UNITED STATES INTERNATIONAL TRADE COMMISSION

CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM EGYPT, SOUTH AFRICA, AND VENEZUELA

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

VIEWS OF THE COMMISSION ON REMAND
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TABLE OF CONTENTS

On October 12, 2001, the Commission determined that imports of carbon and certain alloy steel wire rod ("wire rod") from Egypt, South Africa and Venezuela that were allegedly sold in the United States at less than fair value were negligible, and terminated the investigations with respect to those countries.[1] [2] Those determinations were appealed to the U.S. Court of International Trade. On June 20, 2002, the Court remanded the Commission's negligibility determinations regarding Egypt, South Africa and Venezuela, ordering the Commission to reconsider its terminations given the modified scope in Commerce's antidumping duty investigation regarding wire rod from Germany dated April 10, 2002.[3] On remand, pursuant to the Court's Order, the Commission finds that imports of wire rod from Egypt, South Africa and Venezuela are not negligible, and that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from Egypt, South Africa and Venezuela that are allegedly sold in the United States at less than fair value.

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[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, USITC Pub. 3456 (Oct. 2001) ("Preliminary Determinations").

[2]Commissioner Bragg found in the Preliminary Determinations that subject imports of wire rod from Egypt, South Africa, and Venezuela would imminently exceed the statutory negligibility threshold, and made affirmative threat determinations with respect to those imports. Commissioner Bragg joins in these Views on remand.

[3]Co-Steel Raritan, et. al. v. United States, Court No. 01-00955, Slip Op. 02-59 (June 20, 2002)

VIEWS OF THE COMMISSION ON REMAND

By Opinion and Order dated June 20, 2002,[4] Judge Thomas J. Aquilino, Jr. of the U.S. Court of International Trade (the "Court") remanded the Commission's negligibility determinations and consequent terminations of investigations regarding Egypt, South Africa, and Venezuela in Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela for further consideration based on a modification of the scope of investigation issued by the Department of Commerce ("Commerce") on April 10, 2002. Based on the record in these remand investigations, and pursuant to the Court's Order, the Commission finds that imports from Egypt, South Africa, and Venezuela are not negligible, and that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of carbon and certain alloy steel wire rod ("wire rod") from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at less than fair value ("LTFV").

I. BACKGROUND

In October 2001, the Commission determined the imports of wire rod from Egypt, South Africa, and Venezuela that were allegedly sold in the United States at LTFV were negligible and terminated the investigations with respect to those countries.[5] [6] Petitioners appealed the

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[4]Co-Steel Raritan, et. al. v. United States, Court No. 01-00955, Slip Op. 02-59 (June 20, 2002) ("Opinion").

[5]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, USITC Pub. 3456 (Oct.

Commission's negligibility determinations to the Court.[7]

On June 20, 2002, the Court remanded the Commission's negligibility determinations regarding Egypt, South Africa, and Venezuela to the Commission, ordering the Commission to reconsider its terminations given the modified scope in Commerce's antidumping duty investigation regarding wire rod from Germany, dated April 10, 2002.[8] The Court noted that in the Commission's Preliminary Determinations, it found, based on official import statistics, that the share of imports from Germany constituted 3.1 percent of total imports for the period August 2000 to July 2001, but that percentage was computed prior to the modification of the scope of the investigation. The Court also stated that Petitioners had argued "from the beginning that any such amendment would reduce the German percentage to less than three percent and thereby

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2001)("Preliminary Determinations" or "USITC Pub. 3456") at 7-11. Notice of the Commission's preliminary determinations were published in the Federal Register at 66 Fed. Reg. 54539 (Oct. 29, 2001).

[6]Commissioner Bragg found in the Preliminary Determinations that subject imports of wire rod from Egypt, South Africa, and Venezuela would imminently exceed the statutory negligibility threshold, and made affirmative threat determinations with respect to those imports. Commissioner Bragg joins in these Views on remand as explained in footnote 18.

[7]See Summons filed in the Court by Petitioners on October 30, 2001.

[8]67 Fed. Reg. 17384, 17385 (Apr. 10, 2002). Although the Court cited only to the modified scope of investigations for Germany, Commerce made similar modifications to the scope of investigations for all antidumping duty and countervailing duty wire rod investigations currently underway covering Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine. See 67 Fed. Reg. 17367, 17367-68 (Apr. 10, 2002) (Ukraine); 67 Fed. Reg. 17379, 17380-17381 (Apr. 10, 2002) (Trinidad and Tobago); 67 Fed. Reg. 17389, 17390-17391 (Apr. 10, 2002) (Canada); 67 Fed. Reg. 18165, 18167 (Apr. 15, 2002) (Brazil); 67 Fed. Reg. 17374, 17375-17376 (Apr. 10, 2002) (Indonesia); 67 Fed. Reg. 17384, 17385 (Apr. 10, 2002) (Germany); 67 Fed. Reg. 17397, 17397-17398 (Apr. 10, 2002)(Mexico); 67 Fed. Reg. 17401, 17402 (Apr. 10, 2002) (Moldova). 67 Fed. Reg. 12524 (Mar. 19, 2002) (Countervailing duty investigations are aligned with the antidumping duty investigations and have the same scope).

require aggregation of that country's then-negligible number" with that of Egypt, South Africa, and Venezuela.[9] The Court noted that the Commission had been left to consider the matter "on the run," based on Petitioners' good-faith estimate, and noted that the law disfavored speculation, but that it also favored affirmative preliminary determinations of material injury or the threat thereof.[10] The Court found that it had no way "now" of finally resolving these circumstances, and that it could not completely overlook the modified scope. The Court therefore remanded the negligibility determinations to the Commission.[11]

The Commission filed a Motion for Reconsideration and Stay in the Court on July 22, 2002, that stated our objections to the Court's Opinion and Order on Remand. With that motion, we argued that requiring the Commission to consider post-determination developments jeopardizes the finality of preliminary determinations, finality that is necessary for an orderly administration of Title VII.[12] In particular, the Commission expressed its concern about allowing last minute scope modification requests to disrupt the orderly conduct of investigations. [13] [14] On

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[9]Opinion at 17.

[10]Opinion at 14-15.

[11]Opinion at 18.

[12]The Commission also argued that it should not be required to defer to requests for scope modifications, noting that Commerce's ultimate scope modification differed from petitioner's request.

[13]As discussed in our Preliminary Determinations, Petitioners filed a letter on October 9, 2001 ("October 9, 2001 Letter") to the Commission arguing that its attached October 9, 2001 request to Commerce for a scope amendment required the Commission to find that all subject countries were non-negligible, including Egypt, South Africa, and Venezuela. USITC Pub. 3456 at 9, n.41.

August 7, 2002, the Court denied this Motion.

On July 3, 2002, the Commission reopened the record in these investigations for the limited purpose of seeking, from importers of subject merchandise, data regarding total import volume during the statutorily prescribed period August 2000 to July 2001 of the products that had been excluded from Commerce's scope of investigations in April 2002.[15] The Commission's compilation of import volume for the prescribed period, as adjusted by these data, showed that Germany, Egypt, South Africa, and Venezuela each accounted for less than three percent of total imports of wire rod (as defined in Commerce's revised scope), and that in the aggregate, their combined import share exceeded seven percent of total imports.[16] The Commission also received comments from parties to the preliminary investigations regarding whether any new information received affected our negligibility determinations.[17]

The Court has ordered the Commission to reconsider the negligibility findings as to Egypt, South Africa, and Venezuela based on a modified scope issued six months after the

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[14]With respect to the preceding footnote, see Commissioner Bragg's note 18 infra.

[15]67 Fed. Reg. 17384, 17385 (Apr. 10, 2002).

[16]OINV Memorandum INV-Z-111 (July 12, 2002). OINV Memorandum INV-Z-115 (July 16, 2002.

[17]67 Fed. Reg. 45541 (July 9, 2002). Several parties argued in their comments regarding the additional data that the record should not have been reopened to consider data based on a revised scope issued six months after the Commission's determinations, not only due to the statutory constraints requiring the Commission to make its determinations based on information available "at the time of its determination" but also because Petitioners' letter of October 9, 2001, which triggered this controversy, was "purely result-oriented." Egyptian Respondent Comments on Remand dated July 16, 2002 at 3. Respondents Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH Comments on Remand dated July 16, 2002 at 2-5. Respondents Saarstahl AG and Saarsteel Inc. Comments on Remand dated July 16, 2002 at 2.

Preliminary Determinations, which was not, and could not have been, part of the Commission's record at the time of the determinations in October 2001. We have interpreted the Court's Order as directing the Commission to conduct further investigations to answer the Court's question – namely, does Commerce's modified scope of investigation issued in April 2002 alter Germany's share of total imports, the negligibility determinations, and therefore, the termination of the investigations regarding subject imports from Egypt, South Africa and Venezuela.[18] In making these remand determinations, we have therefore considered the record of the original preliminary investigations, Commerce's modified scope, and the additional data and information gathered in response to the Court's remand.

II. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

We adopt the legal standard for preliminary antidumping and countervailing duty determinations as set forth in our Preliminary Determinations.

III. DOMESTIC LIKE PRODUCT AND INDUSTRY

Our preliminary investigations were based on the scope contained in Commerce's notice of initiation, which was the scope Plaintiffs initially requested from Commerce. Thus, all of our

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[18]While Commissioner Bragg joins in the Commission response to the Court's remand order, she notes that she did not treat the question of negligibility in the same manner as the Commission majority and that she reached affirmative determinations regarding the subject imports at issue in this remand, notwithstanding the issue raised in footnote 41 in the Preliminary Determinations. Thus, Commissioner Bragg did not join the Commission majority in determining that the petitioners' efforts to modify the scope of the investigations were "not sufficient to conclude that contrary evidence . . . would arise in any final phase investigations." See USITC Pub. 3456 at 9 nn. 41 & 42.

data regarding subject merchandise, with the exception of the import data gathered during the remand proceedings, is based on the scope from Commerce's notice of initiation and not the modified scope issued on April 10, 2002.[19]

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

> [C]ertain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.0 mm, in solid cross-sectional diameter.
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> Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulphur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.
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> The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0090, 7227.90.6051 and 7227.90.6058 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.[20]

We base our findings, with the exception of negligibility, on the scope as it existed at the

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[19]We note that as the modified scope was issued six months after our Preliminary Determinations, it would have been impossible to gather any injury data correlating to that modified scope prior to our Preliminary Determinations. We do not believe that the modification to the scope would have a material effect on our preliminary injury findings with respect to volume, price, and impact.

[20] 66 Fed. Reg. 50164 (Oct. 2, 2001) (initiation of antidumping duty investigations).

time of our preliminary determinations, and not the modified scope issued on April 10, 2002. We do not interpret the Court's Opinion as directing the Commission to base its remand determinations, including its domestic like product and industry findings, entirely on the modified scope.[21] Basing the Commission's remand determinations entirely on the modified scope at this point would require essentially a new preliminary investigation, including new questionnaires. Moreover, we do not believe that our domestic like product and industry findings would be different if they were based on the modified scope. As stated in our Preliminary Determinations, the record reflects a continuum of wire rod products without clear dividing lines, including no clear dividing line between 1080 tire cord wire rod, 1080 tire bead wire rod, as described in Commerce's modified scope of investigations, and other high quality specialized wire rod products.[22] Under these circumstances, the Commission does not treat each item of merchandise to be a separate domestic like product that is only "like" its counterpart in

[21] We note that the domestic like product and industry findings that we made in our Preliminary Determinations are consistent with Petitioners' arguments regarding these issues, and were not challenged during the course of the appeal. Petitioners' Postconference Brief at 1-5.

[22]USITC Pub. 3456 at 6. The products excluded through Commerce's scope modification are specific grades of tire cord wire rod and tire bead wire rod corresponding to the quality, applications, designations and specifications set forth in Commerce's modified scope. Tire cord wire rod may be either regular-tensile (AISI 1070) or high-tensile (AISI 1080 or 1090). 1080 and 1090 grade tire cord wire rod are finer grades of tire cord wire rod than 1070 grade, with more stringent specifications. Michelin Postconference Brief at 11. Commerce specifically continued to include 1070 and 1090 grade tire bead and tire cord wire rod in the modified scope of investigations, even though other parties wanted 1070 and 1090 grade wire rod excluded from the scope of investigations. 67 Fed. Reg. 17384 (April 10, 2002). Commerce has excluded only a certain grade, 1080, of tire bead wire rod, as well. Tire bead wire rod is a type of high carbon and medium-high carbon wire rod, a category of wire rod which includes several types of specialized wire rod, on the continuum of wire rod products. CR/PR at Table I-1.

the scope, but rather considers the continuum itself to constitute the domestic like product.[23]

Based on our finding that the domestic like product consists of all wire rod included in Commerce's scope as defined in its notice of initiation, for purposes of these preliminary remand determinations, we find that the domestic industry consists of all domestic producers of wire rod.

IV. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.[24] The statute further provides that imports from a single country which account for less than three percent of total imports of such merchandise, may not be considered negligible if there are several countries subject to investigation that each account for less than three percent of total imports, and the sum of such imports from all of those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.[25]

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the

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[23]USITC Pub. 3456 at 6.

[24]19 U.S.C. § 1677(24)(A)(I)(I).

[25]19 U.S.C. § 1677(24)(A)(ii).

several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.[26] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[27]

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.[28]

As required by the Court's Order, we reconsidered negligibility based on Commerce's modified scope issued April 10, 2002.[29] To evaluate negligibility, we considered official Commerce import statistics for the period August 2000 through July 2001, supplemented with importer responses regarding imports of the products which have now been excluded by Commerce from the scope of investigations (1080 tire cord quality wire rod and 1080 tire bead quality wire rod, corresponding to the quality designations, definitions and applications

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[26]19 U.S.C. § 1677(24)(A)(iv).

[27]19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

[28]19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

[29]Venezuelan Respondent Sidor argues that a change to the scope does not affect the Commission's negligibility analysis. Sidor Remand Comments at 2-3. The negligibility provision provides that "imports from a country of merchandise corresponding to a domestic like product" are negligible under the stated conditions. 19 U.S.C. § 1677(24)(A)(i). Sidor argues that "merchandise" in this context is not subject merchandise. Contrary to Sidor's arguments, 19 U.S.C. § 1673b(a)(1) expressly states that the Commission must determine whether "imports of the subject merchandise are not negligible," and that if "imports of the subject merchandise are negligible," the Commission must terminate the investigation. Reading 19 U.S.C. § 1673b(a)(1) together with 19 U.S.C. § 1677(24)(A)(i), it is clear that the "merchandise" referred to in the negligibility provision is subject merchandise. The Statement of Administrative Action provides further guidance that this reading of the statute is correct. It states that the Commission needs "information concerning the volume of total imports in addition to the volume of imports from the country(ies) subject to investigation." SAA at 856. Moreover, the Court did not accept Sidor's contention. Opinion at 18.

Commerce designated).[30] The importers that submitted data on the modified scope accounted for 94.9 percent of U.S. imports of wire rod from the subject countries in 2000 and 88.9 percent of imports from all countries in 2000.[31] Based on the modified scope, Egypt has a share of total imports of 1.5 percent; Germany, *** percent; South Africa, 2.8 percent; and Venezuela, 2.3 percent.[32] Each of these countries is below the negligibility threshold of three percent of total imports. The aggregate import share of these four countries, however, is *** percent, which exceeds the aggregate negligibility level of seven percent prescribed by statute. 19 U.S.C. § 1677 (24)(A)(i) and (ii). We therefore find, pursuant to 19 U.S.C. § 1677(24)(A)(ii), and the Court's Order, that subject imports from Egypt, South Africa, and Venezuela are not negligible for purposes of our present material injury analysis.[33]

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[30]OINV Memorandum INV-Z-111 (July 12, 2002). OINV Memorandum INV-Z-115 (July 16, 2002).

[31]OINV Memorandum INV-Z-111 (July 12, 2002). OINV Memorandum INV-Z-115 (July 16, 2002). Venezuelan Respondent Sidor argues that our data covers all 1080 tire cord wire rod and 1080 tire bead wire rod, and not just 1080 tire cord wire rod or 1080 tire bead wire rod that was used as tire cord or tire bead wire rod. Sidor Comments on Remand dated July 16, 2002 at 5.

The questions to the importers attached a copy of Commerce's modified scope. See Letters to Importers dated July 3, 2002. Therefore, the data reflect the importers' responses based on the actual scope modification. Moreover, although Petitioners requested Commerce to define the scope by end-use in their October 9, 2001 letter to Commerce, which contained Petitioners' original request to modify the scope, the actual scope as modified by Commerce on April 10, 2002 does not contain the exact end-use language originally suggested by Petitioners. Compare Petitioners' October 9, 2001 Letter, Attachment, (requested scope language in letter to Commerce) to April 10, 2001 modified scope as issued by Commerce (67 Fed. Reg. 17384, 17385 (Apr. 10, 2002)).

[32]OINV Memorandum INV-Z-115 (July 16, 2002).

[33]Venezuelan Respondent Sidor argues that the statute requires the Commission to consider whether imports from a country will imminently account for more than three percent of total imports, before considering aggregate volumes under clause (ii) of subsection (A) of the negligibility provision, and that therefore the Commission should find Germany to be non-

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports from Egypt, South Africa and Venezuela, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market, and none of statutory cumulation exceptions apply.[34] In assessing whether subject imports compete with each other and with the domestic like product,[35] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographic markets of

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negligible because imports from Germany will imminently exceed three percent of total imports. Sidor Comments on Remand at 5-8.

The plain language of the statute directs the Commission to first consider whether imports are individually negligible under clause (i). Then the statute directs the Commission to consider clause (ii), the aggregate negligibility provision with respect to present material injury, which is an exception to clause (i). It is only if imports from a country are negligible with respect to both clause (i) and clause (ii) that the Commission must consider whether imports are negligible for threat purposes under clause (iv), which expressly states that it is an exception to both clauses (i) and (ii). ("Notwithstanding clauses (i) and (ii) . . . . "(Emphasis added.) 19 U.S.C. § 1677 (24)(A)(i)(ii) and (iv).

[34] 19 U.S.C. § 1677(7)(G)(i) and (ii).

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

subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[36]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[37] Only a "reasonable overlap" of competition is required.[38] For the reasons set forth in our Preliminary Determinations, for purposes of determining whether the domestic industry is materially injured or threatened with material injury by reason of imports from other countries subject to investigation, imports from Trinidad and Tobago, a beneficiary country under the Carribean Basin Economic Recovery Act, must be cumulated with other subject imports if the statutory prerequisites for cumulation are satisfied.[39]

For purposes of these preliminary determinations on remand, with respect to Egypt, South Africa, and Venezuela, we find that there is a reasonable overlap of competition among

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

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

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

[39] H.R. Conf. Rep. No. 650, 101st Cong., 2d Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 928, 1025. ("However, imports from CBI [Caribbean Basin Initiative] countries would continue to be aggregated with imports from non-CBI countries under investigation for purposes of determining whether imports from the non-CBI-countries are causing injury.")

the subject imports from these three countries and all other subject imports, and between all subject imports and the domestic like product.[40]

B. Fungibility

Subject wire rod is imported within a range of product categories corresponding to different end uses. Wire rod sold in the United States is categorized according to end use. Subject imports of wire rod are generally used for the same purposes and by the same end users, as the domestic like product.[41]

In their questionnaires, domestic producers and importers provided the quantity of their U.S. shipments that corresponded to five different categories of certain wire rod: 1) industrial/standard quality rods; 2) high, medium-high carbon quality rods; 3) welding quality rods; 4) cold heading quality rods; and 5) all other carbon and certain alloy steel wire rod.[42]

Industrial/standard quality wire rod. Almost half of domestic producers' U.S. shipments were in the industrial/standard quality wire rod category, and every subject country shipped subject imports in this category. Shipments in this category comprised at least 47.8 percent of

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[40]In the preliminary determinations, Commissioner Bragg found a reasonable overlap of competition among all subject imports (including imports from Egypt, South Africa, and Venezuela), and between all subject imports and the domestic like product, for purposes of her threat analysis regarding subject imports from Egypt, South Africa, and Venezuela. See USITC Pub. 3456 at 12 n.64 & 15 n.79. For purposes of analyzing present material injury in these preliminary determinations on remand, with respect to Egypt, South Africa, and Venezuela, Commissioner Bragg finds that there is a reasonable overlap of competition among the subject imports from these three countries and other subject imports, and between all subject imports and the domestic like product.

[41] CR at I-4; PR at I-3 and I-5 & Table I-1.

[42] CR/PR at Appendix D. Petitioners maintain that subject imports are fungible with one another and with the domestic like product. Petitioners' Postconference Brief at 16-17.

domestic shipments and at least 35.8 percent of total U.S. importers' shipments of subject imports. Over the period of investigation, shipments in this category comprised on average at least *** of subject import shipments, with the exception of subject imports from Moldova, Germany, and Canada.[43] *** of the reported shipments of subject imports from Venezuela, and *** of the reported shipments of subject imports from Egypt were in the industrial/standard quality wire rod category. From 1998 to 2000, *** of the shipments of subject imports from South Africa were in the industrial/standard quality wire rod category, while in interim 2001, *** of the reported shipments of imports of wire rod from South Africa were in the industrial/standard quality wire rod category.[44]

High, medium-high carbon quality wire rod. Nearly thirty percent of domestic shipments over the period of investigation were in the high, medium-high carbon quality wire rod category, which also included *** percent of subject imports from Canada and at least *** percent of subject imports from Germany. This category included specialized high quality wire rod used to produce wire for various types of products including tire cord, prestressed concrete wire, and music wire.[45] From 1998 to 2000, *** of the shipments of subject imports from South Africa were in the high/medium high carbon category.[46] In interim 2001, *** of U.S. shipments of imports from South Africa were in this category.

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[43]CR/PR at Tables D-1, D-2 and D-3.

[44]CR/PR at Table D-3.

[45] General Information, Instructions, and Definitions for Commission Questionnaires, Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary) (Sept. 2001). CR/PR at Table D-3.

[46] Similar to South Africa, Brazil and Indonesia also had significant U.S. import shipments in this category, and in the industrial/standard category, but not in the other specialty wire rod categories surveyed. CR/PR at Table D-3.

Cold-heading quality wire rod. Approximately *** to *** percent of reported shipments from Canada and Germany, and 11 to 14 percent of domestic shipments were in the cold-heading quality wire rod category.[47] There were relatively small U.S. shipments of cold-heading wire rod from South Africa over the period of investigation, which declined over time, except that they were higher in interim 2001 than in interim 2000.[48]

The record reflects significant portions of shipments in the industrial quality wire rod category for domestic product and Egypt,[49] South Africa, and Venezuela, and all subject imports except for Canada, Germany, and Moldova. Specifically, given the different percentages of shipments in different quality categories for each subject country, we note that there is relatively more limited fungibility between imports of wire rod from Egypt and Venezuela, and imports of wire rod from Canada and Germany. In comparison, imports of wire rod from South Africa are moderately more fungible with all subject imports since there are shipments of imports of wire rod from South Africa in all three major quality categories surveyed.[50] The record indicates that the imports of wire rod from Egypt, South Africa, and Venezuela and the domestic product are fungible to a significant degree, and that subject imports from these three countries are also

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[47]CR/PR at Tables D-1 and D-3.

[48]CR/PR at Table D-3.

[49]We note that the Egyptian Respondent has argued that it exports a niche product to the United States that is a low carbon wire rod of drawing grade. However, the record lacks evidence demonstrating that wire rod from Egypt is not fungible with either domestic wire rod or other subject wire rod. Egyptian Respondent Postconference Brief at 8-10. Rather, record data reflect that importers consider the subject wire rod shipments from Egypt to be *** industrial/standard quality wire rod, reflecting fungibility with domestic wire rod and other subject wire rod in that category, which was the largest category of wire rod surveyed.

[50]We note that the record contains little information regarding the product mix in Moldova at this time. CR/PR at Table D-3.

fungible to a significant degree with each other, and with subject imports from other countries.

C. Geographic Overlap

U.S. wire rod producers are located throughout the United States.[51] Four U.S. producers reported that they sell wire rod to customers in the entire United States. *** reported that it sells primarily on the West Coast. *** reported that they sell primarily in the Northeast and north central states. Importers tended to be more regional but covered large parts of the country, such as the East Coast, the West Coast, the Gulf Coast, the Great Lakes states, and the Mississippi River states.[52]

As noted in our Preliminary Determinations, Indonesian Respondent P.T. Ispat Indo and Mexican Respondent SICARTSA have raised issues regarding whether imports from these countries compete with the domestic like product and with other subject imports in the Western United States.[53] The record indicates some overlap in geographic markets between the domestic like product and subject imports, and between subject imports from Mexico and Indonesia and other subject imports. Subject imports from both Mexico and Indonesia are sold in the Western United States where at least some domestic producers also compete.

D. Channels of Distribution

There are similar channels of distribution for the domestic like product and subject

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[51] CR/PR at III-1.

[52] CR at II-10; PR at II-6.

[53] USITC Pub. 3456 at 14. Egyptian Respondent maintains that it only sells wire rod on the East Coast or the Gulf Region. Egyptian Respondent Postconference Brief at 12.

imports. The domestic like product and subject imports were overwhelmingly sold directly to end users over the period of investigation,[54] with the exception of subject imports from Brazil and Egypt which were sold directly to end users and through distributors,[55] and subject imports from South Africa ***.[56]

E. Simultaneous Presence

Official Commerce import statistics indicate that the domestic like product and subject imports have been present in the U.S. market throughout the period examined, with the exception that there were no U.S. imports of certain wire rod from Egypt in interim 2000.[57]

E. Conclusion

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable overlap of competition among the subject imports from Egypt, South Africa, and Venezuela, and other subject imports, and between all of the subject imports and the domestic

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[54] U.S. producers shipped 96.2 percent of their wire rod directly to end users in 2000, and the remaining 3.8 percent to distributors. Importers from the subject countries shipped 93.0 percent of their wire rod directly to end users, and 7.0 percent to importers. CR at I-7; PR at I-6. ***.

[55] ***.

[56]***. Although U.S. producers only shipped 3.8 percent of their wire rod to distributors in 2000, that constitutes 205,286 short tons of domestic wire rod shipped to distributors, as compared to ***. CR/PR at Table C-1. ***.

[57] CR/PR at Table IV-1. Egyptian Respondent argues that subject imports from Egypt should not be cumulated with other imports because its imports are ***. Egyptian Respondent Postconference Brief at 13 & Attachment A. In the months in which there have been imports from Egypt, there have been imports from the majority of subject countries. Although there are months in which imports from Egypt have been ***, the same can be said of other subject countries. Id. at Attachment A. Petitioners maintain that domestic wire rod has been produced and sold in the United States continuously over the period of investigation. Petitioners' Postconference Brief at 20. Therefore we do not accept Egyptian Respondent's arguments that its imports should not be cumulated based on the simultaneous presence factor.

like product. With respect to fungibility, we note there is generally a high degree of product fungibility between the domestic like product and subject imports from Egypt, South Africa, and Venezuela, between subject imports from Egypt, South Africa, and Venezuela, and between subject imports from these countries and imports from other subject countries. Although there is less fungibility between subject imports from Egypt and Venezuela, and subject imports from Canada and Germany, due to differences in product mix, there is significant fungibility between imports from South Africa and imports from all four countries. As we stated in our Preliminary Determinations, while in general there is broad geographic overlap for sales and offers to sell the domestic product and subject imports, competition in the Western United States may be more limited. Nevertheless, we find that a reasonable overlap of competition exists. We therefore cumulate subject imports from Egypt, South Africa, and Venezuela with each other and with subject imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine for purposes of our material injury analysis of subject imports from Egypt, South Africa, and Venezuela.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV SUBJECT IMPORTS FROM EGYPT, SOUTH AFRICA AND VENEZUELA

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[58] In making this

[58] 19 U.S.C. § 1671b(a) and 1673b(a).

determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[59] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[60] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[61] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[62]

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing wire rod is materially injured by reason of subject imports from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at less than fair value.[63] In general, we have adopted our material injury findings from our Preliminary Determinations. In the following analysis, we have noted the instances in which our findings and data in these remand determinations differ from those of our Preliminary

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[59] 19 U.S.C. § 1677(7)(B)(I). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[60] 19 U.S.C. § 1677(7)(A).

[61] 19 U.S.C. § 1677(7)(C)(iii).

[62] 19 U.S.C. § 1677(7)(C)(iii).

[63] We also cumulate imports from Trinidad and Tobago for purposes of these inquiries as to the above-listed countries.

Determinations. These differences are caused by the additional subject imports from Egypt, South Africa, and Venezuela that we have cumulated with other subject imports in these remand investigations.

A. Conditions of Competition

We adopt the conditions of competition for this industry found in our Preliminary Determinations, except for the following data, which have been modified.

Nonsubject imports in the domestic market declined steadily from 9.4 percent in 1998 to 6.3 percent in 2000. They were only slightly higher in interim 2001 (5.3 percent) as compared to interim 2000 (5.0 percent).[64]

B. Volume Effects of the Cumulated Subject Imports

The legal standard for analyzing volume effects was set forth in the Preliminary Determinations. We adopt our earlier findings regarding the volume of subject imports, as set forth in the Preliminary Determinations, except as altered by the revised data.

The volume of cumulated subject imports increased steadily from 1998 to 2000, and was slightly larger in interim 2001 compared to interim 2000. The volume of subject imports increased from 1.8 million short tons in 1998 to 2.2 million short tons in 1999 and to 2.6 million short tons in 2000. The volume of subject imports was 1.18 million short tons in interim 2001, compared to 1.15 million short tons in interim 2000.[65]

The U.S. market share of cumulated subject imports rose steadily over the period of

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[64]CR/PR at Table IV-5.

[65]CR/PR at Table IV-1.

investigation at the expense of domestic producers. Cumulated subject imports continued to gain market share in interim 2001, in the face of overall decreasing consumption. Cumulated subject imports, measured in quantity, accounted for 22.2 percent of the total U.S. market in 1998, 26.6 percent in 1999, and 30.1 percent in 2000. Subject imports accounted for 33.9 percent of the U.S. market in interim 2001 compared to 27.4 percent in interim 2000.[66] During that same period, the domestic producers' share of the market, measured in quantity, decreased from 68.5 percent in 1998 to 65.9 percent in 1999 and to 63.6 percent in 2000. The domestic producers' share of the U.S. market was 60.8 percent in interim 2001 compared to 67.6 percent in interim 2000.[67]

For purposes of the preliminary phase of these investigations, we therefore find the volume of cumulated subject imports, both absolutely and relative to consumption, to be significant.

C. Price Effects of the Cumulated Subject Imports

The legal standard for analyzing price effects was set forth in the Preliminary Determinations. We adopt our earlier findings regarding price effects for this market, as set forth in the Preliminary Determinations, except for the following data which has been amended.

Of the 326 quarterly comparisons available in this record, subject imports undersold domestic products in 248 instances, or 76.1 percent of all comparisons.[68] Underselling margins

[66]CR/PR at Table IV-5.
[67]CR/PR at Table IV-5.
[68]CR/PR at Table V-8.

in those quarterly comparisons ranged from *** percent to *** percent.[69] Prices for the domestic like product declined, and prices for subject imports, including prices for subject imports from Egypt, South Africa, and Venezuela, generally declined over the period of investigation.[70]

We therefore find that there has been significant price underselling by cumulated subject imports of the domestic product, and that cumulated subject imports have depressed prices of domestically produced wire rod to a significant degree.

D. Impact of Cumulated Subject Imports

The legal standard for analyzing impact was set forth in the Preliminary Determinations. We adopt our earlier findings regarding the impact of subject imports on the domestic industry, as set forth in the Preliminary Determinations.[71] [72] For the reasons set forth in the Preliminary Determinations, we find that cumulated subject imports are having a significant adverse impact on the domestic industry producing wire rod.

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[69]CR/PR at Tables V-3-V-7.

[70] CR/PR at Tables V-3-V-7.

[71] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation of the antidumping duty investigations, Commerce stated that the estimated dumping margins were as follows for Egypt, South Africa and Venezuela: Egypt, from 14.95 to 59.64; South Africa, 13.32 percent; Venezuela, from 12.68 to 21.02 percent. 66 Fed. Reg. 50164 et seq. (Oct. 2, 2001).

[72]Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

CONCLUSION

For the reasons stated above, we determine pursuant to the Court's Order, that there is a reasonable indication that the domestic industry producing wire rod is materially injured by reason of imports of wire rod from Egypt, South Africa, and Venezuela that are allegedly sold in the United States at less than fair value.