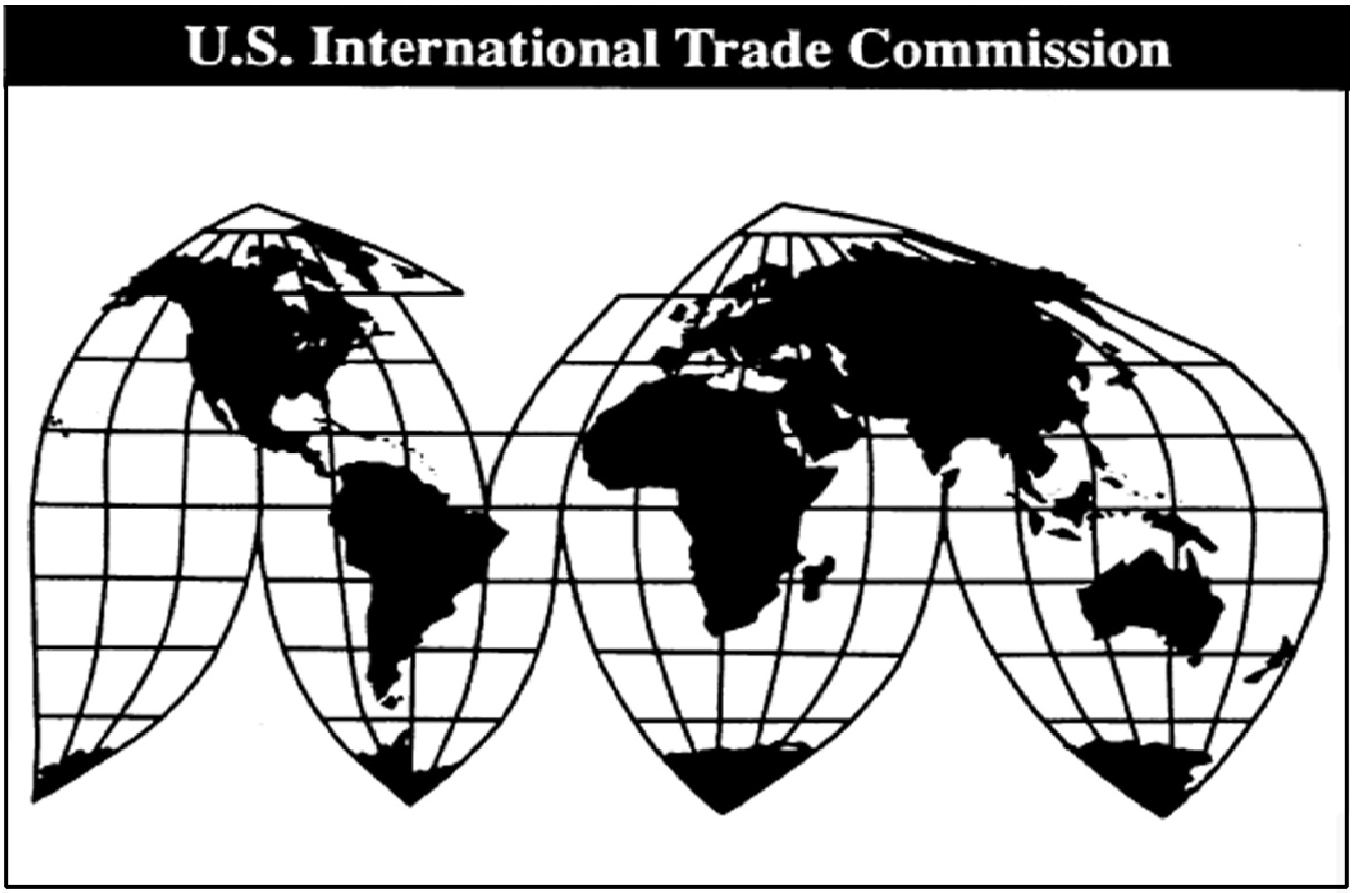
Carbon and Certain Alloy Steel Wire Rod From Egypt, South Africa, and Venezuela

Investigation Nos. 731-TA-955, 960,
and 963 (Preliminary)(Third Remand)

Publication 3987 **March 2008**



Washington, DC 20436

U.S. International Trade Commission

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Douglas Corkran, *Supervisory Investigator*

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

VIEWS OF THE COMMISSION (THIRD REMAND)

By opinion dated January 17, 2007, and opinion and order dated November 8, 2007, the U.S. Court of International Trade ("CIT" or "the Court") remanded, in part, the Commission's determination in Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela, Inv. Nos. 731-TA-955, 960, and 963 (Preliminary) (Second Remand), USITC Pub. 3796 (Sept. 2005) ("Second Remand Determination").[1] Upon consideration of the Court's remand instructions and the domestic industry's comments, and based on the information in the record, as supplemented in this remand proceeding, we determine that imports of carbon and certain alloy steel wire rod ("wire rod") from South Africa that are allegedly sold in the United States at less than fair value ("LTFV") are negligible individually, and that subject imports from Egypt, South Africa, and Venezuela are negligible in the aggregate, for purposes of our threat determinations.[2] [3]

I. BACKGROUND

The procedural history of the subject wire rod investigations and litigation is complex. We provided a summary in the Commission's Second Remand Determination[4] and thus familiarity with earlier aspects of the administrative proceedings and subsequent litigation is presumed and incorporated herein. As relevant to the current considerations, the Commission issued the Second Remand Determination in September 2005, in which it again determined that the investigations on subject imports from Egypt, South Africa, and Venezuela should be terminated on the basis that subject imports from these sources would be negligible.[5] On January 17, 2007, the Court issued an opinion regarding the

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[1] See Co-Steel Raritan, Inc. v. U.S. International Trade Commission, Slip Op. 07-7, (Ct. Int'l Trade January 17, 2007) and Gerdau Ameristeel U.S. Inc. v. United States International Trade Commission, Slip Op. 07-165 (Ct. Int'l Trade November 8, 2007).

[2] Chairman Daniel R. Pearson did not participate in either the original or remand investigations.

[3] Vice Chairman Shara L. Aranoff, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert were not members of the Commission at the time of the original determinations nor did they participate in the prior remand determinations. They made their determinations in this remand proceeding de novo, by weighing all of the evidence in the record and reaching their own independent conclusions.

[4] See Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela, Inv. Nos. 731-TA-955, 960, and 963 (Preliminary) (Second Remand), USITC Pub. 3796 at 3-7 (Sept. 2005). Briefly, this case originated with a petition filed in August 2001 seeking imposition of antidumping and countervailing duties on wire rod from 12 different countries. The Commission terminated the preliminary investigations with respect to Egypt, South Africa, and Venezuela on the grounds that imports from these subject countries were negligible. Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421, 731-TA-953-963 (Preliminary), USITC Pub. 3456 (Oct. 2001). The Commission reached affirmative preliminary determinations with respect to all other subject countries.

[5] Second Remand Determination, USITC Pub. 3796 at 12-21 (Sept. 2005) (In reaching its determination, the Commission found, with respect to South Africa individually, that "there is no potential that subject imports from South Africa will exceed the applicable individual statutory negligibility threshold of three percent of total wire rod imports in the imminent future, and that they will remain at approximately 2.6 percent of total imports in the imminent future" and that with respect to Egypt, South Africa, and Venezuela collectively, there is no potential that aggregate subject imports from these countries would exceed seven percent of total wire rod imports in the imminent future.). All four participating Commissioners (Koplan, Okun, Hillman, and Lane) joined the determination.

Commission's Second Remand Determination,[6] supplemented by its subsequent opinion and order issued on November 8, 2007, in which it remanded the matter to the Commission for further proceedings not inconsistent with its opinion.[7] In particular, the Court directed the Commission to address: (1) whether subject imports from South Africa individually will imminently exceed the negligibility threshold of three percent;[8] and (2) whether the aggregate import ratio will imminently pass the seven-percent threshold. The Court held that the latter inquiry "remains at issue only to the extent that the Commission's non-negligibility remand determination regarding South Africa might affect collective imminent non-negligibility."[9] The Court also focused on the fact that a "gap exists in the evidence on the agency record concerning South African wire-rod production and export potential due to Iscor's failure to respond to the ITC questionnaire."[10] In the remand opinion and order, the Court again focused on this evidentiary issue as central to its remand, stating: "The court's slip opinion 07-7, page 23 states that 'there is not a sustainable relationship between the facts that the ITC finds on remand and the result that it reaches', perhaps due, at least in part, to a 'paucity of producer data'. Slip Op. 07-7, page 21. Hence, without settlement in lieu of more formal proceedings, remand to the defendant for reconsideration is required."[11]

In order to address the Court's concerns regarding the evidence on the agency record, the Commission published a Federal Register notice in December 2007 indicating that it was reopening the record for the limited purpose of seeking new factual information regarding South African producers of wire rod that did not respond to the Commission's request for information in the original investigations.[12] The Commission re-issued questionnaires to the two subject South African producers of wire rod that were believed to have produced/exported wire rod at the time of the original preliminary investigations but had not responded to the Commission's request at that time.[13] Both of these South Africa producers provided timely questionnaire responses in this remand proceeding, which were aggregated with the data

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[6] Co-Steel Raritan, Inc. v. United States, Slip Op. 07-7 (Ct. Int'l Trade Jan. 17, 2007).

[7] Gerdau Ameristeel U.S. Inc. v. United States International Trade Commission, Slip Op. 07-165 (Ct. Int'l Trade Nov. 8, 2007).

[8] See Slip Op. 07-7 at 23.

[9] Slip Op. 07-7 at 15, n.4 ("The court declines reconsideration of the issue of imminent Venezuelan non-negligibility, which was decided by slip opinion 05-63. The ITC's confirmation on remand of its earlier Venezuelan import ratio determination, and its subsequent reliance thereon in factoring its forecast of aggregate imports, does not open the door to reargument as to whether Venezuelan imports are likely to increase significantly in the imminent future. Rather, the issue of whether the aggregate import ratio will imminently pass the seven-percent threshold remains at issue only to the extent that the Commission's non-negligibility remand determination regarding South Africa might affect collective imminent non-negligibility.").

[10] Slip Op. 07-7 at 18.

[11] Slip Op. 07-165 at 4.

[12] 72 Fed. Reg. 73881 (Dec. 28, 2007).

[13] Supplemental Report ("SR") at III-1. The two producers of wire rod in South Africa in 2000 that had not responded originally were: Davsteel, a division of Cape Gate (PTY) Ltd. ("Davsteel") and Iscor Ltd. ("Iscor") (now known as ArcelorMittal South Africa (PTY) Ltd). One producer in South Africa (i.e., Scaw Metals) had provided a response to the Commission's questionnaire in the original preliminary investigations. Id. In re-issuing the foreign producer questionnaires from the original preliminary investigations, the Commission provided a new deadline and the following instruction: "*The information sought in the enclosed questionnaire is limited to information covering the time period prior to the vote date in the original determination (October 12, 2001) and any projections and/or future plans requested in the enclosed questionnaire (see questions #4 (page 3), and #3 (page 4), and data projections (page 5)) must be documented as in existence at the time of the original vote date.*" Letter from U.S. International Trade Commission (Robert Carpenter), dated December 21, 2007. SR at III-1, n.1.

from the questionnaire response originally submitted by Scaw Metals in 2001.[14] The data submitted by these three producers accounted for all known wire rod production in South Africa in 2000.[15]

The Commission also permitted the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions and any new factual information that was obtained by the Commission.[16] On January 30, 2008, Petitioners Gerdau Ameristeel U.S. Inc. and Keystone Consolidated Industries, Inc. filed joint comments pertaining to the Commission's remand determination.

Based on our consideration of all of the information in the record, as supplemented on remand, and of the arguments raised by the parties in the original and remand proceedings, we determine that subject imports of wire rod from South Africa are negligible individually, and that subject imports from Egypt, South Africa, and Venezuela are negligible in the aggregate, for purposes of our threat determinations. The Commission does not reconsider those issues either affirmed by the Court or not subject to appeal, and adopts its prior views and discussion of those issues in the original and second remand proceedings in their entirety, including the legal standards for preliminary determinations, domestic like product, domestic industry, and negligibility for purposes of present material injury and for purposes of threat determinations regarding imports from Egypt and Venezuela individually.

II. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[17] 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."[18]

Using this standard, "the Commission in preliminary investigations will determine whether there is a reasonable indication that imports are not negligible."[19] This is "intended to preclude termination based on negligibility in a preliminary investigation where, for example: (1) the Commission is uncertain regarding appropriate like product designations and corresponding import volumes are not negligible with respect to one of the arguably appropriate designations; or (2) imports are extremely close to the relevant

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[14] SR at III-1.

[15] SR at III-1.

[16] 72 Fed. Reg. 73881-82 (Dec. 28, 2007) ("Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding . . . . In addition, the Commission will permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions and any new factual information [obtained by the Commission] . . . . The parties may not submit any new factual information in their comments and may not address any issue other than inquiries that are the subject of the CIT's remand instructions.").

[17] 19 U.S.C. § 1673b(a); see also, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

[18] 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).

[19] Statement of Administrative Action for the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1 ("SAA") at 857 (1994).

quantitative thresholds and there is a reasonable indication that data obtained in a final investigation will establish that imports exceed the quantitative thresholds."[20]

We find that the record, as supplemented on remand, contains clear and convincing evidence that there is not a potential that subject imports of wire rod from South Africa will imminently account for more than 3 percent of total imports, or that the aggregate volumes of subject imports from Egypt, South Africa, and Venezuela will imminently exceed 7 percent of total imports, and that there is not a reasonable indication that data obtained in a final investigation will establish that imports exceed the quantitative thresholds.

III. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

We reaffirm our prior findings as to domestic like product and domestic industry. We again define the domestic like product to be wire rod corresponding to Commerce's scope of investigation, as it existed at the time of our original Preliminary Determinations. We also define the domestic industry to be all domestic producers of wire rod.[21] [22]

IV. NEGLIGIBILITY

Under 19 U.S.C. § 1673b(a)(1), the Commission is to determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that "imports of the subject merchandise are not negligible." The statute further provides that "[i]f the Commission finds that imports of the subject merchandise are negligible . . . the investigation shall be terminated."[23]

A. Negligibility for Purposes of Present Material Injury

The statutory provision on negligibility, 19 U.S.C. § 1677(24)(A)(i), provides that subject imports are negligible "[i]f such imports account for less than 3 percent of the volume of all such merchandise [corresponding to a domestic like product] imported into the United States in the most recent 12-month period for which data are available that precedes" the filing of the petition or the initiation of the investigation. The statute, 19 U.S.C. § 1677(24)(A)(ii), further provides that "[i]mports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period."

As stated in the Commission's original preliminary determination, negligibility is an issue only with respect to subject imports from Egypt, South Africa, and Venezuela. In that determination, the Commission found that subject imports from Egypt, South Africa, and Venezuela were negligible,

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[20] SAA at 857.

[21] Vice Chairman Aranoff, Commissioner Williamson, and Commissioner Pinkert did not participate in the original or prior remand investigations. They have reviewed the record and adopt the Commission majority's prior views on domestic like product and domestic industry in the original preliminary determination.

[22] Commissioner Pinkert notes that consistent with his general analysis regarding the related parties' provision that he does not rely upon (***) financial performance as a factor in determining whether there are appropriate circumstances to exclude it from the domestic industry and relies instead on other information relevant to this issue.

[23] 19 U.S.C. § 1673b(a)(1).

individually, and in the aggregate, for purposes of its present material injury determination.[24] Those findings relating to negligibility in the present injury context have been upheld in subsequent litigation.[25]

B. Negligibility For Purposes of Threat of Material Injury Determination

Even if imports are found to be negligible for purposes of present material injury, the Commission is required by statute to consider negligibility for purposes of a threat of material injury determination. The statute, 19 U.S.C. § 1677(24)(A)(iv), provides that:

> the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) [individual threshold for present material injury] will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) [aggregate threshold for present material injury] will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.[26]

The legislative history for the negligibility for threat provision adds that

> In threat of material injury analyses, the Commission will examine "actual" as well as "potential" import volumes. Import volumes at the conclusion of the 12-month period examined for purposes of considering negligibility may be below the negligibility threshold, but increasing at a rate that indicates they are likely to imminently exceed that threshold during the period the Commission examines in conducting its threat analysis. In such circumstances, the Commission will not make a material injury determination concerning such imports because they are currently negligible, but it will consider the imports for purposes of a threat determination.[27]

The Court has remanded to us our prior findings that South Africa is individually negligible for purposes of our threat analysis. The Court also has instructed us to reexamine negligibility for threat purposes of the aggregate subject imports from Egypt, South Africa, and Venezuela "only to the extent that . . . [our findings] regarding South Africa might affect collective imminent non-negligibility."[28]

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[24] Original Preliminary Determination, USITC Pub. 3456 at 7-9.

[25] Vice Chairman Aranoff, Commissioner Williamson, and Commissioner Pinkert review the record and adopt the Commission's prior views on negligibility for purposes of their present material injury analysis.

[26] 19 U.S.C. § 1677(24).

[27] SAA at 856.

[28] Slip. Op. 07-7 at 15, n.4 and 23; Slip Op. 07-165 at 4.

1. Negligibility of Subject Imports from South Africa Individually for Purposes of Threat

We first consider actual subject imports from South Africa, and the ratio of subject imports from South Africa to total imports during the period of investigation.[29] The ratio of subject imports from South Africa to total imports was 1.8 percent in 1998, 2.0 percent in 1999, 2.4 percent in 2000, 2.0 percent in interim (January-June) 2000, and 2.6 percent in interim (January-June) 2001.[30] During the statutory negligibility period (August 2000 to July 2001), subject imports from South Africa totaled 79,541 short tons, accounting for 2.6 percent of total U.S. wire rod imports (3,086,932 short tons).[31]

While we recognize that subject imports from South Africa increased in absolute volume and as a share of total imports during the period of investigation, we find that the actual volume remained relatively small, and as a share of total imports never exceeded 3.0 percent in any annual (including rolling 12-month) period or interim period during the period of investigation. On remand, we considered monthly official import statistics for January 2000 to July 2001 and found that the volumes of subject imports from South Africa fluctuated widely between months; further, no subject imports entered in more than a quarter of the months in that 19-month period.[32] Using this official monthly import data, we considered the South African share of total imports for all eight rolling 12-month periods from January - December 2000 to August 2000 - July 2001; the South African share of total imports ranged from a low of 2.3 percent to a high of 2.9 percent for these 12-month periods and never exceeded 3.0 percent.[33]

Petitioners proposed to the Court "that the South African import ratio would exceed three percent even within such shorter period, *viz*. by the end of September [sic] 2001. . . . [by] shift[ing] the 12-month period . . . one month ahead during which a significant shipment of South African wire-rod was predicted" and based on "Plaintiffs' arithmetic . . . would equal some 3.1 percent of total U.S. imports."[34] The Court acknowledged that Plaintiffs' calculation is not based on actual data.[35] We not only question the accuracy of Petitioners' data, but also view the calculation as a "constructed" snapshot of one 12-month period and not an indication of a likely imminent increase in imports from South Africa to beyond negligible levels. In fact, when the predicted import data are placed in the context discussed by the Commission in its Second Remand Determination, as affirmed by the Court, they demonstrate that the volume of subject imports from South Africa in 2001 will be lower than in 2000, with South Africa's share of total imports also lower than its 2.4 percent share in 2000.[36]

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[29] The SAA provides that in performing a negligibility analysis for threat of material injury, the Commission is to consider "actual" and "potential" imports. SAA at 856.

[30] Confidential Staff Report in Original Preliminary Investigation ("CR") at Table IV-1.

[31] CR at Table IV-1; SR at Tables II-1 and II-2.

[32] SR at Table II-1. We find that, due to the wide fluctuations in volumes of subject imports from South Africa between months, it is not appropriate to rely on calculations based on data for any individual month.

[33] SR at Table II-2. South Africa's share of total imports was highest (2.9 percent) for the 12-month period of June 2000 - May 2001. Id.

[34] Slip Op. 07-7- at 16. We note that Petitioners' calculation was for the 12-month period beginning in September 2000 and ending in August 2001.

[35] Slip Op. 07-7 at 16 (recognizing the calculation was "a 'proxy' due to the lack of a 'precise' total tonnage").

[36] CR at Table IV-1 and SR at Table II-1.

As the Commission discussed in its Second Remand Determination, two importers of subject merchandise from South Africa, ***, responded to the original importers' questionnaire.[37] One of those U.S. importers, *** in August 2001.[38] (The Commission's vote date for the original preliminary determination was October 12, 2001.) ***.[39] ***,[40] and reported no plans to import additional wire rod from South Africa in the remaining months of 2001.

We take this evidence in its entirety into account in calculating imminent future subject imports from South Africa.[41] Thus, the record indicates that subject imports from South Africa for 2001 would be about ***, down from 75,412 short tons in 2000.[42] Moreover, this volume of subject imports from South Africa for 2001 would account for an estimated 1.9 percent to 2.0 percent share of total imports based on the total imports in each of the eight 12-month periods between January 2000 and July 2001.[43] Thus, while subject imports from South Africa accounted for 2.4 percent of total imports in 2000 and 2.6 percent during both interim (January-June) 2001 and the August 2000-July 2001 statutory negligibility period, there is clear and convincing evidence in the record that the South African share of total imports would decline for full year 2001 to about two percent of total imports.

Notwithstanding that the evidence of a declining trend for imports from South Africa from 2000 to 2001 is an indication of future trends, we recognize that the trend for the last few months of 2001 may not fully indicate trends for the entirety of the imminent future.[44] Therefore, we continue our analysis by considering the data in the record, as supplemented on remand, regarding the South African wire rod industry, particularly data regarding production, capacity, capacity utilization, shipments, and inventories. We note that in this remand proceeding we have data from three responding South African producers – Iscor, Davsteel, and Scaw – accounting for all known wire rod production in South Africa in 2000.

Total South African production capacity remained unchanged during the period of investigation, but the industry's production increased by *** from 1998 to 2000, and was *** higher in interim 2001

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[37] CR at IV-1. The responding U.S. importers of wire rod from South Africa accounted for *** of U.S. imports of subject merchandise from that country during 2000 based on official import statistics and questionnaire responses. Id. ***; SR at III-5. ***.

[38] SR at III-6. ***.

[39] ***. In response to the same question, ***.

[40] Accord Slip Op. 07-7 at 17-18 ("that importer would only 'have known of any additional deliveries in the remainder of 2001 when it submitted its questionnaire response in mid-September 2006,' *i.e.*, the last few months of 2001.")

[41] We note that the allegedly imminent future import ratio proposed by Petitioners to the Court is actually a calculation for an historical period – the 12-month period of September 2000-August 2001. By constructing this period with the August 2001 delivery data and constructing a denominator for total wire rod imports for this period, Petitioners imply that future deliveries would continue at this magnitude. This assumption is unsupported by, and, in fact, appears to be inconsistent with, the record evidence. See Slip Op. 07-7 at 10-12 and 16-17.

[42] CR at Table IV-1 (2000). We calculate subject imports from South Africa in 2001 as follows: January-July 2001 based on official import statistics (41,310 short tons), ***, and no imports for the September-December 2001 period. Calculated from SR at III-6 and Table II-1.

[43] Calculated from SR at III-6 and Tables II-1 and Table II-2. As discussed above, the record indicates that the volume of subject imports from South Africa for the full year of 2001 would be ***; this is our numerator. To calculate the South African share of total 2001 imports of wire rod – the actual total 2001 import data is out-of-period and thus not record evidence – we use as the denominator the actual totals for the eight 12-month periods between January 2000 and July 2001. Thus, while the actual denominator is uncertain, our calculation involves a range of data based on the best and most recent data in the record.

[44] See Slip Op. 07-7 at 17-18.

compared to interim 2000.[45] Capacity utilization, accordingly, increased.[46] The majority of the South African industry's shipments were internally consumed or otherwise shipped to the home market.[47] The next largest share of the industry's shipments were to established non-U.S. export markets.[48] Although export shipments to the U.S. market increased, they accounted for a relatively small share (*** in 2000) of the industry's total shipments.[49] Inventory levels as a share of total shipments or production fluctuated between years, but remained at about *** or less.[50]

South Africa's *** wire rod producer, Iscor, accounted for about *** of South African wire rod production in 2000, and accounted for *** subject imports from South Africa during the period of investigation.[51] Although Iscor's exports to the U.S. market increased, particularly ***, they remained *** in 2000) as a share of Iscor's total shipments.[52] The majority of Iscor's shipments are to *** markets, followed by shipments to *** market.[53] As Iscor's production increased over the period of investigation, its capacity utilization also increased from *** in 2000, and was *** in interim 2000.[54] Nonetheless, Iscor reported ***.[55] Finally, its end-of-period inventories fluctuated in the years from 1998 to 2000, although they were lower in interim 2001 compared to interim 2000, and remained *** of total shipments.[56]

A second wire rod producer, Davsteel, accounted for about *** of South African wire rod production in 2000.[57] Davsteel internally consumes about *** of its production.[58] The remaining shipments are divided between its home market and other export markets.[59] With the exception of ***, Davsteel did not export to the U.S. market. Davsteel's exports to the U.S. market ***, accounting for ***

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[45] SR at Table III-1.

[46] SR at Table III-1. The South African industry's capacity utilization was *** in interim 2001. Id. As discussed below, published sources indicate that the capacity data provided by Scaw Metals in its September 2001 questionnaire response ***. Since ***, the total industry capacity utilization is understated.

[47] SR at Table III-1. The South African industry's internal consumption as a share of its total shipments was *** in interim 2001. Id. The industry's home market shipments as a share of its total shipments were *** in interim 2001. Id.

[48] SR at Table III-1. The South African industry's non-U.S. export shipments as a share of its total shipments were *** in interim 2001. Id.

[49] SR at Table III-1. The South African industry's export shipments to the U.S. market as a share of its total shipments were *** in interim 2001. Id.

[50] SR at Table III-1.

[51] SR at III-3 and III-5. As noted above, Iscor's export shipments to the U.S. market were imported by ***.

[52] Calculated from *** in interim 2001. Id.

[53] Calculated from *** in interim 2001. Id. Iscor's ***. SR at III-4. Iscor's *** in interim 2001. Calculated from ***.

[54] Calculated from ***. While Petitioners contend that Iscor has unused capacity and could further increase its capacity utilization, we find that the evidence indicates that Iscor was producing *** capacity, particularly in 2000 and interim 2001. See Petitioners' Comments at 10-11. As ***; SR at III-3.

[55] SR at III-3.

[56] Calculated from ***.

[57] SR at III-3.

[58] Calculated from ***. Davsteel's internal consumption as a share of its total shipments was *** in interim 2001. Id.

[59] Calculated from ***. Davsteel's home market shipments as a share of its total shipments were *** in interim 2001. Id. Its non-U.S. export shipments as a share of its total shipments were *** in interim 2001. Id.

of total South African exports to the United States and *** of Davsteel's total firm shipments in interim 2001.[60] Although Davsteel's production increased from 1998 to 2000, its capacity utilization, which ***, also increased from *** in 2000; its production and capacity utilization were *** lower in interim 2001 compared to interim 2000.[61] Davsteel reported ***.[62] Its end-of-period inventories declined from 1998 to 2000, and were lower in interim 2001 compared to interim 2000; inventories as a share of its total shipments were ***, generally ranging from ***.[63]

Finally, Scaw Metals accounted for *** of wire rod production in South Africa in 2000.[64] Although Scaw Metals *** for 2001,[65] as noted above, we find that its capacity data is ***.[66] It reported *** exports to the United States during the period of investigation and projected *** exports to the United States into the future.[67] While Scaw Metals' production increased *** during the period of investigation, it internally consumed *** of its production with *** shipped to its home market.[68] Finally, its inventory levels increased but remained a relatively *** of total shipments or production.[69]

We also note that, while apparent U.S. consumption increased from 1998 to 2000, it was substantially lower (by ***) in interim 2001 compared to interim 2000.[70] Given this decrease in apparent U.S. consumption, and the evidence that subject imports from South Africa would decline in full year 2001, we do not find that South African producers and exporters would have an incentive to increase wire rod shipments to the U.S. market in the imminent future.[71]

In sum, the South African industry's relatively high capacity utilization, ***,[72] low inventory, and primary focus on internal consumption, home markets, and non-U.S. export markets afford clear and convincing evidence that the South African wire rod producers will not imminently increase shipments to the U.S. market.

We thus conclude based on our analysis of the entire record, including the foregoing evidence, that wire rod imports from South Africa will remain at, or be lower than, the calculated 2.6 percent of total imports in the imminent future. Thus, we find that there is not a potential that subject imports from

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[60] SR at III-5 and ***.

[61] Calculated from ***.

[62] SR at III-3.

[63] Calculated from ***.

[64] SR at III-3.

[65] CR at Table VII-8.

[66] SR at III-4 and n. 4. In its September 2001 questionnaire response, ***. Scaw also reported that it produced *** on the same equipment used to produce wire rod and that wire rod accounted for *** of its total sales. SR at III-4. Published sources in 2001 indicate that Scaw Metals had a single 440,000 short ton Morgan bar/rod mill with three outlets for straight merchant bars, coiled bar, and coiled rod. Thus, the evidence indicates the capacity originally reported by Scaw Metals ***. Id. at n.4.

[67] CR at Table VII-8; SR at III-3 and Table III-1.

[68] CR at VII-8. Scaw Metal's internal consumption as a share of its total shipments was *** in interim 2001. Id. Its home market shipments as a share of its total shipments were *** in interim 2001. Id.

[69] CR at VII-8.

[70] CR at Table IV-4.

[71] We also note that wire rod is produced in many countries of the world (both subject and nonsubject) and substantial increases in total subject imports, particularly large and increasing volumes of subject imports from Brazil, Canada, Mexico, and Trinidad and Tobago, during the period of investigation has increased competition in the U.S. market. CR at II-1 and Table IV-1.

[72] Neither Iscor nor Davsteel ***.

South Africa will imminently exceed the three percent negligibility threshold and, therefore, find them negligible individually for purposes of our threat determination.

2. Negligibility of Subject Imports from Egypt, South Africa, and Venezuela in the Aggregate for Purposes of Threat

The Court has instructed us to reexamine the aggregate subject imports from Egypt, South Africa, and Venezuela "only to the extent that our findings regarding South Africa might affect collective imminent non-negligibility."[73] As discussed above, we find that there is not a potential that subject imports from South Africa will imminently account for more than 3 percent of the volume of total subject imports, and conclude that such imports would remain at, or be lower than, approximately 2.6 percent of total imports in the imminent future. In the Commission's original and prior remand determinations, it found, as affirmed by the Court, that subject imports from Egypt and Venezuela would not imminently account for more than 1.4 percent and 2.1 percent, respectively, (or together 3.5 percent) of total subject imports.[74] Thus, based on the record, we find that the aggregate volume of subject imports from Egypt, South Africa, and Venezuela would account for approximately 6.1 percent of total imports and that there is not a potential that this aggregate volume of subject imports would imminently exceed seven percent of total imports.[75] [76] Accordingly, we find that subject imports from Egypt, South Africa, and Venezuela in the aggregate are negligible for purposes of a threat of material injury determination.

[73] Slip. Op. 07-7 at 15, n.4. As noted above, the Court has affirmed our prior findings that Egypt and Venezuela are individually negligible for purposes of our threat analysis, and thus we do not reconsider these issues on remand. See Slip. Op. 05-63 at 8-10, and Slip Op. 07-7 at 15, n.4. Vice Chairman Aranoff, Commissioner Williamson, and Commissioner Pinkert reviewed the record and adopt the Commission's prior views that Egypt and Venezuela are individually negligible for purposes of their threat analysis.

[74] See Second Remand Determination at 32-34 and Slip. Op. 05-63 at 8-10, and Slip Op. 07-7 at 15, n.4.

[75] The ratio of these aggregate subject imports to total imports was 6.1 percent in the statutory negligibility (August 2000 to July 2001) period. CR at Table IV-2. We note that even if the South African share of total imports increased to the highest level (2.9 percent for the June 2000 to May 2001) in the reported 12-month periods, the aggregate threshold of 7 percent would not imminently be exceeded (i.e., 3.5 percent for Egypt and Venezuela, collectively, and 2.9 percent for South Africa equals a total aggregate of 6.4 percent). In fact, we note that no calculation of "imminent negligibility" for South African imports would result in an aggregate calculation in which subject imports exceeded 7 percent (i.e., were imminently negligible).

[76] Contrary to Petitioners' assumption, if we had found South African imports to imminently exceed 3 percent, such imports would not be treated as imminently negligible and therefore would not be included in the calculation of aggregate negligibility for threat purposes. Similar to an aggregate negligibility calculation for present material injury purposes (which does not include subject imports deemed not to be negligible), such an aggregate calculation for threat purposes would be limited to those subject imports deemed to be negligible individually for threat purposes.

V. RESPONSE TO CERTAIN OF PETITIONERS' COMMENTS

In comments filed with the Commission in this remand proceeding, Petitioners raised two procedural arguments: (1) the Commission should not consider information obtained from reopening the record in this remand proceeding; and (2) the Commission should not rely on certain information submitted to the Commission in this remand proceeding. We address these comments below.

First, "the Domestic Industry requests that the Commission refuse to consider information belatedly submitted years after the deadline in this remand proceeding" generally because it allegedly would be "bad public policy" or "poor precedent" to do so.[77] However, Petitioners also recognize that the issue of the "paucity of [South African] producer data" was central to the Court's findings regarding South Africa and that the Court acknowledged that the Commission has the discretion to determine whether it needs to reopen the record in a remand proceeding.[78]

We agree with Petitioners that ideally the original deadlines should have been met. We disagree, however, that we should not have requested or should now disregard data willingly submitted at the Commission's request during the remand proceeding that is central to the questions at issue. The Commission is required to seek all accessible information[79] and has the discretion to determine the information necessary to comply with the Court's concerns, i.e., in this case, the sufficiency of evidence on the agency record regarding South African production of wire rod.[80] We believe it appropriate to have sought and considered this information from South African producers on remand, especially given that one of the South African producers is a successor firm and recently participated with Petitioners in the settlement discussions.[81] We emphasize that the data collected on remand was limited to "the best

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[77] Petitioners' Comments at 4-7.

[78] Petitioners' Comments at 3.

[79] See Roquette Freres v. United States, 583 F. Supp. 599, 604 (CIT 1984) ("[i]t is incumbent on the ITC to acquire all obtainable or accessible information from the affected industries on the economic factors necessary for its analysis.").

[80] This broad discretion is left to the Commission so that it can "pursue methods of inquiry capable of permitting [it] to discharge [its] multitudinous duties." Avesta AB v. United States, 689 F. Supp. 1173, 1188 (CIT 1988) (It is well settled that the Commission has "broad discretion to fashion its own rules of administrative procedure . . . [and] 'to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.") quoting Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978); FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940). No standardized procedures are set forth in U.S. law for conducting a remand because an agency must have the discretion to fashion each remand proceeding to address the specific concerns raised by the Court in its remand decision. See FPC v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326, 333 (1976) (on remand, an agency should be allowed to "exercise its administrative discretion in deciding how, in light of internal organization considerations, it may best proceed to develop the needed evidence and how its prior decision should be modified in light of such evidence as develops."); see also Nippon Steel Corp v. United States, 19 CIT 827, 828 (1995) (on remand, "the Commission had broad discretion to fashion its procedures"), citing, Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 288 (1990); Citrosuco Paulista, S.A. v. United States, 708 F. Supp. 1333 (1989); Chung Ling Co., Ltd. v. United States, 829 F. Supp. 1353, 1359 (1993). As the Federal Circuit has stated, the reviewing court "has no independent authority to tell the Commission how to do its job;" as long as the Commission's analysis does not violate any statute "the Commission may perform its duties in the way it believes most suitable." U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

[81] The private parties involved in the settlement discussions included counsel for Plaintiffs, counsel for defendant-intervenor, Alexandria National Iron and Steel Co. ("ANSDK"), an Egyptian respondent, and counsel for defendant-intervenor, Siderurgica Del Orinoco, C.A. ("Sidor"), a Venezuelan respondent. Plaintiffs' counsel also took the initiative to contact counsel for the subject South African wire rod producer, Mittal South Africa Limited (formerly Ispat Iscor Limited during the original preliminary investigations) and engage this producer in the settlement

information which 'might' have been obtained at the time of the original investigation" necessary to address the Court's concerns.[82] Moreover, a basic tenet for remands of administrative agency actions is that an agency may revise its analysis and gather additional information. As the U.S. Supreme Court has held, on remand the agency is "bound to deal with the problem afresh, performing the function delegated to it by Congress."[83] And, as the Federal Circuit has recognized, "[w]hether on remand the Commission reopens the evidentiary record, while clearly within its authority, is of course solely for the Commission itself to determine."[84] We determined it was appropriate to reopen the record and seek limited information on remand so as to have the best information to address the Court's concerns.

Petitioners also contend that the Commission "should not rely on information that was clearly derived after the original POI and should in particular refuse to consider" evidence that, in Petitioners' view consists of "***."[85] On this issue, the Commission agrees with Petitioners and did not rely on either the projections for 2001 and 2002 provided by Iscor and Davsteel in their questionnaire responses or on certain statements made in Iscor's response regarding relationships/practices after October 2001.[86]

As noted above, in re-issuing the foreign producer questionnaires from the original preliminary investigations, the Commission, in accord with the Court's order,[87] explicitly instructed respondents Iscor and Davsteel that information was to be limited to the period before the original preliminary vote date and that any projections needed to be supported by documentation that the information existed at the time of the original preliminary vote day. The following instruction was provided in the cover letter to the re-issued questionnaires:

> *The information sought in the enclosed questionnaire is limited to information covering the time period prior to the vote date in the original determination (October 12, 2001) and any projections and/or future plans requested in the enclosed questionnaire (see questions #4 (page 3), and #3 (page 4), and data projections (page 5)) must be documented as in existence at the time of the original vote date.*[88]

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discussions, even though its predecessor had not participated in the Commission's investigations. See, e.g., Attachment to Final Status Report, dated Sept. 21, 2007 (E-Mail from Alan Luberda of Kelley Drye Collier Shannon to Robin Turner of the U.S. International Trade Commission, dated September 20, 2007).

[82] Accord Slip Op. 07-165 at 5-6 ("The Budd Co. v. United States, 1 CIT at 79, 507 F. Supp. at 1006-07 (remand of preliminary determination to ITC to supplement its administrative record with the best information which 'might' have been obtained at the time of the original investigation)").

[83] SEC v. Chenery Corp., 332 U.S. 194, 201 (1947).

[84] Nippon Steel Corp. v. International Trade Commission, 345 F.3d 1379, 1382 (Fed. Cir. 2003). Accord Nippon Steel Corp. v. United States, 350 F. Supp.2d 1186, 1222 (CIT 2004) ("The court has considered whether to leave to the Commission's discretion, as it ordinarily would, the issue of reopening the record for further investigation, particularly because non-subject imports were not fully studied, but such information would not change the result. . . . and its attempts to obtain new supportive information on price effects have not been successful. . . . the Commission is unable to obtain new evidence to significantly supplement the record. . . .").

[85] Petitioners' Comments at 9.

[86] In particular, we have not considered projections for 2001 and 2002 provided by Iscor and Davsteel on page 5 of their questionnaire responses, and Iscor's out-of-period statements in its questionnaire response, as follows: page 3, question #1, 3rd paragraph, except for part of the 1st sentence, and all of 4th paragraph; page 4, question #2, entire narrative response except for the 1st sentence.

[87] See Slip Op. 07-165 at 5 ("any enlargement of the record on remand should not entail a period subsequent to the initial preliminary determination").

[88] Letter from U.S. International Trade Commission (Robert Carpenter), dated December 21, 2007. SR at III-1, n.1.

While both respondents provided projections for 2001 and 2002, neither provided the requested documentation that such information existed at the time of the original preliminary vote date.[89] Accordingly, in reaching its negligibility for threat determinations, the Commission has not relied on the projections for 2001 and 2002 submitted by Iscor and Davsteel, or on any out-of-period statements made by Iscor.

VI. CONCLUSION

For the reasons set out above, we find, for purposes of our threat determination, that there is clear and convincing evidence that subject imports from South Africa are individually negligible and that subject imports from Egypt, South Africa, and Venezuela are negligible in the aggregate. Therefore, pursuant to 19 U.S.C. § 1673b(a)(1), we terminate the investigations regarding Egypt, South Africa, and Venezuela.

[89] Iscor ***. We do not consider such a statement to be sufficient documentation to comply with the Commission's request. As noted above, Iscor also provided statements that clearly addressed a time period after October 2001. These statements do not adhere to our instruction that "information sought . . . is limited to information covering the time period prior to the vote date in the original determination (October 12, 2001)," and thus were not considered by the Commission. SR at III-1, n.1.

PART I: INTRODUCTION

BACKGROUND

On November 8, 2007, the U.S. Court of International Trade ("CIT") ordered a third remand of the U.S. International Trade Commission's ("Commission" or "USITC") preliminary determinations in the antidumping investigations concerning carbon and certain alloy steel wire rod ("wire rod") from Egypt, South Africa, and Venezuela (Inv. Nos. 731-TA-955, 960, and 963 (Preliminary)(Third Remand)).[1] The underlying investigations and the history of the litigation concerning wire rod are extensive and complicated. The current remand originated with a petition filed in August 2001 seeking imposition of antidumping and countervailing duties on wire rod from 12 different countries and the Commission's termination of the investigations with respect to Egypt, South Africa, and Venezuela following its preliminary phase of the investigations on the grounds that imports from these subject countries were negligible.[2] The most recent development in this litigation history concerns the Commission's September 2005 determinations[3] on remand that there is no potential that subject imports of wire rod from South Africa will exceed the applicable individual statutory negligibility threshold of three percent of total wire rod imports in the imminent future, and that with respect to Egypt, South Africa, and Venezuela collectively, there is no potential that aggregate subject imports from these countries would exceed seven percent of total wire rod imports in the imminent future.[4] The CIT issued its opinion on the Commission's remand determination on January 17, 2007,[5] and an order on November 8, 2007,[6] remanding the matter to the Commission for further proceedings not inconsistent with its opinion. Therefore, the Commission reopened the record in the court-ordered remand of its preliminary determinations in the antidumping investigations concerning wire rod from Egypt, South Africa, and Venezuela for the limited purpose of seeking new factual information regarding South African producers of wire rod that did not respond to the Commission's request for information in the original investigations and to permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions. Such information is presented in Part III of this remand staff report, following a presentation of U.S. import data on a monthly basis in Part II of this report.

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[1] *Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela: Notice of Remand Proceedings*, 72 FR 73881, December 28, 2007.

[2] *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary)*, USITC Publication 3456 (October 2001).

[3] *Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela, Inv. Nos. 731-TA-955, 960, and 963 (Preliminary)(Second Remand)*, USITC Publication 3796 (September 2005).

[4] 19 U.S.C. § 1677(24).

[5] *Co-Steel Raritan, Inc. v. United States*, Slip Op. 07-7 (January 17, 2007).

[6] *Gerdau Ameristeel U.S. Inc. v. United States International Trade Commission*, Slip Op. 07-165 (November 8, 2007).

SUMMARY OF PROCEEDINGS

Selected information relating to the schedule of the Commission's current remand proceedings is presented below.[7]

Effective date	Action
November 8, 2007	CIT's remand order
December 21, 2007	Commission's notice of remand proceedings and reopening of record (72 FR 73881, December 28, 2007
March 10, 2008	Commission's remand determinations transmitted to CIT

[7] The CIT's remand order and the Commission's notice of remand proceedings appear in appendix A.

PART II: U.S. IMPORTS

The U.S. import data presented in this section of the report are compiled from official Commerce statistics and are based on HTS statistical reporting numbers 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0000, and 7227.90.6050 for the time periods prior to March 2000 and 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7227.20.0010, 7227.20.0090, 7227.90.6051, and 7227.90.6058 for the time periods from March 2000 to July 2001. These data correspond to those used in table IV-2 of the Commission's report in the preliminary phase of these investigations.[1]

The quantity of monthly U.S. imports of the subject merchandise from South Africa and all other sources combined for January 2000-July 2001 are presented in table II-1. According to official import statistics, South African imports of wire rod accounted for more than 3 percent of total U.S. imports of the subject merchandise in 8 of the 19 months from January 2000 to July 2001, and for 3 percent or less in 11 months. There were no imports of wire rod from South Africa reported during the months of February, August, and November in 2000 and January and February in 2001.

Presented in table II-2 are data concerning U.S. wire rod imports from South Africa and all other sources combined for selected 12-month time periods. These data show that U.S. wire rod imports from South Africa accounted for 2.3 percent - 2.9 percent of total U.S. wire rod imports during the selected 12-month time periods in 2000-01.

[1] *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary),* USITC Publication 3456 (October 2001), table IV-2.

Table II-1
Wire rod: Monthly U.S. imports from South Africa and all other sources combined, by sources, January 2000-July 2001

Time period	South Africa	All other sources	Total sources
		Quantity (*short tons*)	
2000:			
January	6,060	212,323	218,383
February	0	237,206	237,206
March	3,287	205,792	209,079
April	7,102	207,253	214,355
May	3,251	230,599	233,850
June	7,556	236,414	243,970
July	9,924	280,422	290,346
August	0	338,897	338,897
September	9,719	302,697	312,416
October	9,305	270,933	280,238
November	0	224,277	224,277
December	19,207	273,486	292,692
2001:			
January	0	138,963	138,963
February	0	96,458	96,458
March	7,176	349,500	356,676
April	18,409	223,404	241,813
May	7,715	195,171	202,886
June	2,546	328,374	330,919
July	5,464	265,232	270,697

Source: Compiled from official Commerce statistics.

Table II-2
Wire rod: U.S. imports from South Africa and all other sources combined, by sources and selected 12-month time periods, January 2000-July 2001

Tim period	South Africa	All other sources	Total sources
		Quantity (*short tons*)	
January 2000-December 2000	75,412	3,020,299	3,095,711
February 2000-January 2001	69,352	2,946,939	3,016,291
March 2000-February 2001	69,352	2,806,191	2,875,542
April 2000-March 2001	73,240	2,949,899	3,023,139
May 2000-April 2001	84,547	2,966,050	3,050,597
June 2000-May 2001	89,011	2,930,622	3,019,633
July 2000-June 2001	84,001	3,022,582	3,106,582
August 2000-July 2001	79,541	3,007,392	3,086,932
		Share (*percent*)	
January 2000-December 2000	2.4	97.6	100.0
February 2000-January 2001	2.3	97.7	100.0
March 2000-February 2001	2.4	97.6	100.0
April 2000-March 2001	2.4	97.6	100.0
May 2000-April 2001	2.8	97.2	100.0
June 2000-May 2001	2.9	97.1	100.0
July 2000-June 2001	2.7	97.3	100.0
August 2000-July 2001	2.6	97.4	100.0

Source: Compiled from official Commerce statistics.

PART III: THREAT CONSIDERATIONS

Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. In the preliminary phase of the original investigations, one producer in South Africa (i.e., Scaw Metals) provided a response to the Commission's questionnaire. In these remand investigations, the Commission re-issued questionnaires to the two remaining firms in South Africa that were believed to have produced/exported wire rod at the time of the original investigations.[1] Information submitted in response to the questionnaires submitted in these remand investigations has been aggregated with the questionnaire response originally submitted by Scaw Metals and is presented below.

THE INDUSTRY IN SOUTH AFRICA

There were three producers of wire rod in South Africa in 2000: Davsteel, a division of Cape Gate (PTY) Ltd. ("Davsteel"); Iscor Ltd. ("Iscor")(now known as ArcelorMittal South Africa (PTY) Ltd. ("ArcelorMittal SA"));[2] and Scaw Metals. Aggregate data provided by the three producers concerning their wire rod operations in South Africa during calendar years 1998-2000, January-June 2000, January-June 2001, and projected 2001-02 are presented in table III-1.

Table III-1
Wire rod: Data on the industry in South Africa, 1998-2000, January-June 2000, January-June 2001, and projected 2001-02

* * * * * * *

Capacity and Production

Iscor, *** producer of wire rod in South Africa during the period examined in the preliminary phase of the original investigations, accounted for *** percent of all wire rod production in South Africa during 2000; *** producer, Davsteel, accounted for *** percent of all wire rod production in South Africa. Scaw Metals was *** wire rod producer in South Africa and the only firm that provided a questionnaire response in the preliminary phase of the original investigations. It accounted for *** percent of total wire rod production in South Africa during 2000.

Aggregate data provided by the three firms show that, although the combined capacity to produce wire rod in South Africa remained unchanged, the combined production of wire rod increased by ***

[1] The Commission re-issued the foreign producer questionnaires from the original preliminary investigations with a new deadline and the following instruction: *"The information sought in the enclosed questionnaire is limited to information covering the time period prior to the vote date in the original determination (October 12, 2001) and any projections and/or future plans requested in the enclosed questionnaire (see questions #4 (page 3), and #3 (page 4), and data projections (page 5)) must be documented as in existence at the time of the original vote date.*" Letter from U.S. International Trade Commission (Robert Carpenter), dated December 21, 2007.

[2] Ispat Iscor Limited, which was established in 1928, was officially renamed Mittal Steel South Africa Limited after the December 2004 merger of Ispat International and LNM Holdings to form Mittal Steel Company N.V. In 2006, Mittal Steel Company N.V. announced its merger with Arcelor SA, creating a new entity ArcelorMittal; articles of incorporation were signed in November 2007. *Annual Report 2004*, Mittal Steel South Africa Limited; *Articles of Incorporation*, Arcelor Mittal, November 5, 2007; and "Mittal Steel South Africa," found at http://www.ispat.com/Facilities/Rest+of+World/Mittal+Steel+South+Africa/ and retrieved on February 11, 2008.

percent from 1998 to 2000 and was *** higher in January-June 2001 than in January-June 2000. Company projections for production and capacity indicators reveal that *** in 2002, while *** expected production to increase in the same period.[3] Indeed, Iscor and Davsteel both reported in their questionnaire responses that ***. Scaw Metals, on the other hand, reported that ***.

Both Iscor and Davsteel individually reported *** capacity utilization rates ranging from *** percent to *** percent during the period examined in the preliminary phase of the original investigations. In fact, Iscor explained that ***. Scaw Metals, on the other hand, reported *** capacity utilization figures ranging from *** percent to *** percent. There was no indication in Scaw Metals' questionnaire response (submitted to the Commission in September 2001) as to the *** capacity utilization rates. As discussed below, however, Scaw Metals also reported that it produced *** on the same equipment used to produce wire rod and that wire rod accounted for *** percent of its total sales.[4]

All three South African producers reported that ***. Iscor added in its response that it "***."

Shipments

Total shipments of wire rod by South African producers increased during the entire period examined and company forecasts reveal that further increases were projected for 2001 and 2002. *** accounted for the greatest portion of the reported increase in total shipments from 1998 to 2000 and from January-June 2000 to January-June 2001. However, ***.

During 2000, Iscor reported that *** of its total shipments were exports, most of which were ***. *** of the firm's total shipments were ***. Davsteel and Scaw Metals reported that *** wire rod they produced was ***. A *** amount of wire rod was shipped ***. Export markets to which Davsteel shipped its wire rod during the period for which data were requested in the preliminary phase of the original investigations included ***. Principal export markets to which Scaw Metals exported wire rod included the following: ***. Scaw Metals did not export wire rod to the United States during the period examined. In the aggregate, the three South African producers' exports to markets other than the United States accounted for *** percent of the firms' total shipments of wire rod during 2000, up from *** percent in 1998.

Total South African exports of wire rod to the United States increased in both absolute and relative terms from 1998 to 2000. An increase was also reported in the first half of 2001 compared with the first half of 2000. Iscor accounted for *** percent of the exports of such merchandise to the United States during 1998-2000. ***. *** accounted for *** percent of total South African wire rod exports to the United States during the first half of 2001 and its exports to the United States accounted for *** percent of its total company shipments of wire rod.

In their questionnaire responses, two of the three South African producers (***) reported that at the time of the preliminary phase of the original investigations they ***. Importer *** indicated in its September 2001 questionnaire response that South African producer Iscor Limited had a ***.[5] Importer *** in August 2001.

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[3] Iscor noted in its questionnaire response that its projections for 2001 and 2002 were based on ***.

[4] Published sources indicate that Scaw Metals had a single 400,000-tonne (approximately 440,000 short ton) Morgan bar/rod mill with three outlets for straight merchant bars, coiled bar, and coiled rod. *Iron and Steel Works of the World, 14th Edition*, Metal Bulletin Books (Surrey, England, 2001), p. 498. Thus, the capacity originally reported by Scaw Metals ***.

[5] Iscor's questionnaire response ***, stating:

* * * * * * *

Iscor's questionnaire response at page 3, question 1.

Inventories

Inventories held by the South African producers increased overall by *** percent from 1998 to 2000, but fell during the partial-year periods. Projections indicated that such inventories were generally expected to fall in 2001-02 from the level reported in 2000. The ratio of inventories to production and inventories to total shipments followed the same trend, ranging from a low of *** percent reported during the first half of 2001 to a high of *** percent reported during calendar year 1999. ***, however, were reported by ***. ***.

Alternative Products

Iscor reported that the subject merchandise represented *** percent of its total sales during fiscal year July 2000-June 2001. In response to a question concerning the production of other products, Iscor reported ***. ***. Scaw Metals reported in its September 2001 questionnaire response that its sales of wire rod accounted for *** percent of its total sales during its most recent fiscal year. It also reported ***. ***. Davsteel, which responded ***, indicated in its questionnaire response that sales of wire rod accounted for *** percent of its total sales.

Dumping in Third-Country Markets

The three South African wire rod producers reported that their exports of wire rod were not subject to antidumping findings or remedies in any WTO-member country during the period examined in the preliminary phase of the original investigations.

THE COMBINED INDUSTRIES IN EGYPT, SOUTH AFRICA, AND VENEZUELA

As background, information regarding the industries in Egypt and Venezuela is provided from the staff report in the preliminary phase of the original investigations. There were four producers of wire rod in Egypt in 2000. Data provided to the Commission during the preliminary phase were submitted by Alexandra National Iron and Steel (ANSDK), which reported that in 2000 it accounted for *** percent of Egyptian production of wire rod and *** percent of such exports to the United States.[6] ANDSK reported ***. While there reportedly were three producers of wire rod in Venezuela, a questionnaire response was provided in the preliminary phase of the original investigations by only one firm, Sidor, which reported that in 2000 it accounted for 100 percent of Venezuelan production of wire rod and 100 percent of subject exports to the United States.[7] Sidor reported ***. As previously noted, there were three producers of wire rod in South Africa in 2000, all of which have now provided data in response to the Commission's questionnaire.[8]

Aggregate data provided by producers of wire rod in Egypt, South Africa, and Venezuela during calendar years 1998-2000, January-June 2000, January-June 2001, and projected 2001-02 are presented in table III-2. South Africa accounted for *** of total reported production of wire rod during 2000; Venezuela and Egypt accounted for *** percent and *** percent, respectively.

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[6] The Commission's preliminary staff report indicates that, according to official Commerce statistics, exports by this firm accounted for *** percent of U.S. imports of wire rod from Egypt in 2000.

[7] According to official Commerce statistics, exports by this firm accounted for *** percent of U.S. imports of wire rod from Venezuela in 2000.

[8] Exports of wire rod from South Africa accounted for *** percent of U.S. imports of wire rod from South Africa during 2000, according to official Commerce statistics.

Table III-2
Wire rod: Aggregate data for producers in Egypt, South Africa, and Venezuela, 1998-2000, January-June 2000, January-June 2001, and projected 2001-02

* * * * * * *

Aggregate data for the wire rod producers in these three countries show that the combined capacity to produce wire rod increased *** percent from 1998 to 2000 but remained unchanged during the partial-year periods. The combined production of wire rod increased by *** percent from 1998 to 2000 but fell by *** percent between the partial-year periods. Capacity utilization followed the same trend as production, ranging from a low of *** percent in 1998 to a high of *** percent in 2000. Company projections for production and capacity indicators reveal that the wire rod producers in these countries expected these indicators to increase in 2002 over the levels reported in 2000.

Total shipments of wire rod by producers in these three subject countries combined, similar to the trend in aggregate production levels, increased by *** percent from 1998 to 2000 but fell by *** percent during the partial-year periods. The largest portion (i.e., *** percent in 2000) of total shipments was accounted for by shipments to the three countries' home markets (internal consumption and commercial combined). Exports to the United States by these three subject countries accounted for *** percent of total shipments during 2000 and all other exports accounted for *** percent of the total. Other export markets listed by the Egyptian wire rod producer include ***. Other export markets for the South African wire rod producers include ***. The other (non-U.S.) market identified for the Venezuelan wire rod was ***.

The ratio of inventories to production and inventories to total shipments ranged from a high of *** percent reported in 1998 and 1999 to a low of *** percent reported in the first half of 2000 and in the projected annual 2002 period.

APPENDIX A

FEDERAL REGISTER NOTICE AND CIT'S REMAND ORDER

assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 10, 2007, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (72 FR 50696, September 4, 2007) was adequate and that the respondent interested party group responses with respect to Canada and Moldova were adequate and decided to conduct full reviews with respect to the antidumping duty orders concerning wire rod from Canada and Moldova. The Commission found that the respondent interested party group responses with respect to Brazil, Indonesia, Mexico, Trinidad and Tobago, and Ukraine were inadequate. However, the Commission determined to conduct full reviews concerning the countervailing duty order on wire rod from Brazil and the antidumping duty orders on wire rod from Brazil, Indonesia, Mexico, Trinidad and Tobago, and Ukraine to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders concerning wire rod from Canada and Moldova. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25174 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–955, 960, 963 (Preliminary) (Third Remand)]

Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its preliminary determinations in the antidumping Investigation Nos. 731–TA–955, 960, 963 concerning carbon and certain alloy steel wire rod from Egypt, South Africa, and Venezuela. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193, or Robin L. Turner, Office of General Counsel, telephone 202–205–3103, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record of Investigation No. 731–TA–1088 may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In September 2005, the Commission determined on remand that there is no potential that subject imports from South Africa will exceed the applicable individual statutory negligibility threshold of three percent of total wire rod imports in the imminent future, and that with respect to Egypt, South Africa and Venezuela collectively, there is no potential that aggregate subject imports from these countries would exceed seven percent of total wire rod imports in the imminent future. 19 U.S.C. 1677(24). The Court of International Trade (''CIT'') issued an opinion in the matter on January 17, 2007, *Co-Steel Raritan, Inc.* v. *United States,* Slip Op. 07–7 (Ct. Int'l Trade Jan. 17, 2007), and an order on November 8, 2007, *Gerdau Ameristeel U.S. Inc.* v. *United States International Trade Commission,* Slip Op. 07–165 (Ct. Int'l Trade Nov. 8, 2007), remanding the matter to the Commission for further proceedings not inconsistent with its opinion.

Participation in the proceeding.—Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not re-file their appearance notices or protective order applications to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions.—The Commission is reopening the record in this proceeding for the limited purpose of seeking new factual information regarding South African producers of steel wire rod that did not respond in the original investigation. In addition, the Commission will permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions and any new factual information. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information in their comments and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than January 29, 2008.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not

accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.
Issued: December 21, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–25236 Filed 12–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–590]

In the Matter of Certain Coupler Devices for Power Supply Facilities, Components Thereof, and Products Containing Same; Notice of Commission Issuance of a Limited Exclusion Order Against the Infringing Products of Eight Respondents Found in Default And Issuance of Cease and Desist Orders Against the Five Domestic Defaulters; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against eight respondents found in default and cease and desist orders against the five domestic defaulters, and has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'').

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Topower Computer Industrial Co., Ltd. (''Topower'') of Xindian City, Taiwan. 72 FR 2554 (January 19, 2007). Topower alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coupler devices for power supply facilities, components thereof, and products containing same by reason of the infringement of one or more of claims 1–14 of U.S. Patent No. 6,935,902. The complaint named thirty respondents located in China, Germany, Taiwan, and the United States (California, North Carolina, and Minnesota). Topower originally requested a general exclusion order. The investigation was assigned to Administrative Law Judge (ALJ) Robert L. Barton, Jr., and subsequently reassigned to Judge Charles E. Bullock. Twenty-two respondents have been terminated from this investigation based on either a settlement agreement, consent order, or withdrawal of allegations.

On August 6, 2007, Topower filed a motion for an order directing respondents Aspire/Apevia International, Ltd. (''Aspire''), Xion/Axpertec, Inc. (''Xion''), JPAC Computer, Inc. (''JPAC''), Sunbeam Co. (''Sunbeam''), Super Flower Computer, Inc. (''Super Flower''), Taiwan Youngyear Electronics Co., Ltd. (''Taiwan Youngyear''), Sun Pro Electronics Co., Ltd. (''Sun Pro''), and Leadman Electronics Co., Ltd. (''Leadman'') to show cause why they should not be found in default for failure to respond to the Complaint and Notice of Investigation and advised that it was no longer seeking a general exclusion order. On August 30, 2007, the ALJ issued an order to show cause by September 14, 2007, why the respondents should not be found in default pursuant to Commission Rule 210.16. Order No. 37. On September 25, 2007, the ALJ issued an initial determination finding the eight respondents in default. Order No. 39. The Commission published notice in the **Federal Register** of its decision not to review this determination, and requested briefing from interested parties on remedy, the public interest, and bonding. 72 FR 58883 (October 17, 2007).

The Commission investigative attorney (IA) submitted briefing on November 8, 2007. The IA proposed a limited exclusion order and cease and desist orders directed to infringing coupler devices, components thereof, and products containing same of the defaulted respondents. The IA recommended allowing entry under bond of 100 percent of entered value during the period of Presidential review. Topower agreed with the recommendations of the IA.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to the defaulting respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c), 19 CFR 210.16(c), the Commission presumed the facts alleged in the complaint to be true.

The Commission determined that the appropriate form of relief in this investigation includes a limited exclusion order prohibiting the unlicensed entry of certain coupler devices for power supply facilities, components thereof, and products containing same by reason of infringement of one or more of claims 1–14 of U.S. Patent No. 6,935,902. The order covers certain coupler devices for power supply facilities, components thereof, and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of respondents Aspire, Xion, JPAC, Sunbeam, Super Flower, Taiwan Youngyear, Sun Pro, and Leadman, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue cease and desist orders prohibiting domestic respondents Aspire, Xion, JPAC, Sunbeam, and Leadman from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for certain coupler devices for power supply facilities, components thereof, and products containing same covered by the above-mentioned claims of U.S. Patent No. 6,935,902. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order and cease and desist orders. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period

Slip Op. 07 - 165

UNITED STATES COURT OF INTERNATIONAL TRADE

GERDAU AMERISTEEL U.S. INC. *et al.*,	:	
Plaintiffs,	:	
v.	:	Court No. 01-00955
UNITED STATES INTERNATIONAL TRADE COMMISSION,	:	
Defendant.	:	

Memorandum & Order

[Defendant's request for remand granted.]

Dated: November 8, 2007

Kelley Drye Collier Shannon (Paul C. Rosenthal, Kathleen W. Cannon and R. Alan Luberda) for the plaintiffs.

James M. Lyons, General Counsel, Andrea C. Casson, and Robin L. Turner, U.S. International Trade Commission, for the defendant.

AQUILINO, Senior Judge: Necessarily recognizing that it would further exacerbate the "timewarp" of this case, the "extraordinary procedural posture", this court's slip opinion 07-7 herein sub nom. Co-Steel Raritan, Inc. v. U.S. Int'l Trade Comm'n, page 25, 31 CIT ___ (Jan. 17, 2007), familiarity with which is presumed, directed defendant's counsel to attempt to settle a proposed order of disposition of the remainder of the case not inconsistent with that slip opinion. Come they now, however, with

a Final Status Report and Request for Remand to the Commission that

> the private litigants have engaged in serious discussions in an attempt to reach a settlement of this proceeding. However, counsel for the Commission has been informed by . . . [an] attorney for Plaintiffs[] that[,] "[u]nfortunately, the parties have not been able to reach a settlement in this matter, despite a serious, good-faith effort to do so. There is no reason to continue settlement discussions." Counsel for defendant-intervenor[] Alexandria National Iron and Steel Co. . . ., an Egyptian respondent, counsel for defendant-intervenor[] Siderurgica Del Orinoco, C.A. . . ., a Venezuelan respondent, and counsel for Mittal S.A., a South African subject producer, have concurred that the parties have been unable to resolve this matter. Plaintiffs' counsel has also informed counsel for the Commission that "[w]e agree that the Commission should, at this point, request the Court to remand the case to the Commission for further proceedings."
>
> Accordingly, since the private parties have been unable to reach a settlement of this matter, the Commission is filing a proposed order of disposition seeking that this case be remanded to the Commission to undertake further proceedings that are not inconsistent with . . . Slip Op. 07-7. In order to address the Court's concerns, the Commission may reopen the evidentiary record for the purpose of seeking information in the remand proceeding that was not submitted in the original investigation. The Commission requests that the Court remand this matter . . . for a period of 120 days . . .. This . . . will permit adequate time to collect necessary information, provide parties appropriate time to comment on such information, and enable the Commission to conduct a thorough review and prepare a detailed explanation of its determination such that its path is reasonably discernible to the Court. . . .

Defendant's Final Status Report, pp. 2-3 (footnotes omitted).

I

While all parties are reported to consent now to remand, plaintiffs' counsel object to any reopening of the Commission ("ITC") record. Among other things, they insist that "neither the statute, the court's holdings, nor policy considerations support reopening of the record here". Plaintiffs' Response in Opposition, p. 2.

That statute, the Trade Agreements Act of 1979, as amended, 19 U.S.C. §1673b(a), provides that

> the Commission . . . shall determine, *based upon the information available to it at the time of the determination*, whether there is a reasonable indication that—
>
> (A) an industry in the United States—
> (i) is materially injured, or
> (ii) is threatened with material injury, or
>
> (B) the establishment of an industry in the United States is materially retarded,
>
> by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

Emphasis added. This is an "obligation imparted by the explicit language of the statute and the legislative history charging the Commission to make its preliminary determination 'based upon the [] information available.'" The Budd Co. v. United States, 1 CIT 67,

75, 507 F.Supp. 997, 1003 (1980). And, the

> term "available" as used in the statute must be construed in accordance with its common meaning. In so doing, it is clear that all information that is "accessible or may be obtained," from whatever its source may be, must be reasonably sought by the Commission.

Id. It is only in this manner that the ITC can comply with the intended congressional mandate to conduct a "thorough investigation". 1 CIT at 75, 507 F.Supp. at 1004.

The court's slip opinion 07-7, page 23, states that "there is not a sustainable relationship between the facts that the ITC finds on remand and the result that it reaches", perhaps due, at least in part, to a "paucity of producer data". Slip Op. 07-7, p. 21. Hence, without settlement in lieu of more formal proceedings, remand to the defendant for reconsideration is required. See, e.g., Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985)(if the record does not support the agency action or if the reviewing court cannot evaluate the challenged agency action on the basis of the record before it, the proper course is to remand to the agency for additional investigation or explanation).

While the court of course can construe its own remand order,

> [a]dministrative agencies have power themselves . . . to control the range of investigation . . . [and] should be

> free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.

FCC v. Pottsville Broad. Co., 309 U.S. 134 (1940), citing United States v. Lowden, 308 U.S. 225 (1939), and Interstate Commerce Comm'n v. Baird, 194 U.S. 25, 44 (1904). Moreover, as noted in Nippon Steel Corp. v. Int'l Trade Comm'n, 345 F.3d 1379, 1382 (Fed.Cir. 2003), "[w]hether on remand the Commission reopens the evidentiary record, while clearly within its authority, is of course solely for the Commission itself to determine."

The plaintiffs protest that the ITC is required to base its preliminary determination "on the information available to it at the time of the determination". Plaintiffs' Response in Opposition, p. 5. See also Co-Steel Raritan, Inc. v. Int'l Trade Comm'n, 357 F.3d 1294, 1297 (Fed.Cir. 2004)(this court erred when it directed the Commission to consider circumstances arising after the preliminary determination). Suffice it to state in this regard that any enlargement of the record on remand should not entail a period subsequent to the initial preliminary determination. See 19 U.S.C. §1673b(a); The Budd Co. v. United States, 1 CIT at 79, 507 F.Supp. at 1006-07 (remand of preliminary determination to ITC to

supplement its administrative record with the best information which "might" have been obtained at the time of the original investigation).

II

In view of the foregoing, the court is constrained to grant defendant's request for remand. In hereby doing so, the defendant may have until March 10, 2008 to report the results thereof to the court, whereupon the other parties may file comments thereon on or before March 24, 2008.

So ordered.

Dated: New York, New York
November 8, 2007

/s/ Thomas J. Aquilino, Jr.
Senior Judge