

# **CARBON STEEL WIRE ROD FROM BRAZIL, BELGIUM, FRANCE, AND VENEZUELA**

**Determinations of the Commission  
in Investigations Nos. 701-TA-148  
701-TA-149, and 701-TA-150  
(Preliminary) Under Section  
703(a) of the Tariff Act of 1930,  
and Investigation  
No. 731-TA-88 (Preliminary)  
Under Section 733(a) of the  
Tariff Act of 1930**

**USITC PUBLICATION 1231**

**MARCH 1982**



# **UNITED STATES INTERNATIONAL TRADE COMMISSION**

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**Paula Stern**

**Alfred E. Eckes**

**Eugene J. Frank**

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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Investigations Nos. 701-TA-148 through 150 (Preliminary) and  
731-TA-88 (Preliminary)

CARBON STEEL WIRE ROD FROM BRAZIL, BELGIUM, FRANCE, AND VENEZUELA

Determinations

On the basis of the record 1/ developed in its countervailing duty investigations on carbon steel wire rod from Brazil, Belgium, and France, the Commission determines, 2/ pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury 3/ 4/ by reason of imports of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Brazil, Belgium, and France, respectively.

On the basis of the record developed in its antidumping investigation on carbon steel wire rod from Venezuela, the Commission determines, 2/ 5/ pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury 6/ 7/ by reason of imports of carbon steel wire rod, provided for in item 607.17 of the TSUS, from Venezuela which are alleged to be sold in the United States at less than fair value.

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1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (47 F.R. 6190, Feb. 10, 1982).

2/ Commissioner Haggart was sworn in subsequent to the vote.

3/ Chairman Alberger finds threat of material injury only in the investigation involving Brazil and present material injury only in the investigations involving Belgium and France.

4/ Commissioner Frank finds present material injury in all three investigations.

5/ Vice Chairman Calhoun dissenting.

6/ Chairman Alberger and Commissioner Eckes find threat of material injury only.

7/ Commissioner Frank finds present material injury only.

### Background

On February 3, 1982, a petition was filed by counsel on behalf of Atlantic Steel Corp., Georgetown Steel Corp., Georgetown Texas Steel Corp., Keystone Consolidated, Inc., Korf Industries, Inc., Penn-Dixie Steel Corp., and Raritan River Steel Co. with the U.S. International Trade Commission and with the Department of Commerce alleging that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Belgium, and France of carbon steel wire rod upon which bounties or grants are alleged to be paid and by reason of imports from Venezuela of carbon steel wire rod which are allegedly being sold at less than fair value. Accordingly, the Commission instituted preliminary investigations under sections 701(a) and 733(a), respectively, of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notices of the institution of the Commission's investigations and of a conference to be held in connection therewith were given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notices in the Federal Register on February 17, 1982 (47 F.R. 7346 and 7347). The conference was held in Washington, D.C. on March 3, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## VIEWS OF THE COMMISSION

After considering the record, we conclude: (1) there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized imports of carbon steel wire rod from Brazil; 1/ (2) there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized imports of carbon steel wire rod from Belgium; 2/ (3) there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized imports of carbon steel wire rod from France; 2/ (4) there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of carbon steel wire rod from Venezuela allegedly sold at less than fair value (LTFV). 3/ 4/

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1/ Vice Chairman Calhoun determines that there is a reasonable indication that an industry is materially injured or threatened with material injury by reason of allegedly subsidized imports of carbon steel wire rod from Brazil, Belgium and France. Commissioner Frank determines that there is a reasonable indication that an industry is materially injured by reason of allegedly subsidized imports of carbon steel wire rod from Brazil, Belgium and France. Commissioner Frank also, having found a reasonable indication of material injury, does not reach the issue of threat of material injury. Chairman Alberger determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of carbon steel wire rod from Brazil.

2/ Chairman Alberger, having found a reasonable indication of material injury with respect to imports from Belgium and France, does not reach the issue of threat in either of those two investigations.

3/ Chairman Alberger and Commissioner Eckes determine that there is a reasonable indication that an industry is threatened with material injury by reason of imports of carbon steel wire rod from Venezuela allegedly sold at

(Footnote continued)

In the following analysis, we will first define the domestic industry. We will then examine the state of the domestic industry in terms of the relevant economic indicators. Finally, we will examine the causal relationship between the state of the domestic industry and the dumped or subsidized imports on a country by country basis.

#### Domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." Section 771(10) defines "like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with the article under investigation.

Carbon steel wire rod is a hot-rolled, semifinished, coiled product of solid, round cross section, not under 0.20 inch nor over 0.74 inch in diameter. Carbon steel wire rod can differ in its chemistry (carbon content) and the process by which it is manufactured (continuous cast or rimmed steel rod). It is produced in a variety of different grades, sizes and qualities.

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#### (Footnote continued)

less than fair value. Vice Chairman Calhoun determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of carbon steel wire rod from Venezuela allegedly sold at less than fair value. Commissioner Frank determines that there is a reasonable indication that an industry is materially injured by reason of allegedly dumped imports of carbon steel wire rod from Venezuela and therefore does not reach the issue of threat of material injury.

4/ Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping and countervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 52 (1979).

The subject imports of carbon steel wire rod are believed to include all of these grades, sizes and qualities. Domestic producers make the same grades, sizes and qualities of carbon steel wire rod as are imported. On the information that we have at this time, there appear to be no clear dividing lines based on the characteristics and uses of different grades, sizes and qualities of carbon steel wire rod. Accordingly, for the purposes of this preliminary investigation, the like product is carbon steel wire rod and the domestic industry is composed of the producers of carbon steel wire rod.

#### Condition of the domestic industry

It is clear that the domestic industry as a whole is experiencing problems. The industry's financial performance, capacity utilization, and employment levels all declined during 1979-81.

Since 1979, the U.S. carbon steel wire rod industry has undergone a significant change. The newer, more efficient mini mills have gained an increasing share of U.S. production. The share held by the integrated producers has declined significantly from 62 percent in 1979 to 46 percent in 1981. In general, the mini mills were more profitable than the integrated operations during the period under consideration. However, their performance did not lift aggregate industry statistics to satisfactory levels for any of the three years covered by this investigation. 5/

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5/ Commissioner Frank notes that the oft-cited efficiency of mini-mills is contingent upon a number of economic factors including location, availability of adequate scrap at attractive prices, and energy cost considerations. In fact, it is known that a number of mini-mills are currently suffering economic and financial distress. Also, certain integrated producers' wire rod operations can approach, if not reach, productive efficiencies of mini-mills if, all other factors being equal (e.g. prices), such integrated operations attain favorable capacity utilization levels.

The domestic industry showed a slight profit in 1979, but was unprofitable in 1980 and 1981. Together, the 10 reporting firms earned an operating profit of \$14 million in 1979, which represented 1.2 percent of net sales that year. However, the industry sustained losses of \$55 million (5 percent of net sales) and \$27 million (2.2 percent of net sales), respectively, in 1980 and 1981. Five firms sustained operating losses in 1979, seven firms sustained such losses in 1980, and six in 1981.

The ratio of cost of goods sold to net sales rose from 96 percent in 1979 to 101 percent in 1980, indicating that, in the aggregate, the 10 reporting firms sold their carbon steel wire rod at less than the cost of production in 1980. In 1981, this ratio declined slightly to 98 percent. However, integrated producers generally continued to sell rod below the cost of production.

Carbon steel wire rod production decreased from 1979 to 1980, but turned slightly upward in 1981. Commercial shipments followed the same pattern, but then started another decline after March 1981.

Capacity utilization in the wire rod mills declined during this period from 88 percent in 1979 to 77 percent in 1981. <sup>6/</sup> Employment of production and related workers for carbon steel wire rod decreased each year during the period under consideration, declining from 9,376 in 1979 to 6,880 in 1981, or by 27 percent; however, some of this decline appears to be the result of industry changes increasing productivity. The hours worked also fell from 19 million in 1979 to less than 14 million in 1981, or by 29 percent.

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<sup>6/</sup> Commissioner Stern notes that there is no information on the record which indicates any bottlenecks in the availability of steel scrap or raw steel for the carbon steel wire rod mills.



### Reasonable Indication of Material Injury By Reason of Imports

Section 771(7)(B) directs the Commission in making its material injury determinations, to consider among other factors, (1) the volume of imports of the merchandise which is the subject of the investigation, (2) the effect of imports of such merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.

### Cumulation

Chairman Alberger and Commissioners Stern and Eckes have made their determinations on a case-by-case basis. Should any of the preliminary cases return for final determinations, they do not preclude cumulation when the record, as developed, shows it is appropriate. For cumulation to be appropriate, we believe that it must be demonstrated that "the factors and conditions of trade in the particular case show its relevance to the determination of injury". 7/ There are preliminary indications that many of these factors may be present. 8/ Should any of these cases return for final

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7/ S. Rep. No. 93-1298, 93d Cong., 2d Sess. 180 (1974). There are no specific references to cumulation in the Trade Agreements Act of 1979 or its legislative history. A general reference to the "conditions of trade and competition" is found in S. Rep. 96-249, 96th Cong., 1st Sess., 74 (1979). For a further description of these factors and conditions of trade, See Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, Inv. Nos. 701-TA-86-144, 146 and 147 (Preliminary) and 731-TA-53-86 (Preliminary), USITC Publication 1221, Views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes, at 16 and 17.

8/ Chairman Alberger and Commissioner Stern note that while there is not yet sufficient information available to them to determine whether cumulation is appropriate in any of these investigations, they have voted to continue certain cases which may merit cumulative treatment in a final investigation where an isolated analysis might otherwise call for a negative determination at the preliminary stage.

determinations, we invite further comment on this issue. 9/

Vice Chairman Calhoun, using the data discussed in this opinion and on the record, cumulated the impact of the subsidized imports from Brazil, Belgium and France. He found that the factors and conditions of trade well demonstrated the relevance of cumulation in these investigations. In his view, it is in their collective, rather than through their individual presence in the U.S. marketplace that imports are affecting the domestic industry. Some of the factors and conditions of trade which make cumulation appropriate here are, first, the condition of the domestic industry, as demonstrated in the discussion above, is not strong, making it especially vulnerable to the impact of imports. Second, the imports and the like product are fungible, they compete in the same market for the same end users, and imports appear to have a simultaneous impact in the market. In addition, the domestic industry holds the dominant share of domestic apparent consumption while the individual countries importing the carbon steel wire rod under investigation have very low levels of penetration. This particular circumstance of high domestic market share and very low individualized penetration makes it difficult to establish with confidence a direct relationship between imports from a particular country and the material injury or threat which exists. But in view of the other factors observed, he finds a reasonable indication that the required nexus exists between material injury or threat and the cumulative impact of the imports. 10/

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9/ Chairman Alberger and Commissioner Stern invite in particular further argument on whether subsidized imports can be cumulated with imports sold at less than fair value.

10/ For additional reasoning by the Vice Chairman on cumulation, See Certain Steel Products from Belgium, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, . . ., Additional Views of Vice Chairman Michael J. Calhoun, at 98-104.

Commissioner Frank made his determinations in these cases by aggregating the impact of those allegedly unfairly traded imports from Brazil, Belgium, France and Venezuela as well as those from Argentina and the Republic of South Africa. Therefore, he does not join his colleagues in their affirmative determinations as reached on a country-by-country basis and the discussion and reasoning therein. 11/

Prices 12/

In analyzing data on pricing in each of these investigations, the Commission has been confronted with an apparent contradiction. On the one hand, questionnaire data gathered by the Commission indicate that imported carbon steel wire rod from all of the subject countries has been selling at prices above those for domestically produced wire rod. On the other hand, domestic purchasers have confirmed lost sales to importers from all but one of the four subject countries. Most of the carbon steel wire rod being imported into the country is standard quality low-carbon wire rod and pricing data was limited to that type of rod. Imported standard quality rod is fungible with domestically produced standard quality rod. Thus, price is generally a principal factor in purchase decisions. Most foreign producers enter U.S. markets by selling at low prices, particularly when dealing in fungible commodities.

Representatives of 9 purchasers of carbon steel wire rod confirmed that the three primary considerations in their purchasing decisions were price, quality, and their relationship with suppliers. Price was generally acknowledged to be the primary factor, although quality was considered by some to be equally important. Because of these facts, the meaning and reliability

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11/ See also Commissioner Frank's Additional Views.

12/ See Commissioner Frank's Additional views.

of the data on pricing are open to question. If these investigations return to the Commission for a final determination, we will examine pricing in greater depth. 13/

Petitioners allege that the carbon steel wire rod market is extremely price sensitive. The announcement of low prices for carbon steel wire rod can have a ripple effect throughout the entire industry, forcing wire rod prices down. This is especially true for domestic producers because, unlike foreign producers, domestic producers' orders can be cancelled up to the time of delivery. Thus, their prices are subject to renegotiation in the downward direction.

In the final quarter of 1981, net realized prices to U.S. customers, f.o.b. producers' mill, were only one percent above the level that prevailed almost three years earlier in the first quarter of 1979, demonstrating that domestic producers are clearly suffering from price suppression. The data discussed earlier showing domestic sales below the cost of production provide further indication of such price suppression.

# 1. CARBON STEEL WIRE ROD FROM BRAZIL

## Introduction

We determine that there is a reasonable indication that allegedly

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13/ Vice Chairman Calhoun and Commissioner Stern note that the attention paid to pricing results from its importance as a measure of material injury and as a possible factor linking imports to the harm suffered by the domestic producers. In their view, in light of the contradictory pricing information thus far collected, it must be kept in mind that the causal connection between subsidized imports and material injury or the threat thereof may manifest itself in ways other than price. These alternative ways include, but are not limited to, the ability of a foreign producer to supply the U.S. market on a regular basis, advertising, specialized service, inducements, and stronger balance sheets assisting in attracting capital.

subsidized Brazilian imports have caused or threaten to cause 14/ material injury to the domestic carbon steel wire rod industry. Our decision is based, among other factors, on the sharp increase in imports from Brazil in 1981, a contract between a large Brazilian producer and a foreign party related to a U.S. importer which calls for large increases of carbon steel wire rod exports to the United States, and the very large capacity to produce carbon steel wire rod in Brazil.

#### Volume of imports

In 1979, Brazil only exported 33 tons of carbon steel wire rod to the United States. U.S. imports of Brazilian rod went from 0 in 1980 to 32,579 tons in 1981, totalling 0.6 percent of consumption. This indicates Brazil's ability to quickly enter the U.S. market.

#### Price

Although available data on prices indicate that carbon steel wire rod from Brazil was higher priced than the domestic product, the prices of Brazilian rod were lower than those for any other subject country. The Commission also confirmed a number of lost sales, more than from any other subject country. More sales were also allegedly lost to Brazil than any other subject country.

There are preliminary indications that imports from Brazil, by virtue of a competitive advantage allegedly derived from government subsidization, are taking sales away from domestic manufacturers and may be materially suppressing or depressing prices in the U.S. market.

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14/ See Footnote 1, at p. 1.

### Threat of material injury

A very large producer of carbon steel wire rod in Brazil has entered into a long term contract with a foreign company related to a large importer.

Under the terms of the contract, this producer will export to the U.S. market large quantities of carbon steel wire rod. The quantities will be much larger than the amounts previously exported to the United States.

Brazil also has the capacity to produce roughly 2 million tons of carbon steel wire rod. In 1981, a significant portion of that capacity was unused. With a sizeable share of the total exports from Brazil in 1981 directed to the United States, much of that unused capacity could be directed at the United States market.

Hence, the Brazilian steel industry appears to have the capacity and the financial incentive to increase its shipments to the United States over present levels. Such shipments could further impact a domestic industry that is already weakened.

## 2. CARBON STEEL WIRE ROD FROM BELGIUM

### Introduction

We conclude that there is a reasonable indication that the domestic industry has suffered or is threatened with 15/ material injury by reason of allegedly subsidized imports of carbon steel wire rod from Belgium. Our determination is based, among other things, on the continued significant volume of Belgian imports, confirmed lost sales, and low capacity utilization in Belgium.

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15/ See Footnote 2 at p. 1.

Volume of imports

Imports of carbon steel wire rod from Belgium declined from 30,697 tons in 1979 to 20,012 tons in 1980. Imports then increased to 21,547 tons in 1981. Although, imports from Belgium were 0 in the first quarter of 1981, imports increased significantly during the last three quarters. Imports of carbon steel wire rod from Belgium accounted for 3 percent of total imports in both 1980 and 1981.

Prices

Although data indicate that Belgian wire rod is selling at prices above those for domestically made carbon steel wire rod, the Commission was able to confirm lost sales to wire rod from Belgium.

Threat of material injury 16/

Although production of carbon steel wire rod in Belgium declined by 10 percent from 1979 to 1981, Belgian capacity to produce carbon steel wire rod increased. Thus, the capacity utilization of producers in Belgium declined to very low levels in 1981. At the same time, total exports of carbon steel wire rod from Belgium accounted for an nearly 40 percent of production, indicating that this significant unused capacity could be directed at the United States in the future.

We conclude that the low capacity utilization and the strong export orientation of the Belgian steel industry establish a reasonable indication of threat of material injury by reason of imports of carbon steel wire rod from Belgium.

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16/ See Footnote 2 at p. 1.

## 3. CARBON STEEL WIRE ROD FROM FRANCE

Introduction

We conclude that there is a reasonable indication that the domestic industry has suffered or is threatened with 17/ material injury by reason of allegedly subsidized imports of carbon steel wire rod from France. Our determination is based, among other things, on the continued significant volume of French imports which has slowly been increasing, on confirmed lost sales, and on the relatively low capacity utilization of French mills.

Volume of imports

France has continued its position as the third largest exporter of carbon steel wire rod to the United States increasing its share of total U.S. imports from 12 percent in 1979 to 13 percent in 1981. Imports of carbon steel wire rod from France dipped slightly from 98,267 tons in 1979 to 93,738 tons in 1980 and then in 1981 increased by nine percent to 101,921 tons.

Prices

From the data gathered, French wire rod, like Brazilian and Belgian wire rod, appears to be selling at prices above those for domestically produced rod. However, one-third of the confirmed lost sales were to carbon steel wire rod from France.

Threat of material injury 18/

Although production and capacity declined slightly from 1979 to 1981, exports of carbon steel wire rod accounted for about 40 percent of production

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17/ See Footnote 2, at p. 1.

18/ See Footnote 2, at p. 1.



in France. Furthermore, capacity utilization was at a relatively low level in 1981, indicating that additional exports of carbon steel wire rod could be directed from France to the United States. We conclude that the export orientation and the relatively low capacity utilization of the French steel industry establish a reasonable indication of threat of material injury by reason of imports of carbon steel wire rod from France.

#### 4. STEEL WIRE ROD FROM VENEZUELA 19/

##### Introduction

Our determination that there is a reasonable indication that allegedly dumped carbon steel wire rod from Venezuela has caused or threatens to cause 20/ material injury to the domestic industry is based principally on the quick entrance of Venezuelan imports and on the extremely low capacity utilization rate in Venezuela.

##### Volume of imports

In 1979, Venezuelan imports to the United States were 0. In 1980 imports increased to 4,461 tons. In 1981, imports jumped 6 times to 25,443 tons. Imports from Venezuela accounted for 0.6 percent of total U.S. imports in 1980 and 3.3 percent in 1981 which indicates Venezuela's ability to penetrate the U.S. market rapidly.

##### Prices

Venezuela's prices appear to be higher than the domestic prices. However, although there were no confirmed lost sales to Venezuelan wire rod,

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19/ See Additional Views of Vice Chairman Michael J. Calhoun.

20/ See Footnote 3, at p. 2.

the Commission's staff was able to trace a sizable sale of Venezuelan rod to a major domestic user which also buys from domestic sources. Since Venezuela is a very new entrant to the U.S. market, the Commission believes that price probably was the primary reason for buying the Venezuelan rod. It is unlikely that a new supplier could establish a position in the U.S. market without underselling established domestic producers. These matters clearly warrant further investigation.

#### Threat of material injury

Venezuela's production has steadily increased during 1979 to 1981. Capacity utilization is still at a very low level and, although Venezuela's total exports have declined, its exports to the United States have increased significantly. Furthermore, Venezuela's large unused capacity could easily be directed to increasing its share of the U.S. market.

We conclude that the low capacity utilization and the significant increase in imports from Venezuela establish a reasonable indication of threat of material injury by reason of imports of carbon steel wire rod from Venezuela.

### Additional Views of Vice Chairman Calhoun

Based on the information gathered in this preliminary investigation, I have determined that there is no reasonable indication that imports of Venezuelan carbon steel wire rod are causing material injury nor is there a reasonable indication that these imports are a threat thereof. As I observed in the majority views, in circumstances in which the domestic industry dominates the market place with a market share of approximately 85 percent and the imports under investigation occupy such a very small share of total U.S. consumption, there is, for me, great difficulty in establishing the requisite nexus to material injury. Finding such a connection between imports and material injury in this circumstance requires identification and examination of the particularities in the market which would demonstrate the causal relationship.

In the case of Venezuelan imports, their involvement in this market appears, from one perspective, to be the same as that of imports from Brazil, Belgium and France. The Venezuelan share of the U.S. market is very small. Imports first appeared in the United States market in 1980 with a 0.1 percent market share and had a 0.5 percent market share in 1981. For the reasons I cite in the majority opinion regarding cumulation, it would be my view that the impact of these imports ought to be felt in aggregate with the imports from Brazil, Belgium and France rather than individually.

From another perspective, however, one which focuses upon some particular features attending Venezuela's wire rod presence in this market, the extent to which these imports contribute to even a

cumulative adverse impact is, to me, greatly in doubt. First, Venezuelan wire rod has no historical presence in the United States market. Our information indicates that the only shipments into the U.S. began in the last part of 1980 and ended in the third quarter of 1981. It further reveals that these shipments were part of a one time sale resulting from an isolated anomaly in the Venezuelan market. 1/ There is no information even suggesting possible future sales. Indeed, information supplied by Sidor, the Venezuelan producer, indicates its belief that the imports were a one time phenomenon unlikely to recur. Sidor plainly expressed its intention that in the foreseeable future sales would not recur. 2/

Second, while there is some question about Sidor's capacity and capacity utilization, several things are clear: Sidor is the only producer of carbon steel wire rod in Venezuela; Venezuela remains a net importer of carbon steel wire rod; and the most generous calculation of capacity in the next several years demonstrates that Sidor's production represents about 80 percent 3/ of Venezuelan requirements. Such a circumstance strongly argues against rather than in support of the proposition that Venezuelan rod is a factor or will be a factor in the United States wire rod market.

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1/ See Brief Filed on behalf of CVG-Siderurgica del Orinoco, C.A. p.2, Letter from CVG-Siderurgica del Orinoco, C.A. to Chairman William Alberger, March 2, 1982 (Conference Exhibit #9).

2/ Id.

3/ Id.

Moreover, this investigation failed to confirm any instance of lost sales to imports from Venezuela. What our investigation found, in this regard, is that the isolated sales of these imports were to importers who are long time users of both imports and domestic wire rod. Thus, failure to confirm an instance of a lost sale could well be explained by the fact that the very small volume of these imports supplanted other foreign rather than domestic carbon steel wire rod. Although the failure by staff to document actual lost sales is, alone, of limited significance especially in preliminary investigations, it is valuable here as one of several factors which together uniformly demonstrate Venezuelan rod as having a very limited impact in our market.

Finally, while I fully support the analysis and conclusion of the majority regarding our pricing data, I, nevertheless, cannot completely ignore the fact that the only pricing data we have for Venezuelan rod reveals the transaction price was nearly 25% higher than the domestic price at the time. It was also one of the highest transaction prices in all the transactions for which we have data. Despite our reservations regarding the extent to which market behavior comports with our pricing data, this price information is supported by the other factors associated with the behavior of the Venezuelan imports under investigation.

For all of these reasons, I cannot find a reasonable indication of material injury or threat by these imports either in the aggregate or individually. The data thus far collected seem to me to demonstrate quite well that Venezuelan rod is an irrelevant, at best marginal<sup>19</sup> factor in the United States carbon steel wire rod market.

As a last point, I wish to make clear that nothing in this analysis nor in my analysis in the prior steel cases 4/ should be construed as an endorsement of the view that our assessment of the impact of imports on the domestic industry can be undertaken by cumulating the impact of subsidized imports with that of imports sold at less than fair value. My reference here to Venezuelan imports in the aggregate is by way of covering all foreseeable formats in which they might have an impact in the market.

I am in full agreement with Commissioner Stern in her invitation to parties to address this question in the final investigation. The question of cumulating the impact of what might well be completely separate causes of action is a very troublesome question of law. I am not prepared to resolve it unless it arises in a way making resolution unavoidable or until we have had an adequate opportunity to receive legal briefs from interested parties.

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1/ See Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, Inv. Nos. 701-TA-86-144, 146 and 147 (Preliminary) and 731-TA-53-86 (Preliminary), USITC Pub. 1221.

## ADDITIONAL VIEWS OF COMMISSIONER PAULA STERN

Data Problems

In previous preliminary antidumping and countervailing duty cases, I have often noted that, "I must base my determination as much on what information the Commission has not been able to gather (but has expectations of developing in a full scale investigation) as on the information I have before me." 1/ In the case before us now, Certain Steel Wire Rods, the pricing and, in the case of Venezuela, lost sales data remain insufficiently developed. The possibility cannot be precluded that the subject goods are causing material injury through underselling and/or price depression made possible by subsidies or dumping. Should any of these cases return, I would expect to base any final determination on more complete demand information, comparable pricing data, analysis of the extent and impact of any subsidies or margins of dumping, and a better examination of any other factors affecting the U.S. steel industry.

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1/ See Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands and the United Kingdom, Inv. Nos. 731-TA-18-24 (Prel.), USITC Pub. 1064 (May 1980), "Statement of Reasons of Commissioner Paula Stern" at 41. Also see "Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany," Inv. No. 701-TA-86-144, 146 and 147 (Prel.) and Inv. No. 731-TA-53-86 (Prel.), USITC Pub. 1221, Vol. 1 (January 1982), "Additional Views of Commissioner Paula Stern" at 119-20.

Causality Analysis under the Trade Agreements Act of 1979

In Certain Steel Wire Nails from the Republic of Korea (March 1982) 1/, the issue arose as to what the Commission should look at in determining causation in countervailing duty cases. In the present set of cases, that concern is broadened to antidumping cases as well. These situations are parallel, and both will be dealt with here. Because the subject is so important and because the record already contains allegations that certain subsidies do not affect exported products 2/, I shall expand the argument found in my "Additional Views" in that case and then dispel some misinterpretations of those views. Discussion has focused on two interpretations of the phrases, "the effects of the subsidized imports" 3/ and "by reason of imports" 4/: (1) judging the full impact of the subject imports, which happen to benefit from a subsidy or are being sold at less than fair value, or (2) judging the impact of the subject imports in connection with the subsidy or margin of dumping in causing the injury. I believe that the language of the Trade Agreements Act 5/ on this subject is not intuitively clear on its face and therefore merits careful examination.

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1/ Certain Steel Wire Nails from the Republic of Korea, Inv. No. 701-TA-145 (Prel.), USITC Pub. No. 1223 (March 1982). See "Additional Views of Commissioner Paula Stern" at 11-14.

2/ E.g., Post-Conference Brief of Secilor at 13.

3/ E.g., section 771(4)(D) uses this phrase.

4/ E.g., section 701(a), 703(a) and 705(b) -- which deal with the countervailing duty determinations of the Commission -- employ such a phrase. The same phrase is found in sections 731(a), 733(a), and 735(b) which concern antidumping determinations.

5/ 19 U.S.C. § 1671(b).



The conceptual difference between these two approaches cannot be underestimated. The first alternative would attach no weight to whether, for instance, a subsidy was 0.5 percent or 50 percent. Any imports benefitting from a subsidy -- no matter how insignificant -- would be equally tainted for purposes of causality analysis under the first formulation. By contrast, the second formulation would require the causality analysis to trace, to whatever extent possible, the role of the subsidy in the imports' impact on the domestic industry.

The statute in section 771(C)(ii) mandates that the Commission consider certain factors in "evaluating the effect of imports of such merchandise." But how these factors should be evaluated to determine causality is not explicit in this phrase. I believe that the statute, the legislative history, and the relevant international agreements taken together clearly demonstrate that the second alternative is the proper basis for assessing causality in the Commission's countervailing duty and antidumping investigations and is true to the intended meaning of the phrases "the effects of the subsidized imports" and "by reason of imports."

The Senate Finance Committee's "Report on the Trade Agreements Act" (Senate Report) directs the Commission to continue its practice of looking to the effects of the net subsidy in its countervailing duty determinations:

In determining whether injury is "by reason of" subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the

imports subject to the investigation, and how the effects of the net bounty or grant relate to the injury, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill. (Emphasis added.) 1/

The Senate Report employs the identical language in directing the Commission with regard to antidumping deliberations, replacing only the phrase "net bounty or grant" with "margin of dumping." 2/ The "by reason of imports" language of the Trade Agreements Act tracks similar language in the Antidumping Act, 1921. The statutory repetition of this causality language in the absence of any criticism of the Commission's prior practice constitutes implicit approval by Congress of the Commission's causality methodology.

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1/ Senate Comm. on Finance, Trade Agreements Act of 1979, S. Rept. No. 96-249, 96th Cong., 1st Sess. (1979) at 57.

A review of the drafting of the Subsidies and Antidumping Codes contains background on what should be used to determine causation of material the codes on the effects language,

[t]he language finally agreed upon provided that:  
 "[i]t must be demonstrated that subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement."

Richard Rivers and John Greenwald:  
 The Negotiation of a Code on Subsidies  
 and Countervailing Measures: Bridging  
 Fundamental Policy Differences,  
 11 L. & Pol'y Int'l Bus. 1447, 1457 (1979).

The Director-General of GATT in April of 1979 described the negotiations at the Tokyo Round on this same issue:

Many participants took the firm position that . . .  
 [t]he existence of a significant material injury must be proven and the causal link between injury and the particular subsidy established.

Director-General of GATT, The Tokyo Round  
 of Multilateral Trade Negotiations, 59.

See also U.S. Office of Special Trade Representative, Background Papers on MTN, Subsidies and Countervailing Duties (May 2, 1979).

2/ Ibid., at 74.

The Commission's longstanding practice under the 1921 Act was to link the dumping margin to the injury. This precedent was repeated in its first countervailing duty investigation conducted by the Commission under section 303(b) of the Tariff Act, Certain Zoris from the Republic of China (1976). The Commission noted:

. . . the bounty or grant paid on the subject imports of zoris would amount to only about 1.3 cents per pair. Such a bounty or grant would account for only a fraction of the margin of underselling which the subject imports enjoy over casual footwear produced in the United States. 1/

In a later antidumping case, Welded Stainless Steel Pipe and Tube from Japan (1978), the Commission found in the negative also because the dumping margins accounted for only a small part of the amount by which the imports undersold the U.S. product. 2/ In Certain Fish from Canada (1978), a unanimous

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1/ Certain Zoris from the Republic of China (Taiwan), Inv. No. 303-TA-1, USITC Pub. No. 787 (September 1976) at 7.

2/ Welded Stainless Steel Pipe and Tube from Japan, Inv. No. AA-1921-180, USITC Pub. No. 899 (July 1978). In the majority opinion, Chairman Joseph O. Parker, and Commissioners George M. Moore and Catherine Bedell concluded: ". . . the dumping margin accounted for only a small part of the amount by which the Japanese pipe and tubing undersold any sales that U.S. producers might have lost to Japanese imports or any price suppression that might have been experienced by U.S. producers cannot be attributed to the LTFV margins applicable to the imports from Japan." ("Views" at 7.) In the concurring "Reasons for Negative Determination," Commissioners Bill Alberger and Daniel Minchew adopted similar reasoning and came to an identical conclusion. ("Reasons" at 11-12.)

Commission found in the negative. It concluded that there was no likelihood of injury due to the subject imports because those subsidies not scheduled for immediate elimination "are not likely to have any injurious impact on the U.S. industry." 1/

In Unlasted Leather Footwear Uppers from India (1980) 2/, the first countervailing duty case decided after the Trade Agreements Act of 1979 took effect, the Commission majority relied in large part on the "inconsequential" size of the subsidy in coming to a negative determination. In our "Statement of Reasons," Chairman Bedell and Commissioners Moore and I noted:

. . . the impact of a subsidy of 1.01 percent ad valorem on the price of finished nonrubber footwear is inconsequential . . . . If the Indian subsidies had any effect on U.S. nonrubber footwear prices, it was to make them more competitive with prices of imported footwear, since it is U.S. nonrubber footwear producers which purchase the Indian shoe uppers. 3/

In their concurring views, then Vice Chairman Alberger and Commissioner Calhoun also relied on an analysis of the subsidy in making the Commission's determination unanimous. They observed:

. . . the impact of the 1.01 percent ad valorem Indian subsidy on production costs of nonrubber footwear is also small . . . . In view of these considerations, particularly in combining the low level of market penetration and the low level of the subsidy, the fact of material injury by reason of these subsidized imports cannot be established." 4/

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1/ Certain Fish from Canada, Inv. No. 303-TA-3, USITC Pub. No. 919 (September 1978). "Statement of Reasons of Chairman Joseph O. Parker, Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell, and Italo H. Ablondi," at 8.

2/ Unlasted Leather Footwear Uppers from India, Inv. No. 701-TA-1 (Final), USITC Pub. No. 1045 (March 1980).

3/ Ibid., "Statement of Reasons of Chairman Catherine Bedell, Commissioners George Moore and Paula Stern" at 6.

4/ Ibid., "Views of Commissioners Alberger and Calhoun" at 14.

In Certain Iron-Metal Castings from India (1980) 1/, the Commission again returned to the issue of the impact of a subsidy on the domestic industry. I noted in my views, "My analysis shows that subject imports caused price suppression as a result of the subsidies despite the fact that margins of underselling were larger than the levels of subsidy." 2/ Chairman Alberger also observed: "The margin of underselling by the importers' product was more than twice the amount of the subsidy . . . ." 3/ Though we reached different conclusions, both Chairman Alberger and I recognized the importance of analyzing the effect of the subsidy.

In a subsequent preliminary antidumping case, Certain Iron-Metal Castings from India (1981), Vice Chairman Calhoun and Commissioners Moore and Bedell spoke of a reasonable indication of material injury "beyond, and entirely separate from, any injury caused by the export subsidies already found to exist on Indian castings." 4/ In my concurring opinion and in Chairman Alberger's dissenting opinion, we both referred to the LTFV margins and the countervailing duty in examining causation. 5/

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1/ Certain Iron-Metal Castings from India, Inv. No. 303-TA-13 (Final), USITC Pub. No. 1098 (September 1980).

2/ Ibid., "Statement of Reasons of Commissioner Paula Stern" at 24.

3/ Ibid., "Views of Chairman Bill Alberger" at 34.

4/ Certain Iron-Metal Castings from India, Inv. No. 731-TA-37 (Preliminary), USITC No. 1122 (January 1981), "Statement of Reasons for the Affirmative Determination of Vice Chairman Michael J. Calhoun and Commissioners George M. Moore and Catherine Bedell" at 5.

5/ Ibid., "Views of Commissioner Paula Stern" at 9 and "Views of Chairman Bill Alberger" at 10.

Thus, it has been a long and continuous Commission practice in both antidumping and countervailing duty cases to base its analysis of causality in part 1/ on the links between the offending act -- as measured by the size of the subsidy or margin of dumping -- and any impact of the imports on the domestic industry. When the net subsidy or margin of dumping has accounted for only a small portion of the margin of underselling, the Commission has reasoned in general that the injury could not be remedied by a countervailing or antidumping duty and found in the negative.

In preliminary investigations the Commission is usually unable to assess precisely the effects of the subsidy or LTFV margins because at this stage their exact extent is unknown. 2/ Thus, in judging causation in a preliminary case, the focus is of necessity on the subject imports without substantial analysis of the alleged subsidy or margins of dumping. This does not mean that reliable information on subsidies or margins should be ignored in preliminary investigations. A demonstration at any stage that the subsidies or margins of dumping cannot possibly result in material injury would be a powerful argument for a negative determination.

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1/ Analysis of subsidies or margins of dumping has formed only one part of the Commission's considerations of causality. This has always been my position.

2/ The only available information on margins in preliminary cases usually consists of general allegations by the petitioner.

For example, in my preliminary findings in Hot-Rolled Carbon Steel Sheet from France (1982), I noted that such a demonstration had not been made. I analyzed subsidy information in coming to the conclusion that "[t]here is no reasonable basis for denying the potential impact such subsidies could be having . . . ." That case had been initiated by the Department of Commerce (Commerce), which is responsible for determining the extent of subsidies. The information provided by Commerce was more substantial than general allegations by an interested party. 1/ If any of the present cases return for final investigation, the Commission will have the benefit of the final margins from Commerce and, as usual, I will take another look at causation on the basis of the expanded record at that time.

#### Certain Misconceptions

A recent discussion of the problems of causality analysis suffered from a mistaken belief that the "plain language" of the statute is "unambiguous" and that, therefore, reference to the legislative history and the GATT code is "irrelevant." 2/ However, the Senate Report devotes

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1/ Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701-TA-85 (Prel.), USITC Pub. No. 1206 (January 1982), "Views of Commissioner Paula Stern" at 27.

2/ E.g., see "Additional Views of Vice Chairman Michael J. Calhoun" in Certain Steel Wire Nails from the Republic of Korea (1982) at 15-22. All quoted phrases in this section come from this source.

much space to a discussion of this "unambiguous" subject. The Act itself is necessarily streamlined and the entire discussion of the issue by all parties and two of the Commissioners in Certain Steel Wire Nails (1982) testifies to the need for further explication of the statutory language. Of course, the legislative history and the GATT discussion are only of assistance to the extent they explain, rather than contradict, the statute.

It has been suggested that the purpose of the Act would be defeated if it made a remedy "contingent upon a detailed tracking" of the impact of such practices on the domestic industry. This argument apparently applies only to subsidies since dumping by definition is the relatively direct activity of selling at below home-market fair value (however difficult it may be to determine properly fair value). Moreover, if it were an impossible burden to make such a detailed tracing, the Act is surely self-defeating because that is precisely what it requires Commerce to do in preparing its final margins. All information on subsidies and/or dumping is distilled -- quantified -- into simple margins based on prices.



Application of the remedy is absolutely dependent on this "detailed tracing," and the Commission -- at least in final investigations -- benefits from the knowledge Commerce has acquired.

In addition, I do not believe that an affirmative determination critically depends on the most intricate tracing of the incidence of the subsidies and dumping margins on the domestic market. But the information is, to borrow a phrase, a "consideration of the first order" 1/, and we are required to base our determinations on the best available information. The process is not unnecessarily burdensome to the Commission. Indeed, Commerce lightens our task considerably by conducting the examination and determination of the margins. Rather than ignoring the information provided on this subject, the Commission should and does incorporate it into its causality considerations. Indeed, the Commission is also accustomed to "intricate tracing" of market phenomena. In this case the Vice Chairman and I have taken cognizance of some complex phenomena which will be of interest in analyzing the impact of the subject imports should any of these cases return. 2/

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1/ Ibid., It is difficult to reconcile the Vice Chairman's opening observation that ". . . this issue . . . need not necessarily be relevant in reaching a [final] determination" (at 15) with his later statement that "in establishing causality the relation between a particular proscribed practice and material harm ought to be a consideration of the first order." (At 18.)

2/ See footnote 13 of "Views of the Commission" at 10.

Finally, an argument has been made that the very attempt to tie the proscribed practices to the imports creates a de facto double standard for material injury in preliminary and final cases. I believe that this conclusion is unwarranted. I have always been of the view that the concepts of the Act (e.g., material injury, by reason of, industry), have a single meaning common to both preliminary and final cases. Indeed, the definitions of such terms are found in section 771 which applies to preliminary and final antidumping and countervailing duty cases alike. But there is a fundamental, inescapable difference between preliminary and final cases -- the evidentiary standards. In preliminary cases, a reasonable indication must be shown; in final cases, material injury due to subsidized or LTFV imports must be proven. Using information on subsidies or dumping margins in final cases imposes no double standard other than the different evidentiary requirements already stated.

From the above, it is clear that I have concluded that causality is what common sense tells us it ought to be -- connecting unfair practices, LTFV and/or subsidized sales of imports, to the material injury they cause.

## ADDITIONAL VIEWS OF COMMISSIONER FRANK

As noted in the views of the Commission, I aggregated the impact of the alleged unfairly traded imports of carbon steel wire rod from the six countries 1/ cited by the petitioners and therefore do not join my colleagues in their determinations reached on a country-by-country basis. On this cumulated basis, such imports, which declined 5 percent from 142,500 tons in 1979 to 135,253 tons in 1980, increased sharply in 1981 to 220,638 tons, or by 63 percent. Also, monthly data on such imports for 1981 show a significantly increasing trend during July-December 1981, while domestic producers total shipments have declined. 2/ These trends are also manifested by the fact that such imports have comprised a greater presence on a percentage basis with respect to quantities of all U.S. imports of carbon steel wire rod for domestic consumption, increasing from 18.5 percent in 1980 to 29 percent 1981. For all U.S. imports of carbon steel wire rod, which had declined 11 percent in 1980 from 1979 levels, increased 4 percent in 1981, a marked lesser degree of increase than evidenced by imports from respondent countries. 3/

Moreover, on a cumulated basis, imports of carbon steel wire rod from the six cited countries increased in domestic market penetration each year during

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1/ Petitioners also filed cases with the Department of Commerce against South Africa and Argentina. These countries, however, are not entitled to any injury test by the Commission because they are not signatories to the International Subsidy Code. Therefore the Commission did not institute cases on imports from these countries. I believe, however, the imports from these two countries should be cumulated with imports from the other four countries subject to these Commission preliminary investigations. For my reasoning on cumulation, see Certain Steel Products from Belgium . . . , Inv. Nos. 701-TA-86-144, 146, 147 and 731-TA-53-86 (Preliminary), USITC Pub. 1221, February 1982, Views of Commissioner Eugene J. Frank at 127-129.

2/ Report at p. A-38.

3/ Report at pp. A-32 to A-33.

1979-1981 both as a ratio of apparent U.S. consumption (from 2.5 percent in 1979 to 4.3 percent in 1981) and as a ratio of apparent U.S. open-market consumption (from 4.1 percent in 1979 to 6.4 percent in 1981). These trends are in contrast to trends relative to overall market penetration levels of total U.S. imports of carbon steel wire rod which, as a percent of total apparent consumption, increased from 1979 to 1980 but declined in 1981 from 1980 and, as a percent of total apparent open-market consumption, declined each year 1979-1981. 4/

Pricing data obtained by the Commission appears incomplete at this juncture; transactions and purchaser and product/country coverage within the period covered do not appear to be comprehensive or representative; there is a question whether data submitted by U.S. producers is comparable with that submitted by importers; trends in weighted average prices realized by U.S. producers and by importers cited (and that indicating these imported products were selling at premiums over domestically produced products) do not appear to reflect the realities of the depressed market for these fungible, price-sensitive products. For price is the primary factor in the decision to purchase carbon steel wire rod, and its price-sensitivity is even more accentuated in the context of stagnant or declining domestic demand.

Producers have stated that, beginning in 1981 and continuing into 1982, wire rod falling within wide ranges of specifications have been sold for essentially the same price owing to competition, a significant portion of which emanates from the cited countries, for fewer orders in the

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4/ Report at A-34, Table 20 and A-36 to A-37.

marketplace. 5/ Such specifications and possible quality variances do not appear to be covered by price indices and trends thereto cited, in addition to potential increased incidence of freight equalization allowance concessions oftentimes made by domestic producers in periods of slackened demand which can adversely affect gross margins.

The Producer Price Index for low carbon steel wire rod, which since 1979 to January-March 1982 increased about 40 percent, moderated and remained relatively constant from the third quarter 1981 to the first quarter 1982. 6/ Also, limited pricing data cited in the Report representing net realized prices to customers of U.S. producers (f.o.b. producers' mill), while not necessarily comparative to prices of imported products, show evidence at a minimum of suppressive effects (and indeed possible distortions) as such prices in the final quarter of 1981 were only one percent above the level of prices two years earlier the first quarter of 1979 following a highly inflationary period. Such prices also fluctuated considerably during the aforementioned period. 7/ Also, one must note recent adverse gross margins incurred by the domestic industry for these products. 8/

There is also substantial testimony by domestic customers confirming lost sales to imports. Should the Commission undertake final investigations,

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5/ Report at A-37 to A-39.

6/ Report at A-40.

7/ Report at A-40 to A-42.

8/ The vulnerability of domestic producers to competition from alleged unfairly trade imports is perhaps even more exacerbated by domestic purchasing practices which, unlike those applicable to foreign producers, allow for the cancellation of domestic producers' orders up to the time of shipment. This means quoted prices are always subject to downward renegotiation up until the actual delivery is effectuated, the ever-present possibility of which (whether such renegotiation occurs or not) in a stagnant market is in itself a dampening effect on price. See Conference Transcript at pp. 25, 35 and 88.

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