada did not experience a significant increase over the trend for the recent representative base period.

Nonetheless, when the volume of imports from Canada is compared to U.S. production, a surge, particularly in the first quarter of 2001, is apparent (I note that the record only provides apparent consumption and U.S. production data through the first quarter of 2001).⁹ The ratio of Canadian imports to U.S. production increased from 10.5 percent in 1998 to 11.6 percent in 1999 to 13.4 percent in 2000. Between the interim (January-March) periods, the ratio increased even further from 12.1 percent in interim 2000 to 16.9 percent in interim 2001.¹⁰ The record also indicates that the volume of Canadian imports relative to apparent U.S. consumption increased from 7.6 percent in 1998 to 8.0 percent in 1999

⁶ CR and PR at Table II-5.

⁷ Memorandum INV-Y-162 (August 21, 2001), Table 1.

⁸ Memorandum INV-Y-162 (August 21, 2001), Table 1.

⁹ CR and PR at Table II-5. A comparison of subject imports to U.S. production provides the most reliable indicator of the relative volume of subject imports, since U.S. production is most directly linked to industry performance, any adverse effects of subject imports, and the purpose and effectiveness of the remedy. Canadian imports relative to other imports are a less reliable indicator of volume trends given that the remedy at issue had only limited effect in restraining imports for countries subject to the TRQ and had been in place for a relatively brief period of time.

¹⁰ CR and PR at Table II-8.

to 9.1 percent in 2000.¹¹ Between the interim periods, the ratio increased from 8.6 percent in interim 2000 to 10.3 percent in interim 2001.¹²

Accordingly, in light of the trends relative to production and consumption, I determine that there has been a surge in certain steel wire rod imports from Canada.¹³

B. MEXICO

In absolute terms, the volume of subject imports from Mexico increased from 75,241 short tons in 1998 to 122,038 short tons in 1999, by 62.2 percent, and then to 159,818 short tons in 2000, by 31.0 percent.¹⁴ The volume of Mexican subject imports then increased between the interim (January-June) periods from 73,343 short tons in interim 2000 to 109,425 short tons in interim 2001, or by 49.2 percent.¹⁵ The record further indicates that the volume of subject imports from Mexico rose dramatically over the most recent 12-month period (July 2000-June 2001) when compared to the two related, previous 12-month periods, from 78,769 short tons during July 1998-June 1999 to 153,918 short tons during July 1999-June 2000 and then to 195,900 short tons during the period July 2000-June 2001.¹⁶ Thus, on an absolute basis, imports from Mexico have surged.

When the volume of imports from Mexico is compared to U.S. production, a surge, particularly in the first quarter of 2001, is also apparent (I again note that the record only provides apparent consumption and U.S. production data through the first quarter of 2001). The ratio of Mexican imports to U.S. production increased from 1.4 percent in 1998 to 2.3 percent in 1999 to 3.0 percent in 2000.¹⁷ Between the interim (January-March) periods, the ratio increased even further from 2.7 percent in interim 2000 to 6.3 percent in interim 2001.¹⁸ Relative to apparent U.S. consumption, imports from Mexico increased from 1.0 percent in 1998 to 1.5 percent in 1999 to 2.0 percent in 2000.¹⁹ Between the interim periods, the ratio increased from 1.9 percent in interim 2000 to 3.9 percent in interim 2001.²⁰

Accordingly, in light of the absolute volume increase as well as trends relative to production and consumption, I determine that there has been a surge in certain steel wire rod imports from Mexico.

¹¹ CR and PR at Table II-8. Although a comparison of the volume of imports relative to apparent consumption best analyzes whether imports have undermined the effectiveness of the action by garnering an unexpected share of the U.S. market, the comparison is also probative of whether there has been a surge in imports.

¹² CR and PR at Table II-8.

¹³ This finding is consistent with my determination in the original section 201 investigation of certain steel wire rod, in which I found that steel wire rod imports from Canada, if they continued unrestrained, would contribute importantly to the threat of serious injury to the domestic steel wire rod injury. See Separate Views on Injury of Chairman Lynn M. Bragg, Certain Steel Wire Rod, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999) at I-21-32.

¹⁴ CR and PR at Table II-5.

¹⁵ Memorandum INV-Y-162 (August 21, 2001), Table 1.

¹⁶ Memorandum INV-Y-162 (August 21, 2001), Table 1.

¹⁷ CR and PR at Table II-8.

¹⁸ CR and PR at Table II-8.

¹⁹ CR and PR at Table II-8.

²⁰ CR and PR at Table II-8.

III. UNDERMINE EFFECTIVENESS

By surging into the United States and capturing an increasing share of the U.S. market at a time when the TRQ program was implemented to limit the volume of steel wire rod imports, Canadian and Mexican subject imports acted in a manner contrary to the purposes of the TRQ and well in excess of reasonably expected growth among NAFTA trading partners. Canadian and Mexican wire rod imports into the United States have therefore directly undermined the effectiveness of the TRQ within the meaning of section 312(c).

Specifically, the record indicates that the condition of the domestic industry continued to deteriorate even with the imposition of the TRQ, thus indicating that surging imports from Canada and Mexico had a role in the industry's decline after the TRQ was implemented.²¹ Over the relevant period, particularly during January-March 2001, nearly every indicator of the condition of the domestic industry declined.²² For example, the domestic industry's operating margin declined from negative 4.0 percent in 1998 to negative 4.9 percent in 1999, improved slightly to negative 4.7 percent in 2000, but then declined from negative 3.3 percent in interim (January-March) 2000 to negative 10.5 percent in interim 2001.²³

The record further indicates that imports from Canada were primarily comprised of higher-valued wire rod products, while imports from Mexico were primarily comprised of commodity-grade material.²⁴ This is an important distinction because it indicates that imports from Canada and Mexico were having a unique, and therefore individual, negative impact on the domestic industry. This conclusion is confirmed by the fact that both Canadian and Mexican imports gained market share over the period as domestic producers lost market share.²⁵ In addition, both Canadian and Mexican market share accelerated upward at the end of the representative base period, just after the remedy was put in place.²⁶

Accordingly, I find that the continued deterioration in the condition of the domestic industry, despite the imposition of the TRQ, resulted, in part, from the surge in certain steel wire rod imports from Canada and Mexico individually. I therefore determine that certain steel wire rod imports from Canada and Mexico have individually undermined the effectiveness of the wire rod TRQ established by the President on February 16, 2000.

IV. CONCLUSION

Based upon the record in this investigation and all of the foregoing, I find that a surge in wire rod imports from Canada and Mexico, individually, has undermined the effectiveness of the wire rod tariff rate quota established by the President on February 16, 2000.

²¹ CR and PR at Table III-1.

²² CR and PR at Table C-1.

²³ CR and PR at Table III-1.

²⁴ CR and PR at Tables I-2 & II-5.

²⁵ CR and PR at Table II-8.

²⁶ CR and PR at Table II-8.

**DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN AND
COMMISSIONER JENNIFER A. HILLMAN**

We join with our colleagues in the discussions regarding background, scope of investigation, and cumulation. However, we find that certain steel wire rod from Canada is not being imported into the United States in such quantities as to constitute a surge within the meaning of section 312(c)(3). We also find that while certain steel wire rod from Mexico is being imported into the United States in such quantities as to constitute a surge, it does not undermine the effectiveness of the import relief on certain steel wire rod provided for in Presidential Proclamation 7273 of February 16, 2000.

Legal Standard

In determining whether certain steel wire rod from Canada and Mexico is being imported into the United States in such quantities as to constitute a surge that is undermining the effectiveness of the import relief on wire rod provided for in Presidential Proclamation 7273 of February 16, 2000, we analyze the two criteria set forth in the statute. Specifically, we must consider –

- (1) whether there has been a significant increase in imports of the subject article over the trend for a recent representative base period; and
- (2) if so, whether that surge has undermined the effectiveness of the President’s relief action.

We must find that both criteria are satisfied in order to make an affirmative determination.

Whether There Has Been a Surge in Imports

Section 312(c)(3) defines a surge as “a significant increase in imports over the trend for a recent representative base period.”¹ Our analysis of this provision is guided by the purpose of section 312, which is to determine whether imports from NAFTA countries, which initially were not subject to import relief because of findings under section 311,² have changed behavior in a manner that undermines the effectiveness of the import relief action. Section 311 establishes a relatively high threshold for inclusion of exports from a NAFTA country in a relief action under section 201. Therefore, under the statutory scheme, we should interpret section 312 as itself requiring a high threshold for inclusion of exports from a NAFTA country after imposition of the relief. Any other approach would undermine section 311 by allowing petitioners to sweep NAFTA country exports into a relief action soon after imposition of the action even though inclusion was not permitted under section 311. The wording of section 312 supports this conclusion by defining a surge as a *significant* increase in imports over a prior trend.³ Indeed, section 311 provides that imports from a NAFTA country can be growing and yet still not be included in a relief action. We therefore find that the statutory scheme of sections 311 and 312, and the plain wording of section 312(c)(3), allow us to find a surge only where there has been a substantial change in the behavior of the imports at issue.

¹ 19 U.S.C. § 3372(c)(3).

² 19 U.S.C. § 3371.

³ 19 U.S.C. § 3372(c)(3) (emphasis added).

Section 312(c)(3) requires a comparison of trends of subject imports – that is, their rate of change – during and after some recent representative base period. Our analysis under section 312(c)(3), therefore, requires that we (1) identify a base period that is both “recent” and “representative” of imports, (2) identify the more recent comparison period, and (3) compare the import trends – that is, the rates of change (increase or decrease) – for both periods to determine whether there has been a “significant increase” in import trends.

Base Period

Our determination of the appropriate base period is driven by the purpose of section 312, which is to determine whether there has been a substantial change in imports since imposition of a relief action, and whether any such substantial change has undermined the effectiveness of that relief action.⁴ In light of this purpose, we find that our base period should consist of a series of 12-month periods March through February, such that the base period ends at the time that the relief action was put in place (*i.e.*, March 1, 2000).

We also considered whether the data should be examined on a July-June basis because the Commission’s injury vote was taken in July 1999. Petitioners argue that after that vote, it was unlikely that imports from Canada and Mexico would be included in any relief action. We agree that such inclusion was unlikely after the Commission’s vote. However, inclusion is a decision for the President, and he was free to include imports from either Mexico or Canada if he made the required determinations under section 312(a). More significantly, given the Commission’s split vote on injury, it was highly uncertain whether *any* relief would be imposed. Even if relief was granted, it was entirely unclear, given the differing injury votes and remedy recommendations, what form it would take. In fact, the relief eventually granted differed significantly from either of the recommendations forwarded by the Commission. In light of these uncertainties, we do not find that the Commission’s injury vote significantly changed parties’ market behavior. Moreover, the import data do not indicate any substantial change upon the Commission’s injury vote. Therefore, we find that using 12-month periods of July-June is not appropriate for this investigation.

In determining an appropriate period for determining the base trend in imports, we considered the statute’s requirement that the base period be “recent.” We also looked at the Commission’s standard practice under other statutory authorities. We normally look at three to five years data in our investigations under the antidumping and countervailing duty laws (three years) and safeguard law (five years) to determine trends in economic factors relating to injury to an industry. Furthermore, section 203(e)(4) of the Trade Act of 1974, as amended,⁵ requires that import relief in the form of a quantitative restriction (import quota) allow importation of at least that quantity or value of goods that entered during “the most recent 3 years that are representative of imports.”

Given the statute’s requirement and our practice in other areas, we choose a base period composed of three 12-month periods of data, ending before the institution of Presidential Proclamation

⁴ Neither the statute nor the legislative history provides any further guidance for determination of the base period.

⁵ 19 U.S.C. § 2253(e)(4).

7273 (*i.e.*, March 1, 1997, to February 29, 2000). This base period is both recent and representative of Canadian and Mexican imports.

We considered, and rejected, using a longer period as our base period. The annual data back through 1994 show: (1) for Canada, import levels that have both risen and fallen substantially (the level was relatively low in 1994, peaked in 1996, declined until 1998, and then began to rise again); and (2) for Mexico, import levels that fluctuate greatly each year (never falling below 75,000 short tons and never rising above 170,000 short tons, excluding 1994 as an outlier).⁶ Thus, past trends vary greatly depending on the length of the representative period chosen. Given the fluctuations in import levels, we do not find that any particular period is more objectively “representative” than any other. However, the statute also requires that the representative period be “recent.” Therefore, given the lack of clear criteria for choosing between varying lengths of representative periods, we have chosen a period that smooths out some fluctuations while remaining recent.

Comparison Period

Consistent with our definition of the base period, we use the period March 1, 2000, to February 28, 2001, as our comparison period. This choice also is consistent with the statutory scheme, as it captures imports’ behavior post-relief.

Comparison of Trends in Imports⁷

With respect to Canada, imports of all steel wire rod⁸ increased from 551,028 short tons in March 1997 - February 1998 to 642,924 short tons in March 1999 - February 2000. The annualized growth rate between these periods was 8.0 percent. For the comparison period, March 2000 - February 2001, imports rose to 722,981 short tons, an increase of 12.4 percent from the prior 12-month period.⁹

We find that this change in import trends, from a growth rate of 8.0 percent to a growth rate of 12.4 percent, is not a “significant” increase. As discussed above, the statutory scheme of sections 311 and 312 requires a substantial change in import behavior to warrant an affirmative finding under section 312. A change of 4.4 percentage points does not rise to this level. Thus, we find no surge, as defined in section 312(c)(3), in imports of steel wire rod from Canada.

With respect to Mexico, imports of all steel wire rod increased from 122,593 short tons in March 1997 - February 1998 to 131,591 short tons in March 1999 - February 2000. The annualized growth rate

⁶ Confidential Staff Report (CR) at II-14, n.31; Public Staff Report (PR) at II-10, n.31.

⁷ While the statute requires that we compare import trends to determine whether a surge has increased, we note that, if we were to compare only absolute import volumes, we would likely not find a significant increase in imports for either Canada or Mexico, due to the fluctuations in import levels discussed previously. While imports of steel wire rod from both Canada and Mexico increased recently, current levels are not substantially out of line with those reached at other points during the seven-year period dating back to 1994.

⁸ The record in this investigation does not contain sufficient data on certain steel wire rod to analyze import trends. *See* Commission’s opinion regarding scope of investigation. However, excluded steel wire rod is a very small percentage of total steel wire rod imports from both Canada and Mexico. Therefore, an analysis based on all steel wire rod does not lead to different results.

⁹ CR/PR at Table II-7 and Memorandum INV-Y-162 (August 21, 2001) at Table 1.

between these periods was 3.6 percent. For the comparison period, March 2000 - February 2001, imports rose to 177,148 short tons, an increase of 34.6 percent from the prior 12-month period.¹⁰

We conclude that a change in growth rate from 3.6 percent to 34.6 percent, an increase of 31 percentage points, is sufficiently substantial to constitute a “significant” increase in imports. However, as discussed below, even though we conclude that this increase constitutes a “surge” within the meaning of section 312(c), we find that this surge does not undermine the effectiveness of the import relief action.

Whether Any Surge Has Undermined the Effectiveness of the Import Relief

Neither the statute nor the legislative history offers guidance on how we should determine whether a surge “undermines the effectiveness” of the relief action. Depending on the facts of a given investigation, factors such as fungibility, substitutability, absolute volumes, shifts in market share, pricing, the condition of the domestic industry, and the industry’s adjustment plan could be appropriate elements in our “undermining” analysis.

Our analysis also should be based closely on the intent of the relief action. The action at question in this investigation did not intend to reduce import levels; rather, the tariff rate quota set by the action begins with a relatively high level of imports for the base year and increases the quota by two percent each year. The action appears to have been designed to prevent further substantial erosion of the domestic industry’s market share and, by limiting the growth of supply, providing a modest increase in prices. As the action was designed and imposed during a time of increasing apparent consumption of steel wire rod, it attempted to limit further import surges while ensuring that there would be no shortage of supply.

Section 312(c)(2) requires that we assess whether a *surge* in imports undermines the effectiveness of the action. As discussed above, section 312(c)(3) defines the term “surge” as a significant increase in imports *over the trend for a recent representative period*. Therefore, the surge that we are to consider is the volume of imports in excess of that expected from the past import trend. Over the recent representative period discussed above, imports of wire rod from Mexico increased at an annual rate of 3.6 percent. If this trend had continued, imports from Mexico would have reached 136,328 short tons in the 12-month period March 2000 - February 2001. However, the actual import volume for that period was 177,148 short tons.¹¹ Thus, the “surge,” or the excess imports over the expected trend, amounted to 40,820 short tons.

This surge is equivalent to only 0.5 percent of apparent consumption of certain steel wire rod for the year 2000. Even if we consider the lower rate of consumption in the first quarter of 2001 (annualized), the “surge” amounts to only 0.6 percent of apparent domestic consumption.¹² We cannot find that such a small relative amount of imports could have an effect large enough to undermine the effectiveness of the relief action,¹³ and therefore reach a negative determination with respect to Mexico.

¹⁰ CR/PR at Table II-7 and Memorandum INV-Y-162 (August 21, 2001) at Table 1.

¹¹ CR/PR at Table II-7.

¹² CR/PR at Table II-4.

¹³ If the relative volume of the surge were greater, we would consider other facts on the record to determine whether the surge undermined the effectiveness of the relief.